

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

G.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Sewell, NJ, Employer**

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**Docket No. 16-0032
Issued: August 15, 2016**

Appearances:

*Thomas R. Uliase, Esq., for the appellant¹
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 October 8, 2015 appellant, through counsel, filed a timely appeal from a July 30, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 the diagnosed cervical condition was caused or aggravated by her federal job duties.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

On appeal counsel asserts that the medical evidence establishes causal relationship or, at a minimum, OWCP should further develop the medical evidence.

FACTUAL HISTORY

This case has previously been before the Board. In a February 5, 2015 decision, the Board found that appellant did not establish that she sustained a cervical condition causally related to a May 7, 2007 work incident or other employment factors because the medical evidence was insufficient to establish causal relationship.³ The Board noted that Dr. Mark S. Rekant, Board-certified in orthopedic and hand surgery, merely discussed appellant's diagnosed bilateral carpal tunnel syndrome, an accepted condition. As to the reports from Dr. Valentino,⁴ the Board noted that his May 22, 2013 report, redated on October 29, 2013, noted that on March 14, 2013 appellant had a new onset of neck pain that radiated into the right arm with paresthesia and weakness that correlated with the magnetic resonance imaging (MRI) scan findings of a disc herniation at C3-4. Dr. Valentino noted that an August 1, 2011 MRI scan showed disc herniations at C4-5, C5-6, and C6-7 with nerve root compression, for which she had surgery on November 1, 2011. He indicated that a May 10, 2013 cervical spine MRI scan demonstrated a new moderate-sized central disc herniation at C3-4 with encroachment on the cord and moderate bilateral foraminal encroachment. Dr. Valentino opined that the multilevel herniations were causally connected to a May 7, 2007 work injury in which appellant stated she injured her right hand and wrist pulling down a door on her work vehicle. He noted that appellant returned to work after the November 2011 cervical spine surgery and that work activities created the symptomatic disc herniation at C3-4.

The Board found in its February 5, 2015 decision that Dr. Valentino's opinion lacked sufficient medical rationale to discharge appellant's burden of proof that she sustained an employment-related cervical injury, finding that he did not demonstrate specific knowledge of her job duties or offer an explanation of the mechanics of how either a May 7, 2007 work

³ On February 12, 2013 appellant, a rural carrier, filed an occupational disease claim (Form CA-2) alleging that extensive repetitive and strenuous upper extremity job duties caused bilateral carpal tunnel syndrome and a cervical injury. OWCP adjudicated the claim under file number xxxxxx984. Appellant had a previous May 7, 2007 claim for a right wrist injury, adjudicated by OWCP under file number xxxxxx536 that was denied. A May 13, 2009 claim, adjudicated under file number xxxxxx571 was accepted for lumbosacral sprain. On June 21, 2013 OWCP denied the instant claim, xxxxxx984, for an employment-related cervical condition. Appellant requested a hearing, and, following a preliminary review, on September 17, 2013 a hearing representative reversed in part and set aside in part the June 21, 2013 decision. The hearing representative found that appellant had established that the claimed bilateral carpal tunnel syndrome was causally related to work and should be accepted. She remanded the case to OWCP to double the instant claim with claim number xxxxxx536, prepare an appropriate statement of accepted facts, and obtain a supplementary report from Dr. Steven J. Valentino, an attending Board-certified osteopath specializing in orthopedic surgery, asking that he give a reasoned explanation regarding the medical connection between appellant's cervical condition and her job duties. After receipt of an October 29, 2013 report from Dr. Valentino, by decision dated November 20, 2013, OWCP again denied appellant's claim for a work-related cervical condition. Counsel requested a hearing that was held on April 22, 2014. On July 8, 2014 an OWCP hearing representative affirmed the November 20, 2013 decision, finding the evidence insufficient to establish that the claimed cervical condition was caused by appellant's work duties. Appellant then filed an appeal with the Board.

⁴ *Id.*

incident or appellant's regular job duties resulted in a cervical injury. Without a detailed medical report describing how and why appellant sustained a cervical condition caused by employment factors, the Board found that appellant did not meet her burden of proof.⁵ The facts and circumstances set forth in the previous Board decision are incorporated herein by reference.

In the interim, on July 29, 2014 OWCP informed appellant that her bilateral carpal tunnel syndrome was accepted. Dr. Rekant provided treatment notes dated February 18, 2013 to August 11, 2014 in which he recommended corrective surgery for appellant's bilateral carpal tunnel syndrome. On September 12, 2014 he performed left carpal tunnel release, and a right carpal tunnel release on December 5, 2014. Appellant, who was working regular duty, filed a recurrence claim. She received appropriate compensation and was placed on the periodic compensation rolls.

In correspondence dated and received by OWCP on May 1, 2015, counsel requested reconsideration of the Board's February 5, 2015 decision. He submitted an April 20, 2015 report in which Dr. Valentino noted a history that "on May 7, 2005" appellant injured her right hand and wrist pulling down a long life vehicle (LLV) door and had complained of upper extremity pain and numbness afterward.⁶ Dr. Valentino advised that she was initially diagnosed and treated for carpal tunnel syndrome, but her symptoms persisted. He opined that appellant's repetitive letter carrier duties of lifting, carrying, bending, and twisting aggravated her condition, indicating that her symptoms worsened and she failed to respond to conservative care. Dr. Valentino reported that appellant had cervical decompression and fusion surgery on November 4, 2011 with subsequent resolution of radicular symptoms such that she was able to return to work in her preinjury capacity. He noted that the medical evidence clearly established multilevel cervical disc herniations. Dr. Valentino opined that the mechanism, date of injury, and subsequent employment factors of bending, lifting, and twisting contributed to the presence of the symptomatic cervical disc herniations with radiculopathy.

In a merit decision dated July 30, 2015, OWCP found that, as Dr. Valentino provided only a brief and generalized description of appellant's work factors and provided no evidence to support that he was familiar with the physical requirements of her rural carrier position, his report was insufficient to establish that appellant's cervical condition was employment related. It denied modification of the prior decisions.

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 timely filed within the applicable time limitation period of FECA, that an injury was sustained 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. These are the essential elements of each and every

⁵ Docket No. 14-2004 (issued February 5, 2015).

⁶ The record indicates that the lifting incident occurred in May 2007. *Supra* note 2.

compensation claim, regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.⁷

OWCP regulations define the term “occupational disease or illness” as a condition produced by the work environment over a period longer than a single workday or shift.⁸ 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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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.⁹

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹⁰ 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 employee.¹¹ 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.¹²

ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish a cervical condition caused by a claimed May 7, 2007 employment incident or by her usual job duties as a rural carrier. The medical evidence of record is insufficient to establish causal relationship.

In its previous decision, the Board had reviewed a number of reports from Dr. Valentino including a May 22, 2013 report, redated on October 29, 2013.¹³ In that report, Dr. Valentino noted that on March 14, 2013 appellant had a new onset of neck pain that radiated into the right arm with paresthesia and weakness that correlated with MRI scan findings of a disc herniation at C3-4. He noted that an August 1, 2011 MRI scan demonstrated disc herniations at C4-5, C5-6,

⁷ *Roy L. Humphrey*, 57 ECAB 238 (2005).

⁸ 20 C.F.R. § 10.5(ee).

⁹ *Supra* note 6.

¹⁰ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹¹ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹² *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹³ *Supra* notes 2 and 4.

and C6-7 with nerve root compression, for which she had surgery on November 1, 2011. Dr. Valentino indicated that a May 10, 2013 cervical spine MRI scan study demonstrated a new moderate-sized central disc herniation at C3-4 with encroachment on the cord and moderate bilateral foraminal encroachment. He opined that the multilevel disc herniations were causally connected to a May 7, 2007 employment injury in which appellant stated she injured her right hand and wrist pulling down an LLV door. Dr. Valentino noted that appellant returned to work after the November 2011 cervical spine surgery and that her work activities created the symptomatic disc herniation at C3-4. In its February 5, 2015 decision, the Board found that, as Dr. Valentino did not adequately explain or describe physiologically how or why the May 7, 2007 employment incident or appellant's work duties as a rural carrier caused her cervical condition, his opinion was of diminished probative value.¹⁴

With the May 1, 2015 reconsideration request, appellant submitted an April 20, 2015 report from Dr. Valentino. In that report, while Dr. Valentino related that appellant's work activities of bending, lifting, and twisting contributed to her diagnosed disc herniations, the Board finds this most recent opinion lacks sufficient detailed medical rationale to discharge appellant's burden of proof that she sustained an employment-related cervical injury. He did not demonstrate specific knowledge of her job duties or offer sufficient explanation of how the May 7, 2007 lifting incident or her regular job duties resulted in a cervical injury. Without a detailed medical report describing how and why appellant sustained a cervical condition caused by employment factors, appellant has not met her burden of proof.¹⁵

The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to a claimant's federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.¹⁶ As Dr. Valentino did not adequately explain or describe physiologically how or why the May 7, 2007 employment incident or appellant's work duties as a rural carrier caused her cervical condition, his opinion is of diminished probative value.¹⁷

It is appellant's burden of proof to establish that the claimed cervical condition is causally related to factors of her federal employment. She has submitted insufficient evidence to show a cervical condition was caused by her employment factors.

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.

¹⁴ See *M.L.*, Docket No. 14-1128 (issued September 17, 2014).

¹⁵ See *W.S.*, Docket No. 14-1022 (issued July 1, 2014).

¹⁶ *A.D.*, 58 ECAB 149 (2006).

¹⁷ See *supra* note 13.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that the diagnosed cervical condition was caused or aggravated by her federal job duties.

ORDER

IT IS HEREBY ORDERED THAT the July 30, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 15, 2016
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