

**United States Department of Labor
Employees' Compensation Appeals Board**

L.A., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
San Diego, CA, Employer**

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**Docket No. 14-1818
Issued: September 25, 2015**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On August 19, 2014 appellant, through counsel, filed a timely appeal from a July 21, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish that her bilateral medial epicondylitis condition is causally related to her regular rural carrier duties from March 2009 to April 2012.

FACTUAL HISTORY

On October 24, 2013 appellant, then a 39-year-old rural letter carrier, filed an occupational disease claim for bilateral medial epicondylitis related to exposure in the performance of her federal job duties. She stated that she first became aware of this condition on

¹ 5 U.S.C. § 8101 *et seq.*

January 29, 2001, and first realized that it was caused or aggravated by her employment on September 11, 2013.² The employing establishment controverted appellant's claim, contending that she provided medical documentation since December 2012 concerning her psychiatric condition that precluded her from working, but she had not supplied any medical documentation concerning an epicondylitis condition until she was presented with a removal request to terminate her employment.

Appellant has a prior claim under OWCP claim number xxxxxx245 for a traumatic injury, alleging that on January 29, 2001 she strained both forearms when lifting flats, and casing and boxing mail. The claim was allowed for payment of limited medical expenses without formal adjudication.³ In January 2001 appellant was a part-time carrier, working as needed, with no regular workdays. In the event the office was short a clerk, on an as needed basis, she would case, box and break down mail for approximately three to four hours. Appellant also covered the rural route for approximately two continuous weeks in the summer, as well as a few Saturdays, and occasionally after holidays. In March 2009 she became a full-time rural carrier. Appellant stopped work on April 12, 2012 due to a nonwork-related knee condition. Although she was subsequently given work medical restrictions concerning her knee condition, she did not return to work and in October 2012 she became totally disabled due to a psychiatric condition. In November 2013 the employing establishment terminated appellant's employment due to her being in leave-without-pay status for more than 365 days.

In an October 10, 2013 disability report, Dr. Christopher C. Lei, a Board-certified orthopedic surgeon, provided a diagnosis of bilateral medial epicondylitis and restricted appellant from repetitive use of bilateral upper extremities and lifting over 10 pounds.

By letter dated October 30, 2013, OWCP advised appellant of the deficiencies in the evidence and afforded her 30 days to provide additional factual and medical documentation to establish her claim.

In a November 23, 2013 statement, appellant noted her prior claim and stated that her current bilateral arm conditions preexisted from her employment. She suggested that her psychiatric condition was also work related, but did not indicate that she had filed a claim. Appellant explained that she became a full-time rural carrier in March 2009 and that her bilateral arm condition then advanced to medial epicondylitis in both arms. She alleged her condition was caused by working on call when the employing establishment was short staffed and by sorting, casing, pulling down mail, loading her car with mail and heavy parcels and delivering mail through her car window. Appellant indicated that as a rural carrier she drove 120 miles a day six days a week. She stated that she last saw Dr. Lei in August 2002 related to her prior claim and saw him again on September 11, 2013.

In a November 26, 2013 report, Dr. Lei advised that he had seen appellant on several occasions and on her initial evaluation of September 11, 2013, she was treated for bilateral medial elbow pain and diagnosed with medial epicondylitis. He noted his review of notes from

² Appellant worked six days a week, from 8:20 a.m. to 2:30 p.m.

³ The last medical documentation in that claim prior to November 23, 2013 was dated August 6, 2002 and reflects she was treated for bilateral overuse tendinitis of the forearms.

Dr. Christopher T. Behr, an orthopedic surgeon, dated March 6, 2001, with a diagnosis of overuse tendinitis bilateral forearms with no mention of bilateral medial epicondylitis. Electromyogram studies were negative. Dr. Lei indicated that it was unclear why appellant had not worked since 2012, but she had been increasing her activities lately and developed pain in her elbows and forearms. Based on the information he reviewed, Dr. Lei opined that her medial epicondylitis was not part of her prior work injury. However, as appellant's bilateral forearm pain was part of a previous work injury documented by Dr. Behr in 2001, he believed that her forearm pain was an exacerbation of her previous workers' compensation injury. Dr. Lei noted tenderness along the medial epicondyles and bilateral forearm flexor tendons. He noted that appellant has been put on modified duties and that her bilateral epicondylitis was not related to her prior work injury, but her bilateral forearm pain, overuse injury, and tendinitis were related to the prior work injury.

By decision dated December 11, 2013, OWCP denied the claim, finding that evidence was insufficient to establish fact of injury. Specifically, it found that appellant had not provided sufficient information regarding the nature, duration, and frequency of the implicated employment exposure.

On December 23, 2013 appellant's counsel requested a telephonic hearing, which was held on June 10, 2014. During the hearing, the hearing representative found that performance of duty was not at issue with respect to the occupational exposure of March 2009 and continuing; rather, the issue was causal relationship of the diagnosed bilateral medial epicondylitis based on the established exposure beginning in 2009 as a full-time regular rural letter carrier. Appellant confirmed that she had stopped work in April 2012 due to a nonindustrial knee condition, and then did not return because she became totally disabled in October 2012 due to a psychiatric condition. She suggested that her psychiatric disability was work related.

In a December 30, 2013 report, Dr. Gregory Mack, a Board-certified orthopedic surgeon, noted that appellant was seen for bilateral arm pain with lifting that started around February 2013. He noted that her prior work injury in 2001 involved burning pain and numbness of her bilateral arms and that she was working as a relief driver and "float" at that time. Appellant continued to work with no permanent restrictions. Dr. Mack noted that Dr. Behr had diagnosed bilateral forearm tendinitis in March 2001, that appellant last worked in April 2012 due to a nonindustrial knee injury as well as other issues, and that she felt that she could not tolerate the stress of driving 120 miles a day. In February 2013 appellant experienced arm pain after she became more active, including driving and "doing more things."

Dr. Mack provided examination and x-ray findings and noted that subjective complaints were greater than objective findings. He stated that medial forearm pain and medial arm pain suggest medial epicondylitis but could also be consistent with ulnar neuritis. However, tests specific for those diagnoses did not confirm those diagnoses. Dr. Mack stated that it was possible that appellant may have ulnar neuritis at the elbow and recommended an electrodiagnostic study. His principle impression was that of an overuse syndrome of the upper extremities, but he noted that the specific cause of her symptoms would be speculative. Dr. Mack noted that the interval between the date last worked and onset of current symptoms was 10 months. He stated that it was his understanding per appellant's history, that Dr. Lei recommended light duty before she last worked and thus the basis for industrial causation would

hinge on his records. Dr. Mack further stated that it was also possible that her current complaints reflected a continuation of her 2001 injury. Permanent restrictions were provided.

By decision dated July 21, 2014, an OWCP hearing representative modified the prior decision to accept fact of injury in appellant's regular rural carrier duties since March 2009 and that she has not worked since April 2012. The hearing representative, however, affirmed the denial of appellant's claim as appellant failed to establish that she sustained an injury causally related to the established employment exposure from March 2009 through April 2012.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established. To establish an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁶

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 Neither the mere 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 causal relationship.⁹

⁴ C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁵ S.P., 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ R.H., 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁷ I.J., 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *James Mack*, 43 ECAB 321 (1991).

⁹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ANALYSIS

OWCP accepted, and the record reflects, that appellant had been performing regular rural carrier duties since March 2009 and she had not worked after April 2012. The Board finds, however, that the medical evidence failed to establish a causal relationship between her current arm conditions and her work exposure from March 2009 through April 2012.

In his November 26, 2013 report, Dr. Lei diagnosed appellant with medial epicondylitis. He noted that she had not worked since April 2012, and that she developed pain in her elbows and forearms after a recent increase in activity. Dr. Lei opined that appellant's medial epicondylitis was not due to her duties as a regular rural carrier. Rather, he found that her current condition was an exacerbation of her previous work injury concerning her bilateral forearm pain. The current claim pertains to appellant's work activities as a regular rural carrier from March 2009 to April 2012. Dr. Lei did not offer an opinion that appellant's bilateral medial epicondylitis was caused by her exposure as a regular rural carrier. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.¹⁰ Thus, Dr. Lei's opinion is of limited probative value in this claim.¹¹

In his December 30, 2013 report, Dr. Mack noted that appellant last worked in April 2012 and that her arm pain developed in February 2013 after increasing activities, including driving and doing more things. While he suggested that her pain symptoms could be medial epicondylitis or ulnar neuritis, he specifically diagnosed overuse syndrome of the upper extremities. However, Dr. Mack stated that the cause of appellant's symptoms would be speculative as the interval between the date she last worked and the onset of the current symptoms was 10 months. He referenced Dr. Lei's records for the basis of causation. Dr. Mack did not offer an opinion that appellant's current condition was causally related to her employment as a regular rural carrier from March 2009 to April 2012. Thus, his opinion is of diminished probative value on the issue of causal relationship and is insufficient to establish appellant's burden of proof.¹²

The Board finds that the medical evidence does not establish that appellant sustained a medical condition causally related to the accepted employment exposure from March 2009 to April 2012. An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment, is sufficient to establish causal relationship.¹³ Causal relationship must be established by rationalized medical opinion evidence. As noted, the medical evidence is insufficient to

¹⁰ *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003).

¹¹ To the extent Dr. Lei noted the prior work injury of 2001 and opined that appellant's bilateral forearm pain, overuse injury and tendinitis were related to the prior 2001 work injury, he failed to provide any medical rationale for his opinion.

¹² *Supra* note 9.

¹³ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

establish appellant's claim. Consequently, OWCP properly found that she did not meet her burden of proof in establishing her claim.

On appeal, appellant's counsel argues that the decision is contrary to fact and law. As noted above, the medical evidence does not establish that appellant's diagnosed conditions are causally related to the accepted employment exposure from March 2009 to April 2012. Reports from appellant's physicians failed to provide sufficient medical rationale based on a complete factual background explaining the reasons why her diagnosed condition was caused or aggravated by the accepted employment exposure as a regular rural carrier. The need for such rationale is particularly important in view of the fact appellant stopped working in April 2012 and noted an increase in her symptoms after resuming activities approximately 10 months later.

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.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that her bilateral medial epicondylitis condition is causally related to her regular rural carrier duties from March 2009 to April 2012.

ORDER

IT IS HEREBY ORDERED THAT the July 21, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 25, 2015
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board