

noted that she “came back from Easter and have woke in pain every night.” Appellant first became aware of her claimed condition on April 30, 2013 and of its relationship to her employment on May 8, 2013.

Appellant submitted a report signed by a physician’s assistant dated May 8, 2013. She also submitted several unsigned and/or illegible medical notes.

By letter dated May 9, 2013, the employing establishment challenged appellant’s claim. It noted that she had not submitted medical documentation to substantiate her claim and that she had continued to work without wage loss. The employing establishment further noted that appellant alleged her pain began after she returned from Easter, a holiday, and that she may have injured herself outside of the scope of her employment.

In a duty status report dated May 9, 2013, Dr. Dale L. Mock, a family practitioner, recommended that appellant follow certain work restrictions in the performance of her duties, including working only part time at four hours a day. He stated that his diagnosis due to her injury was cervical radiculopathy and carpal tunnel syndrome. In another duty status report dated May 14, 2013, Dr. Mock recommended that appellant not return to work. He wrote, “This is work related but this person [illegible] at job site provided [appellant] can be placed where it will not aggravate symptoms.”

In a diagnostic report dated May 16, 2013, Dr. Dallas Peck, a Board-certified radiologist, diagnosed appellant with a spondylitic change in the upper- to mid-cervical spine, most pronounced at C5-6, where there was significant bilateral foraminal narrowing, more pronounced on the left.

By decision dated July 8, 2013, OWCP denied appellant’s claim. It found that she had not submitted sufficient medical evidence to establish a causal relationship between duties of her employment and her diagnosed conditions.

On December 12, 2013 appellant, through her attorney, requested reconsideration of OWCP’s July 8, 2013 decision. In an attached memorandum, counsel contended that new medical evidence, attached to the request for reconsideration, met appellant’s burden to receive a merit review of the July 8, 2013 decision.

In a diagnostic report dated October 8, 2013, Dr. Steven V. Marx, a Board-certified radiologist, examined the results of an x-ray of appellant’s cervical spine. He found a satisfactory appearance of fusion at C5-6 with no abnormal movement, and movement at C2-3, C3-4 and C4-5.

By letter dated July 18, 2013, Dr. R. Tyler Frizzell, a Board-certified neurological surgeon, described how appellant’s need for cervical surgery was related to her work at the employing establishment. He noted that on May 8, 2013 appellant was at work running a delivery bar code sorter (DBCS) machine and that, after repetitively reaching to the top of the machine and grasping the mail, she developed significant pain into the arms consistent with cervical radiculopathy. Dr. Frizzell wrote, “In summary, I believe that her work on the DBCS machine on May 8, 2013, led to her cervical radiculopathy and the need for cervical spine surgery.”

By letter dated September 5, 2013, Dr. Mock stated that, on or about April 29 or 30, 2013, appellant was at work performing her regular duties and lifted a box of mail from an overhead shelf weighing approximately 30 to 40 pounds. At that time, appellant felt immediate numbness and tingling in her bilateral shoulders with radiating pain, and numbness down to her arms, and fingertips. Dr. Mock stated that she worked with this condition until May 4, 2013, at which time she had to stop working due to discomfort in her bilateral shoulders, arms, and hands. He wrote, "This situation was most certainly due to a work-related injury that initially developed on April 29 or 30, 2013, while [appellant] was at her usual job performing her usual tasks."

Appellant submitted a diagnostic report from Dr. Adam S. Maxfield, a Board-certified radiologist, containing diagnoses of an anterior cervical discectomy and fusion at C5-6, and mild degenerative changes of the cervical spine.

By decision dated March 11, 2014, OWCP denied appellant's request for reconsideration. It found that the evidence submitted on reconsideration was not relevant and pertinent new evidence not previously considered by OWCP and that she had not met the requirements for entitlement to a merit review of her claim.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.² These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.

The claimant has the burden of establishing by the weight of reliable, probative, and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.⁴ An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere

² *Gary J. Watling*, 52 ECAB 278, 279 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Michael E. Smith*, 50 ECAB 313, 315 (1999).

⁴ *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.⁵

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁶ Rationalized medical opinion evidence is medical evidence which includes a physician's reasoned opinion on whether there is a causal relationship between the claimant's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition, and the specific employment factors identified by the claimant.⁷ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁸

ANALYSIS

Appellant filed a claim for occupational disease on May 6, 2013, alleging that she sustained numbness, and tingling to her arm, and hand as a result of grasping mail, reaching above her shoulder and lifting trays on a repetitive basis. OWCP denied her claim on July 8, 2013, finding that she had not submitted sufficient medical evidence to establish a causal relationship between the condition of her arms and hands and factors of her federal employment. It accepted that appellant was a federal civilian employee, who filed a timely claim; that the factors of employment occurred; that a medical condition had been diagnosed; and that she was within the performance of duty. Appellant requested reconsideration and by decision dated March 11, 2014, OWCP stated that it had not reviewed the merits of her case and declined her request for reconsideration.

Although OWCP's March 11, 2014 decision indicated on its face that it was not a review of the merits of appellant's claim, perusal of this decision establishes that it did in fact constitute merit review. This decision evaluated the medical evidence submitted on reconsideration to determine whether it constituted a rationalized medical opinion, while noting specific deficiencies with the medical reports of Drs. Frizzell and Mock. In particular, it noted, "Though the September 5, 2013 letter was newly introduced to the record relative to the July 8, 2013 decision, its content failed to provide a substantive discussion of causal relationship. The repeated assertion that the claimant's condition is related to work does not constitute a rationalized, medical opinion. The document is not material to the issue at hand, causal relationship."

⁵ *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

⁶ *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117, 123 (2005).

⁷ *Leslie C. Moore*, 52 ECAB 132, 134 (2000).

⁸ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

The standard for determining whether a request for reconsideration should be granted is not whether appellant has submitted sufficient evidence to establish his or her claim on the merits, but whether evidence or argument submitted by appellant: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁹ A determination of whether evidence submitted by appellant suffices to establish an element of his claim, rather than merely whether the standard for reconsideration has been met, constitutes a merit review. As the March 11, 2014 decision of OWCP in fact reviewed the merits of appellant's claim, the Board will do so on the present appeal.¹⁰

Thus, the issue on appeal is whether appellant has submitted sufficient medical evidence to establish a causal relationship between her diagnosed cervical radiculopathy and factors of her federal employment. The Board finds that appellant has not submitted sufficient medical evidence to establish such a relationship, as the medical reports provide insufficient rationale as to how factors of appellant's employment, over the course of multiple work shifts, caused or contributed to her diagnosed condition.¹¹

Appellant's occupational disease claim was initially denied based upon insufficient medical evidence establishing that her diagnosed conditions were causally related to the employment factors identified by appellant. Hence, the type of medical evidence that would establish her claim is that which attributes her diagnosed conditions to identified factors of employment over a period longer than a single workday or shift.

In a duty status report dated May 9, 2013, Dr. Mock recommended that appellant follow certain work restrictions in the performance of her duties, including working only part time at four hours per day. He stated that his diagnosis due to her injury was cervical radiculopathy, and carpal tunnel syndrome. In another duty status report dated May 14, 2013, Dr. Mock recommended that appellant not return to work. He wrote, "This is work related but this person [illegible] at job site provided she can be placed where it will not aggravate symptoms." The Board finds that Dr. Mock did not provide adequate medical rationale on causal relationship. Dr. Mock did not explain in physiological terms how appellant's duties of grasping mail, reaching above her shoulder and lifting trays on a repetitive basis had caused or contributed to her cervical radiculopathy. The Board has long held that medical opinions not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet appellant's burden of proof.¹² As such, Dr. Mock's May 9 and 14, 2013 duty status reports are insufficient to meet appellant's burden of proof.

⁹ 20 C.F.R. § 10.606(b)(2); *D.K.*, 59 ECAB 141, 146 (2007).

¹⁰ *See M.M.*, Docket No. 07-1657 (issued May 15, 2008).

¹¹ OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. 20 C.F.R. § 10.5(ee). These regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

¹² *Carolyn F. Allen*, 47 ECAB 240, 246 (1995).

The report of Dr. Frizzell dated July 18, 2013, instead of attributing appellant's diagnosed conditions to the identified employment factors of grasping mail, reaching above her shoulder, and lifting trays on a repetitive basis over a period longer than a single shift, attributed her diagnoses to a particular traumatic incident on May 8, 2013. Dr. Frizzell did not mention work factors occurring over a longer period of time as contributing to or causing appellant's diagnosed conditions. As appellant's claim is for an occupational disease, and as Dr. Frizzell's opinion on causal relationship related her diagnoses to a single traumatic incident, her July 18, 2013 letter is of diminished probative value on the issue of a causal relationship between duties of appellant's federal employment and her diagnosed condition of cervical radiculopathy, because it is not based on an accurate factual background according to appellant's history of injury.

Similarly, Dr. Mock's September 5, 2013 letter attributed appellant's diagnoses to a single traumatic event on April 29 or 30, 2013. He did not mention work factors occurring over the course of several shifts as contributing to appellant's diagnoses and did not mention an injury on May 8, 2013. Dr. Mock's opinion, like Dr. Frizzell's, supports only a single date of injury; but unlike hers, the date chosen was April 29 or 30, 2013. As such, his letter is of diminished probative value on the issue of a causal relationship between factors of appellant's work and her diagnosed condition.

The diagnostic studies of Drs. Marx, Maxfield, and Peck do not contain an opinion on the causal relationship between appellant's diagnoses and duties of her federal employment. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹³ Hence, these reports are insufficient to meet appellant's burden of proof to establish a causal relationship between her diagnosed condition of cervical radiculopathy and factors of her federal employment.

Appellant submitted several illegible reports, in which the signature indicating the identity of the person completing the report was also illegible. The Board has held that a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8101(2). Reports lacking proper identification do not constitute probative medical evidence.¹⁴

Appellant also submitted a report from a physician's assistant dated May 8, 2013, which was not countersigned by a physician. Physicians' assistants do not qualify as physicians under FECA, and their reports do not constitute probative medical evidence unless countersigned by a physician.¹⁵ As such, this report does not support appellant's claim for compensation.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

¹³ *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹⁴ *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

¹⁵ See 5 U.S.C. § 8101(2); *Lyle E. Dayberry*, 49 ECAB 369, 372 (1998) (regarding physicians' assistants).

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a condition of the arms and hands causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 11, 2014 is affirmed, as modified.¹⁶

Issued: January 9, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

¹⁶ Michael E. Groom, Alternate Judge, participated in the original decision but was no longer a member of the Board effective December 27, 2014.