

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

D.A., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Chesterfield, VA, Employer)

**Docket No. 15-1872
Issued: January 11, 2016**

Appearances:

Stephen D. Scavuzzo, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 11, 2015 appellant, through counsel, filed a timely appeal from a March 16, 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.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she sustained a medical condition on March 13, 2012 other than the accepted cervical sprain and contusion of her right shoulder and upper arm; and (2) whether appellant met her burden of proof to establish disability from March 15 to April 18, 2014 due to her March 13, 2012 work injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 13, 2012 appellant, then a 41-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that she sustained injury to her right arm on that date. She indicated that she was delivering mail to a mailbox when her postal vehicle was struck from behind by a customer's vehicle.² Appellant stopped work on March 13, 2012 but shortly thereafter she returned to her regular work for the employing establishment.

OWCP accepted that appellant sustained a cervical sprain and contusion of her right shoulder and upper arm on March 13, 2012.

The findings of March 13, 2012 x-rays of appellant's cervical spine were reported as negative. There was no evidence of acute fracture or subluxation, the vertebral body alignment was appropriate, and the prevertebral soft tissues were within normal limits. The findings did not show significant degenerative change. Computerized tomography testing of appellant's head on March 15, 2012 revealed no intracranial abnormality.

In periodic (Form CA-17) duty status reports dated beginning in March 2012, Dr. Jerome G. Smith, an attending Board-certified internist, diagnosed such conditions as cervical sprain and right arm contusion.³ In a narrative report dated March 14, 2012, Dr. Smith diagnosed head contusion with headache, cervical sprain, and right forearm contusion. By July 2012, he began to diagnose headaches on the duty status reports, either in the clinical findings section of the reports or in the portion for "other disabling conditions," *i.e.*, those conditions not related to the reported March 13, 2012 injury.⁴ By early 2013, Dr. Smith stopped providing the diagnosis of headaches on these form reports. In a duty status report dated December 27, 2013, he diagnosed cervical disc protrusion due to the March 13, 2012 injury.

In a November 18, 2013 report, Dr. Charles E. Sutton, Jr., an attending Board-certified neurologist, indicated that appellant was reevaluated for her ability to work for the employing establishment. He reported that she continued to complain of paresthesias and paresis in her right hand and neck pain which intermittently radiated into her right shoulder. Dr. Sutton indicated that his neurologic evaluation revealed decreased sensation of the right hand over the ventral and dorsal aspects, and 4/5 motor strength of the biceps and triceps muscles in both arms and the deltoid muscles in the right arm. He reported that appellant had a disc protrusion at C6-7 with mild stenosis and noted, "[Appellant's] neurologic sequelae remain unresolved after greater than one year." Dr. Sutton recommended that she continue anti-inflammatory, muscle relaxant medications on a perneeded basis and that she avoid exacerbating activities. Appellant's neurologic treatment remained palliative and conservative in nature.

² An emergency medical services report of the March 13, 2012 accident indicates that appellant's postal vehicle sustained minor damage of the rear bumper and rear driver's side door and that appellant was able to exit her postal vehicle and walk to a nearby location.

³ Some of the reports contained a diagnosis of head contusion.

⁴ In a narrative report dated March 14, 2012, Dr. Smith diagnosed head contusion with headache, cervical sprain, and right forearm contusion.

Appellant stopped work on March 13, 2014 and on April 17, 2014, she filed a claim for compensation (Form CA-7) alleging that she had disability from March 15 to April 18, 2014 due to her March 13, 2012 work injury. She indicated that she was off work during this period due to “physicians’ orders.”⁵ Appellant did not submit any additional medical evidence at the time she filed her claim.

By letter dated April 29, 2014, OWCP requested that appellant submit additional factual and medical evidence in support of her claim. It advised her that the condition of cervical disc herniation had not been accepted as work related and that she would have to submit a rationalized medical report relating this or any additional medical condition, other than the accepted conditions, to the March 13, 2012 work injury.

In a May 22, 2014 report, Dr. Smith noted that he had treated appellant for injuries sustained in a March 13, 2012 vehicular accident. He indicated that she had a prior injury to her neck and right shoulder due to a September 5, 2011 automobile accident. Appellant reported that symptoms related to the September 5, 2011 injury had long resolved prior to the accident of March 13, 2012 and that she experienced improvement of her symptoms due to undergoing physical therapy after March 13, 2012. She complained of persistent neck pain, headaches, and right forearm pain. Dr. Smith noted that appellant had been referred to Dr. Sutton for evaluation of persistent headaches and right hand numbness, and that Dr. Sutton performed an electroencephalogram test which showed normal results and a June 13, 2013 magnetic resonance imaging scan of the cervical spine which showed a small sub-ligamentous disc protrusion at C6-7 and mild canal stenosis. Dr. Sutton reported on November 19, 2013 that appellant had persistence of paresthesias and paresis of her right upper extremity and that her neurological sequelae remained unresolved after more than one year. Dr. Smith noted, “It is my medical opinion that, unless there is evidence of a preexisting condition, ... [appellant’s] clinical findings of chronic headache, neck pain, paresthesias, and paresis of the right hand are resultant from the automobile accident [of March 13, 2012].”

Appellant submitted (Form CA-17) duty status reports dated April 29 and May 27, 2014 in which Dr. Smith again diagnosed cervical disc protrusion due to the reported March 13, 2012 work injury. She also submitted a third-party questionnaire form completed on April 22, 2014 and descriptions of modified-duty jobs offered by the employing establishment.

In a June 3, 2014 decision, OWCP denied appellant’s disability claim because she did not submit sufficient medical evidence to establish disability from March 15 to April 18, 2014 due to her March 13, 2012 work injury. In reaching this determination, it also found that she did not establish that she sustained a medical condition on March 13, 2012 other than the accepted cervical sprain and contusion of her right shoulder and upper arm. OWCP found that the medical evidence appellant submitted did not contain a rationalized opinion on causal relationship.

⁵ Appellant generally claimed that she sustained injuries on March 13, 2012 other than the accepted cervical sprain and contusion of her right shoulder and upper arm.

Appellant requested a review of the written record by an OWCP hearing representative with respect to the June 3, 2014 decision. She resubmitted the November 18, 2013 report of Dr. Sutton and the May 22, 2014 report of Dr. Smith.

By decision dated March 16, 2015, the hearing representative affirmed OWCP's June 3, 2014 decision, finding that appellant had not established that she sustained a medical condition on March 13, 2012 other than the accepted cervical sprain and contusion of her right shoulder and upper arm or that she had disability from March 15 to April 18, 2014 due to her March 13, 2012 work injury.

LEGAL PRECEDENT -- ISSUE 1

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 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 specific condition and/or disability for which compensation is claimed are causally related to the employment injury.⁶ Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁷

The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. 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 a detailed medical discussion explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁸

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained a cervical sprain and contusion of her right shoulder and upper arm due to an employment-related vehicular accident on March 13, 2012. Appellant claimed that she also sustained additional injuries on March 13, 2012. The Board finds that she did not submit sufficient medical evidence to establish that she sustained a medical condition on March 13, 2012 other than the accepted cervical sprain and contusion of her right shoulder and upper arm.

Appellant submitted reports of Dr. Smith, in which he indicated that she sustained conditions on March 13, 2012 other than the accepted cervical sprain and contusion of her right shoulder and upper arm. In a May 22, 2014 report, Dr. Smith noted that he had treated her for injuries sustained in a March 13, 2012 vehicular accident and noted that she had a prior injury to

⁶ *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

⁷ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁸ *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

her neck and right shoulder due to a September 5, 2011 automobile accident. He indicated that appellant complained of persistent neck pain, headaches, and right forearm pain. Dr. Smith discussed diagnostic testing of record and her treatment by other physicians and noted, “It is my medical opinion that, unless there is evidence of a preexisting condition, ... [appellant’s] clinical findings of chronic headache, neck pain, paresthesias, and paresis of the right hand are resultant from the automobile accident [of March 13, 2012].” In a number of (Form CA-17) duty status reports dated beginning in December 2013, he diagnosed cervical disc protrusion due to the March 13, 2012 injury.

The Board finds, however, that these reports are of limited probative value because they do not contain medical rationale supporting their conclusions that appellant sustained medical conditions on March 13, 2012 other than the accepted cervical sprain and contusion of her right shoulder and upper arm. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.⁹ Dr. Smith did not describe the March 13, 2012 employment-related accident in any detail or explain how it could have been competent to cause the conditions he diagnosed. Moreover, his March 22, 2014 opinion on causal relationship is equivocal in nature because it appears to be dependent on him gaining a greater understanding of appellant’s medical conditions which preexisted the March 13, 2012 employment-related accident. The Board has held that an opinion which is equivocal is of limited probative value regarding the issue of causal relationship.¹⁰ With respect to Dr. Smith’s opinion that appellant sustained a cervical disc protrusion on March 13, 2012 the provision of medical rationale is especially necessary because he did not diagnose this condition until December 2013, *i.e.*, more than a year and a half after the March 13, 2012 employment-related accident. For these reasons, his reports do not establish that she sustained a medical condition on March 13, 2012 other than the accepted cervical sprain and contusion of her right shoulder and upper arm.

In a November 18, 2013 report, Dr. Sutton, an attending Board-certified neurologist, reported that appellant continued to complain of paresthesias and paresis in her right hand and neck pain which intermittently radiated into her right shoulder. He indicated that she had a disc protrusion at C6-7 with mild stenosis and noted, “[Appellant’s] neurologic sequelae remain unresolved after greater than one year.” In this report, Dr. Sutton did not provide any mention of the March 13, 2012 employment-related accident and, although he indicated that appellant had long-standing symptoms, he did not provide a clear opinion that she sustained a medical condition on March 13, 2012 other than the accepted cervical sprain and contusion of her right shoulder and upper arm.

On appeal, appellant’s counsel asserted that the medical evidence of record established that appellant sustained medical conditions on March 13, 2012 other than the accepted cervical sprain and contusion of her right shoulder and upper arm. The Board notes that he did not explain how the medical evidence supported this assertion.

⁹ *C.M.*, Docket No. 14-88 (issued April 18, 2014).

¹⁰ See *Leonard J. O’Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956).

LEGAL PRECEDENT -- ISSUE 2

As explained above, an employee who claims disability for a given period must establish that an injury was sustained in the performance of duty as alleged and that any specific disability for which compensation is claimed is causally related to the employment injury.¹¹ For each period of disability claimed, the employee has the burden of proving that she was disabled for work as a result of the accepted employment injury.¹² Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative, and substantial medical evidence.¹³ The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence.¹⁴

ANALYSIS -- ISSUE 2

Appellant stopped work on March 13, 2014 and on April 17, 2014, she filed a claim for compensation (Form CA-7) alleging that she had disability from March 15 to April 18, 2014 due to her March 13, 2012 work injury.¹⁵ OWCP denied her disability claim because she failed to submit sufficient medical evidence in support of her claim.

The Board finds that appellant did not submit sufficient medical evidence to establish disability from March 15 to April 18, 2014 due to her March 13, 2012 work injury. Appellant did not submit any medical report that contained an opinion that she sustained disability from March 15 to April 18, 2014 due to her March 13, 2012 work injury.¹⁶ The medical reports of record, including the above described reports of Dr. Smith and Dr. Sutton, do not contain any such opinion. Therefore, appellant did not meet her burden of proof to establish that her March 13, 2012 work injury caused disability for the period March 15 to April 18, 2014.

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 she sustained a medical condition on March 13, 2012 other than the accepted cervical sprain and contusion of her right shoulder and upper arm. The Board further finds that she did not meet her

¹¹ See *supra* notes 6 and 8.

¹² *William A. Archer*, 55 ECAB 674 (2004).

¹³ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁴ See *supra* note 8.

¹⁵ Appellant returned to her regular work after the March 13, 2012 employment-related accident.

¹⁶ Appellant indicated on her (Form CA-7) that she was off work during this period due to “physicians’ orders,” but she did not submit copies of such orders.

burden of proof to establish disability from March 15 to April 18, 2014 due to her March 13, 2012 work injury.

ORDER

IT IS HEREBY ORDERED THAT the March 16, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 11, 2016
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board