

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

R.C., Appellant)
and) Docket No. 15-1012
U.S. POSTAL SERVICE, POST OFFICE,) Issued: September 1, 2015
Folsom, LA, Employer)

)

Appearances:

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 31, 2015 appellant, through counsel, filed a timely appeal from a February 18, 2015 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 the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an occupational disease in the performance of duty.

FACTUAL HISTORY

On August 26, 2013 appellant, then a 32-year-old rural carrier, filed an occupational disease claim. She claimed that picking up tubs and trays of mail caused a strain. Appellant

¹ 5 U.S.C. § 8101 *et seq.*

advised that she became aware of her condition on May 21, 2013. She stopped work on August 26, 2013.

By letter dated September 20, 2013, OWCP notified appellant that evidence was insufficient to establish the claim. Appellant was instructed to return a questionnaire establishing the factual element of her claim and advised of the type of medical evidence needed.

In an August 26, 2013 statement, appellant's postmaster advised that appellant informed him that she injured her right arm on May 21, 2013 while pulling, opening, and closing mailboxes. The statement noted that appellant did not earlier report this May 21, 2013 injury. However, she reported a May 18, 2013 injury where she shoved her shoulder into a lock door but declined to file a claim or seek medical attention. An attached May 20, 2013 statement from the postmaster advised that appellant informed him that she was injured when she hit her shoulder on a door at work on May 18, 2013. Appellant was asked if she wanted to file a claim and seek medical attention, but she declined.

On August 26, 2013 appellant advised that on May 21, 2013 she began to feel pain in her right arm while pulling on mailboxes during her delivery route. She noted that the pain shot from her elbow to her shoulder and into her lower neck. Appellant stated that her physician told her to take a week off from work at that time. She related that initially she seemed fine and returned to work, but on August 22, 2013 her symptoms returned while picking up tubs and trays of mail.

Medical evidence submitted included a May 21, 2013 report from Dr. Joseph Perdigao, a Board-certified diagnostic radiologist. He advised that a cervical spine x-ray revealed no acute fracture, dislocation, significant degenerative disc disease, or degenerative joint disease. Dr. Perdigao noted that there was minimal age-related posterior spondylosis in the cervical spine. Appellant also submitted a May 21, 2013 report signed by a family nurse practitioner.

In an October 1, 2013 report, Dr. Herbert Reiss Plauche, a Board-certified orthopedic surgeon, advised that appellant sustained a work-related injury to her right elbow on May 21, 2013. He noted that appellant reached out to the right side, pulled on a mailbox door, and felt a pop in her elbow. Appellant returned to work and, after two or three days, had recurrent elbow pain. She tried to work the next several months but developed elbow soreness with some radiating numbness down the right forearm and into the hand. Appellant also had shoulder pain in the upper trapezial area which she attributed to change in activity level and alteration in her use. Dr. Plauche advised that appellant had been off work since August. On examination he found tenderness in the trapezial area and anterior elbow at the radial head, no palpable spasm, full cervical flexion and extension, mild diminished sensibility in the median and ulnar distribution, and minimal Tinel's at both the elbow medially and at the carpal canal. Dr. Plauche assessed right elbow pain with some numbness in the fingertips. He opined that the shoulder symptoms were likely muscular in nature and related to appellant's modification of work activities and home duties.

By decision dated October 25, 2013, OWCP denied the claim because medical evidence did not establish that a condition was diagnosed in connection with the alleged work events.

Appellant's counsel requested an oral telephone hearing which took place on May 19, 2014. He detailed the medical evidence submitted and reiterated that appellant's physician opined that her condition was work related.

Prior to the hearing, appellant submitted additional medical evidence. On November 12, 2013 Dr. Plauche advised that appellant complained of pain in the elbow radiating up to the upper arm, shoulder, and neck down to the hand. He noted that she attributed her symptoms to repetition and overuse of the right arm and that she had been off work since August 2013. Dr. Plauche advised that appellant sorted and delivered mail and that on one occasion she reached out to open a mailbox and pulled a stuck door resulting in a sharp pain in the posterior elbow. On examination he found posterior and medial elbow tenderness, good cervical range of motion, tenderness along the left lateral neck, no gross paraspinous spasm, negative Spurling's test, and no full elbow and shoulder motion. Dr. Plauche assessed right posterior olecranon tenderness, medial elbow tenderness, and pain with radiation discomfort in the upper lower arm. He recommended that appellant undergo a course of occupational therapy.

In a November 6, 2013 report, Dr. Paul Mclean Jackson, a Board-certified diagnostic radiologist, advised that the magnetic resonance imagining (MRI) scan of the right elbow revealed mild tendinosis of the common extensor tendon origin at the lateral epicondyle. He also noted that appellant had a suspected small accessory muscle within the posterior aspect of the cubital tunnel which could result in impingement of the descending ulnar nerve. In a November 6, 2013 report, Dr. Jigar Patel, Board certified in diagnostic radiology, advised that a right shoulder MRI scan revealed no acute abnormality and mild early acromioclavicular joint degenerative changes.

In a January 29, 2014 disability status report, Dr. Plauche advised that appellant was unable to return to work for the next 30 days. In a February 18, 2014 report, he advised that she had an overuse work-related injury on August 22, 2013 and reiterated the findings of earlier diagnostic testing. Dr. Plauche noted that appellant was being treated with physical therapy and recommended a functional capacity evaluation to find a more appropriate line of work as appellant believed her repetitive duties contributed to her condition.

In a January 30, 2014 report, Dr. Jackson advised that a cervical spine MRI scan revealed slight straightening and kyphotic curvature of the cervical spinal column, shallow central subligamentous disc protrusion at C6-7, no significant spinal canal narrowing, foraminal narrowing, nerve root contact, or impingement at any level.

Appellant submitted a March 13, 2014 functional capacity evaluation from a physical therapist who indicated that she could work full-time work in a light-duty capacity.

By decision dated July 8, 2014, the hearing representative affirmed the October 25, 2013 decision because the medical evidence was not sufficient to establish that elbow tendinosis, right shoulder degenerative changes, and cervical disc protrusion was caused by work factors.

In an August 14, 2014 report, Dr. Plauche advised that appellant related that she had an over-use injury in May 2013 and was later reinjured in August 2013. He stated that he did not have any evidence to dispute her claim that her symptoms developed through her repetitive use

at work and opined that her symptoms were likely due to the type of work she did. Dr. Plauche noted that appellant's position included a lot of repetitive lifting. He advised that his report was in support of appellant obtaining workers' compensation benefits so that she could obtain medical treatment and return to her previous position or to receive vocational training to obtain another position.

By letter dated October 1, 2014, appellant, through counsel, requested reconsideration.

Dr. Scott Sondes, a Board-certified physiatrist, on August 18, 2014, advised that appellant was injured in May 2013 while lifting bins at work and later reinjured in August 2013. On examination he noted trigger point palpation in the splenius cervicis and positive Spurling's test. Dr. Sondes assessed cervical herniated nucleus pulposus, cervical radiculopathy, cervicalgia, neuropathy, neuralgia, and spinal enthesopathy. In a September 22, 2014 disability status report, he noted treating appellant for cervical radiculopathy and advised that she was unable to return to work. On October 13, 2014 Dr. Sondes advised that appellant continued to complain of headaches, severe neck and shoulder spasms, and pain in the right arm. He noted that she underwent trigger point injections to help with her symptoms. Dr. Sondes opined that given her job and injury, her condition appeared to be work related beyond reasonable medical certainty.

In a November 12, 2014 report, Dr. Sondes advised that appellant complained of neck pain as a result of lifting bins full of mail in May 2013. He reiterated her treatment history and opined that given the nature of her injury and symptoms, her condition was caused and worsened by work-related duties beyond a reasonable degree of medical certainty. Dr. Sondes stated that he had no doubt in his mind of this causation.

By decision dated February 18, 2015, OWCP denied modification of its July 8, 2014 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden 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 timely filed within the applicable time limitation, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

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 *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

(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.⁴

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.⁵ 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.⁶

ANALYSIS

Appellant claimed that she began experiencing right elbow and shoulder pain as a result of pulling on mailboxes and picking up tubs and trays of mail. There is no dispute that she opened and closed mailboxes and lifted mail as a part of her job. However, the Board finds that medical evidence of record is insufficient to establish that the medical conditions were causally related to the accepted work events.

In his October 1, 2013 report, Dr. Plauche advised that appellant sustained a work-related injury to her right elbow on May 21, 2013 when she pulled on a mailbox door, and felt a pop in her elbow. He opined that the shoulder symptoms were likely muscular in nature and related to appellant's modification of work activities. This report is insufficient to discharge appellant's burden of proof because Dr. Plauche did not clearly explain why particular work duties caused or contributed to a diagnosed condition. On November 12, 2013 Dr. Plauche noted that appellant attributed her symptoms to repetition and overuse of the right arm. He advised that she sorted and delivered mail and that on one occasion she reached out to open a mailbox and pulled a stuck door resulting in a sharp pain in the posterior elbow. Dr. Plauche stated that appellant attributed her condition to repetition and overuse of the arm but he did not offer his own opinion as to the cause of her condition. The Board has held that a physician's opinion regarding causal relationship that appears to be primarily based on appellant's own representations rather than on objective medical findings is of limited probative value.⁷ In his February 18, 2014 report, Dr. Plauche advised that appellant had an overuse work-related injury on August 22, 2013. He opined that her symptoms were likely due to the type of work she did and noted that her position included a lot of repetitive lifting. Dr. Plauche's use of the word "likely" makes his opinion speculative. The Board has held that medical opinions which are speculative or equivocal are of

⁴ *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁵ *I.J.*, 59 ECAB 408 (2008); *supra* note 3.

⁶ *James Mack*, 43 ECAB 321 (1991).

⁷ *C.M.*, Docket No. 14-88 (issued April 18, 2014).

diminished probative value.⁸ In none of his reports did Dr. Plauche provide medical reasoning to explain how particular work factors caused or contributed to a diagnosed medical condition. These reports are insufficient to establish appellant's claim.

In his November 12, 2014 report, Dr. Sondes advised that appellant complained of neck pain as a result of lifting bins full of mail in May 2013. He opined that given the nature of her injury and symptoms, appellant's condition was caused and worsened by her work-related duties beyond a reasonable degree of medical certainty. Dr. Sondes stated that he had no doubt in his mind of this causation. This report is insufficient to discharge appellant's burden of proof because Dr. Sondes does not provide medical rationale to explain how lifting mail caused or aggravated appellant's cervical herniated nucleus pulposus, cervical radiculopathy, cervicalgia, neuropathy, neuralgia, and spinal enthesopathy. Dr. Sondes' August 18, 2014 report advised that appellant was injured in May 2013 while lifting bins at work and later reinjured in August 2013. On October 13, 2014, Dr. Sondes noted appellant's continuing symptoms and opined that given her job and injury, her condition appeared to be work related beyond reasonable medical certainty. These reports are of limited probative value as Dr. Sondes does not provide medical rationale to explain his opinion on causation.

Multiple diagnostic and disability status reports were submitted. However, they are insufficient to discharge appellant's burden of proof as they do not offer a physician's opinion on causal relationship.⁹

OWCP also received evidence from a nurse practitioner and a physical therapist. However, physical therapists and nurse practitioners are not physicians as defined under the FECA.¹⁰ Thus, these reports have no probative medical value and are insufficient to discharge appellant's burden of proof.

Consequently, appellant has submitted insufficient medical evidence to establish her claim. As noted, causal relationship is a medical question that must be established by probative medical opinion from a physician.¹¹ The physician must accurately describe appellant's work duties and medically explain the pathophysiological process by which these duties would have

⁸ See *S.E.*, Docket No. 08-2214 (issued May 6, 2009) (finding that opinions such as the condition is probably related, most likely related or could be related are speculative and diminish the probative value of the medical opinion); *Cecilia M. Corley*, 56 ECAB 662, 669 (2005) (finding that medical opinions which are speculative or equivocal are of diminished probative value).

⁹ See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹⁰ A.C., Docket No. 08-1453 (issued November 18, 2008). Under FECA, a "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2). See *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

¹¹ See *supra* note 5.

caused or aggravated his condition.¹² Because appellant has not provided such medical opinion evidence in this case, she has failed to meet her burden of proof.

Appellant may submit new evidence or argument as part of a formal 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 establish that she sustained an occupational disease caused by work-related events.

ORDER

IT IS HEREBY ORDERED THAT the February 18, 2015 decision of Office of Workers' Compensation Programs is affirmed.

Issued: September 1, 2015
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹² *Solomon Polen*, 51 ECAB 341 (2000) (rationalized medical evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician). *See also S.T.*, Docket No. 11-237 (issued September 9, 2011).