

FACTUAL HISTORY

On August 23, 2014, appellant, then a 58-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on that date, while dispatching mail, she picked up heavy trays and felt a pain in her left arm, shoulder, and chest. She stopped work on August 23, 2014.

The employing establishment, through appellant's supervisor, controverted the claim on August 27, 2014. Appellant's supervisor stated that appellant failed to inform her of the incident immediately, but rather worked for another hour and then went to lunch, so there was no way for her to inspect the tray. She further alleged that appellant would not recreate the action she took while dispatching mail when asked, that the other employees did not see or hear anything, and that appellant may have failed to follow safety rules and regulations.

Appellant was seen on August 23, 2014 at JFK Advanced Medical, PC. A form with an illegible signature, indicated that appellant was not fit for duty and was diagnosed with cervical strain/sprain, cervical radiculopathy, and left shoulder strain/sprain. OWCP thereafter received a number of attending physician forms (Form CA-20) from JFK Advanced Medical, PC, all bearing illegible signatures. In a September 2, 2014 form, appellant was diagnosed with left shoulder, arm, chest, and back strain/sprain. A box marked "no" was checked indicating that appellant's condition was not caused or aggravated by an employment activity. Appellant's date of injury was listed as August 23, 2014, and her period of disability was noted as August 23 through September 11, 2014. A September 25, 2014 attending physician's report (Form CA-20) indicated that the activity was not related to employment. October 4 and 9, 2014 reports indicated that appellant's left shoulder, arm, and lumbar strain, and sprain was caused by employment-related activity. In an October 30, 2014 report, a box marked "yes" was checked indicating that appellant's condition was caused or aggravated by employment activity. Appellant was diagnosed with left shoulder, arm, and lumbar strain/sprain with radiculopathy, and referred to a pain management specialist. A November 12, 2014 attending physician's report (Form CA-20) offered the same conclusions.

Appellant was seen at New York Methodist Hospital on August 26, 2014 by Dr. Ayisha Tene Edwards, a Board-certified internist, who diagnosed musculoskeletal chest pain.

In an August 27, 2014 attending physician's report (Form CA-20), Dr. Manuel Ceja, an internist, diagnosed appellant with left shoulder, arm, chest wall, and lumbar strain. He checked a box marked "yes" without explanation indicating that he believed that this condition was caused or aggravated by appellant's employment activity. Dr. Ceja listed appellant's period of total disability from August 23 through September 2, 2014. He also noted that, due to appellant's symptomology and past medical history, she was referred to a local emergency room for cardiac evaluation, which was negative for cardiomyopathy. Dr. Ceja gave appellant a prescription for physical therapy. In a follow-up report of the same date, he noted that appellant indicated that her injury was sustained on August 23, 2014 while she was at work and was lifting a tray of mail off a pie wagon when the pain suddenly appeared in her shoulder radiating down the anterior and lateral chest wall, and was aggravated by lifting her arm, twisting, or taking a deep breath. Appellant also described a tingling sensation in her left arm. Dr. Ceja assessed appellant with sprain and strain of unspecified site of shoulder and upper arm, sprain and strain

of unspecified site of back, lumbar sprain and strain, and pain in shoulder region joint. He indicated that appellant was not fit for duty.

In a September 25, 2014 progress report, Dr. Ceja described the injury of August 2014. He assessed appellant with sprain and strain of unspecified site of shoulder and upper arm, sprain and strain of unspecified site of back, lumbar sprain and strain, and pain in joint shoulder region.

In an October 6, 2014 report, Dr. R.C. Krishna, a Board-certified neurologist, noted appellant's statement as to how she was injured and described her symptoms followed by his examination. He concluded that appellant's clinical findings were consistent with a cervical strain injury and cervical disc herniation resulting in cervical radiculopathy, left shoulder derangement, and neuropathic pain syndrome. Dr. Krishna recommended that appellant obtain magnetic resonance imaging (MRI) scans of her cervical spine and left shoulder.

The record also contains notes from appellant's visit to the emergency room on August 23, 2014 with Karen McNeil, a registered nurse.

In an October 9, 2014 progress report, Dr. Ceja reiterated appellant's history of injury, and again assessed appellant with sprain/stain of unspecified site of shoulder and upper arm, sprain and strain of unspecified site of back, lumbar sprain and strain, and pain in joint, shoulder region.

By letter to appellant dated October 30, 2014, OWCP noted that when her claim was first received, it appeared to be a minor injury that resulted in minimal or no lost time from work. It noted that based on these criteria and because the employing establishment did not controvert continuation of pay or challenge the merits of the case, payment of a limited amount of medical expenses were administratively approved, but the merits of the claim were not formally considered. OWCP informed appellant of the necessary information that was needed for approval of her claim and afforded her 30 days to submit the material.

By decision dated December 1, 2014, OWCP denied appellant's claim. It determined that appellant did not establish that the events occurred as alleged.

On December 9, 2014 OWCP received a number of medical reports. In an October 7, 2014 report from Dr. Harold S. Barnes, a Board-certified radiologist, appellant's MRI scan was interpreted as showing a partial tear of the supraspinatus tendon and a partial tear of the mid anterior/posterior superior inferior glenoid labrum. In an October 16, 2014 report, Dr. Barnes interpreted the MRI scan of appellant's cervical spine and noted straightening as well as reversal of normal curvature of the cervical spine, with mild narrowing of the AP diameter of the spinal canal at the C4-C5 level.

OWCP also received a November 13, 2014 progress note from Dr. Ceja. Dr. Ceja reiterated his assessment of appellant as sprain and strain of unspecified site of shoulder and upper arm, sprain and strain of unspecified site of back, lumbar sprain and strain, and pain in joint, shoulder region.

On December 9, 2014 appellant requested an oral hearing before a hearing representative of OWCP's Branch of Hearings and Review.

Appellant continued to submit medical reports dated from August 23 through December 8, 2014 by Dr. Ceja. In the August 23, 2014 report, submitted to OWCP, Dr. Ceja noted appellant's history of an injury to her left arm, anterior chest, and low back on that date while she was lifting a tray of mail off a pie wagon. Appellant told Dr. Ceja that she was bending down when the pain suddenly appeared in her shoulder and radiated down the anterior and lateral chest wall. She further told Dr. Ceja that the pain was aggravated by lifting her arm, twisting and taking a deep breath, and that she also described a tingling sensation in her left arm. Dr. Ceja assessed appellant with lumbar sprain and strain, pain in joint of shoulder region, sprain and strain of unspecified site of back, sprain and strain of unspecified site of shoulder and upper arm, and brachial neuritis or radiculitis. He indicated that appellant was not currently fit for duty.

Appellant wrote a December 9, 2014 letter to OWCP wherein she stated that she injured herself on August 23, 2014 while sleeving a heavy tray of mail. She noted that she was treated at JFK's Advanced Medical P.C., where the doctor informed her that the incident of lifting the heavy tray caused her injuries, and that she should not return to work.

OWCP received further medical evidence on December 29, 2014. In a November 24, 2014 progress note, Dr. Louis Francis McIntyre, a Board-certified orthopedic surgeon, noted appellant's history as working on August 23, 2014 and bending down when she had a sudden onset of left shoulder pain that radiated to her left lateral chest wall, and that she also complained of low back discomfort. He listed impressions of cervical strain, left shoulder strain, and lumbar strain. In a December 12, 2014 note detailing a clinical visit, Dr. McIntyre noted that appellant sustained an injury to the left side of her neck and shoulder pain radiating to her elbow. He diagnosed cervical strain, partial tear of left rotator cuff, and left bicipital tendinitis.

In a letter dated December 29, 2014, Dr. Rita Albano, a Board-certified internist with Advantage Care Physicians, noted that appellant has been under their care for an injury sustained on August 23, 2014, and that she may return to work full duty and without restrictions on January 12, 2015.

In a December 30, 2014 attending physician's report (Form CA-20) from JFK Advanced Medical, P.C., with an illegible signature, it was noted that appellant's injuries to her shoulder and arm and her radiculopathy were caused or aggravated by employment activity.

At the hearing on August 16, 2015, appellant indicated that she was injured while sleeving a tray of mail. She noted that she had a preexisting neck/lumbar spine injury which occurred when she was hit by a Hi-Lo. The hearing representative explained to appellant that she needed to submit medical evidence establishing a causal relationship between the incident of employment and her injury within 30 days.

In an undated report from Dr. Ceja received by OWCP on May 8, 2015, Dr. Ceja noted that he initially saw appellant on the date of her employment incident, at which time she did complain of pain which seemed to have stemmed from aggravation of a nerve. He noted that although appellant could lift up to 20 to 25 pounds, the tray appellant lifted exceeded the amount. He noted appellant's description as to how the incident occurred. He concluded that other contributing factors to her injury would be the repetitive nature of her job function so it may not

have been this particular incident that was the causative factor but a build up to this point of repetitiveness with the weight and motion. He noted that there was no previous examination to provide a baseline but that he did note appellant's subjective complaints along with the objective findings from his office, the orthopedist, and the neurologist.

In a decision dated July 1, 2015, the hearing representative found that appellant established that the employment incident occurred on August 23, 2014 as alleged. However, he determined that appellant did not establish that the employment incident caused her medical diagnosis. Therefore, the hearing representative affirmed the December 1, 2014 OWCP decision as modified.

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 compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.³ In order to meet his or her burden of proof to establish the fact that he or she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he or she actually experienced the employment injury or exposure at the time, place, and in the manner alleged.⁴

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁵ The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated 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,

² *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

³ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (August 2012).

⁴ *Linda S. Jackson*, 49 ECAB 486 (1998).

⁵ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

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.⁶

ANALYSIS

Appellant alleged that she sustained an injury on August 23, 2014 when she picked up heavy trays and felt a pain in her left arm, shoulder, and chest. The hearing representative found that the incident occurred as alleged. Appellant initially treated with Dr. Ceja who diagnosed appellant with left shoulder, arm, chest wall, and lumbar strain. However, OWCP denied appellant's claim as it found that she failed to establish a causal relationship between the accepted employment incident and the medical diagnosis.

In support of her claim, appellant submitted multiple reports by her treating internist, Dr. Ceja. Dr. Ceja treated appellant on August 23, 2014, the date of the employment incident. He described appellant's account of the injury, and his reports appear to be based on an accurate recitation of the facts of the employment incident of August 23, 2014. Dr. Ceja assessed appellant with lumbar sprain and strain, pain in the joint of the shoulder region, sprain and strain of unspecified site of back, sprain and strain of unspecified site of shoulder and upper arm, and brachial neuritis or radiculitis. In his summary report, received by OWCP on May 8, 2015, he opined that appellant was initially seen on the date of the August 23, 2014 incident, but that there were multiple contributing factors to her injury, including the repetitive nature of her job function. Accordingly, Dr. Ceja indicated that it may not have been the incident of August 23, 2014 that was the causative factor, but rather a build up to this point of repetitiveness with the weight and motion. His opinion regarding causal relationship is speculative in nature. While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.⁷ Furthermore, the Board notes that Dr. Ceja's reports appear to be more supportive of an occupational disease claim, then a traumatic injury.⁸ His reports do not offer adequate rationale for the finding that the August 23, 2014 employment incident caused appellant's injuries. Dr. Ceja offered no medical explanation as to how the accepted incident of lifting trays would have caused physiologically the diagnosed condition. His opinion is therefore of limited value in establishing causal relationship.⁹

The Board further finds that multiple attending physicians' reports were submitted bearing an illegible signature. When it cannot be determined whether the person who signed a report is a physician as defined by 5 U.S.C. § 8101(2), the report cannot constitute competent medical evidence.¹⁰ The Board does note that these attending physician reports were issued by a

⁶ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

⁷ *See Ricky S. Storms*, 52 ECAB 349 (2001); *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁸ The primary difference between a traumatic injury and an occupational disease is that a traumatic injury must occur within a single work shift while an occupational disease occurs over more than one work shift. 20 C.F.R. §§ 10.5(ee), 10.5(q).

⁹ *See F.H.*, Docket No. 16-204 (issued April 18, 2016).

¹⁰ *M.M.*, Docket No. 11-1544 (issued March 12, 2012).

person at JFK Advanced Medical, P.C., that Dr. Ceja is employed at JFK Advanced Medical, P.C., and that the reports from JFK Advanced Medical, P.C. generally mirror the dates and diagnoses of Dr. Ceja's reports.

However, even if the Board were to consider these reports as signed by Dr. Ceja, they still would not constitute rationalized medical evidence. In the reports dated September 2 and 25, 2014, a box marked "no" was checked indicating that appellant's medical condition was not caused or aggravated by an employment injury. However, in all of the reports commencing October 4, 2014, the box marked "yes" was checked indicating that appellant's left shoulder, arm, and lumbar strain/sprain was caused by an employment-related activity. The explanation provided was simply "condition was caused by work-related activity." These reports did not discuss the August 23, 2014 employment incident or provide any explanation for the conclusion that appellant's diagnoses were causally related to the employment incident. A report that addresses causal relationship with a checkmark, without medical rationale explaining how the work condition caused the alleged injury, is of diminished probative value and is insufficient to establish causal relationship. Therefore, these reports are insufficient to meet appellant's burden of proof.¹¹

The remaining evidence is also insufficient to establish causal relationship. These reports are of limited probative value as they fail to discuss the causal relationship between appellant's August 23, 2014 employment incident and the diagnosed medical conditions.¹² In her August 26, 2014 report, Dr. Edwards indicated that appellant had cervical strain/sprain, cervical radiculopathy, and left shoulder sprain/strain. She noted that appellant was not fit for duty, but did not give an opinion relative to causation. On October 6, 2014 Dr. Krishna noted appellant's statement as to how she was injured and concluded that appellant's clinical findings were consistent with a cervical strain injury and cervical disc herniation resulting in cervical radiculopathy, left shoulder derangement, and neuropathic pain syndrome. However, she also did not make any independent conclusion on causation. Similarly, Dr. McIntyre did not make any conclusion on causation of appellant's cervical strain, partial tear of left rotator cuff, and left bicipital tendinitis. Dr. Albano indicated that appellant had been under her care for an injury sustained on August 23, 2014 and gave no further explanation. Dr. Barnes interpreted the MRI scans, but did not discuss appellant's employment incident, and therefore his report is of limited probative value.¹³ The reports by Nurse McNeil do not constitute medical evidence, as a nurse is not considered a physician as defined under FECA.¹⁴

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that the condition was caused by her employment is sufficient to

¹¹ See *D.M.*, Docket 16-0372 (issued April 6, 2016).

¹² *A.D.*, 58 ECAB 149 (2006) (medical evidence which 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 See *G.M.*, Docket No. 14-2057 (issued May 12, 2015).

¹⁴ 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t); see also *K.W.*, 59 ECAB 271, 279 (2007).

establish causal relationship.¹⁵ As appellant did not establish that her medical condition was causally related to the accepted incident of her employment, OWCP properly denied appellant's claim.

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 establish that she sustained a traumatic injury on August 23, 2014, causally related to the accepted employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 1, 2015 is affirmed.

Issued: June 1, 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

¹⁵ *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).