

ISSUE

The issue is whether appellant met her burden of proof to establish that her alleged cervical, lumbar and shoulder conditions were causally related to factors of her federal employment.

FACTUAL HISTORY

This case has previously been before the Board.⁴ In a decision dated May 15, 2015, the Board found that appellant had not met her burden of proof to establish that her alleged cervical, lumbar, and bilateral shoulder conditions were causally related to factors of her employment. The Board determined that the medical evidence submitted lacked medical rationale sufficient to demonstrate that her diagnosed conditions resulted from her federal employment. The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The facts relevant to this appeal are set forth below.

On August 28, 2013 appellant, then a 37-year-old parcel post machine operator, filed an occupational disease claim (Form CA-2) alleging that she sustained "other disorders due to repeated trauma." She first became aware of her condition and realized it resulted from her employment on July 29, 2013. Appellant indicated that she was last exposed to the elements that allegedly caused her condition on August 20, 2013. She worked modified duty beginning August 29, 2013. In an attached statement, appellant related that she sustained a work-related injury due to heavy lifting, processing mail, lifting over her shoulders, removing trays from containers, and putting mail in the trays.

Appellant underwent various diagnostic examinations. In a July 29, 2013 magnetic resonance imaging (MRI) scan of the lumbar spine, Dr. Mohammad I. Jilani, a Board-certified diagnostic radiologist, who specializes in neuroradiology, observed central L5-S1 disc herniation and L4-5 disc bulge. In his review of an August 19, 2013 MRI scan of the cervical spine, Dr. Noam S. Eshkar, a Board-certified diagnostic radiologist specializing in neuroradiology, reported focal central disc herniation at C3-4 and C4-5, broad-based left paracentral disc herniation at C6-7, and disc bulging at C5-6.

Dr. Rosa M. Neno, a Board-certified internist, initially examined appellant and in a September 13, 2013 report noted that she treated appellant for cervical radiculopathy, intractable neck and mid-back pain, and herniated discs of the cervical and lumbar spine. She related that appellant's medical condition occurred due to working at the employing establishment lifting heavy boxes, bags, and parcels, and "keying" every day for the past 15 years. Dr. Neno requested that appellant be excused from work.

Appellant was also examined by Dr. Mark A.P. Filippone, Board-certified in physical medicine and rehabilitation, who discussed in reports dated September 27 to November 8, 2013 that appellant worked as a clerk for the employing establishment since 1994 and was injured at work. He related that appellant experienced low back, neck, and left shoulder pain as well as numbness and tingling into the right upper extremity. Upon examination, Dr. Filippone observed

⁴ Docket No. 15-607 (issued May 15, 2015).

pain, guarding, and spasm in the cervical paraspinals and suboccipital musculature and pain, guarding, and spasm in the lumbar paraspinals. Examination of the upper extremities revealed pain on palpation over the anterior aspect of both shoulders and limitation of terminal glenohumeral abductions bilaterally with pain and impingement in the shoulders. Dr. Filippone diagnosed cervical radiculitis, internal derangement of both shoulders, and lumbosacral radiculitis. He provided various attending physician's reports dated September 27, 2013 to May 7, 2014, which indicated that appellant was totally disabled.

In a decision dated November 20, 2013, OWCP denied appellant's occupational disease claim finding that she had not established fact of injury. It determined that appellant had not sufficiently described the factors of employment that she believed caused her medical conditions and had failed to submit sufficient medical evidence to establish a diagnosed condition causally related to factors of her employment.

On December 3, 2013, through counsel, OWCP received a request for a hearing before an OWCP hearing representative. A hearing was held on May 22, 2014. Appellant described in detail the various positions she held at the employing establishment and the physical requirements of each position. She noted that many of her employment duties involved repetitive lifting and twisting of her back and repetitive use of her arms. Appellant stated that in 2000 she began to experience pain in her lower back and was eventually diagnosed with a bulging disc and minimal herniation. She described the medical treatment and various diagnostic examinations that she underwent. Appellant noted that she continued to work, which involved the same repetitive duties. In September 2013, the pain became so severe that she made an appointment with Dr. Neno. Counsel noted that appellant performed a lot of repetitive work, including sorting mail, processing mail, and working on sorting machinery from 1994 to 2013. He contended that the various medical reports supported causal relationship.

Dr. Filippone continued to treat appellant, and in reports dated December 6, 2013 to June 13, 2014, related appellant's continued complaints of numbness and tingling in the upper and lower extremities. He noted that appellant's physical examination findings were unchanged. Dr. Filippone reported that appellant's symptoms had continued over the past 10 years, especially when she attempted to do any repetitive activities which were an essential part of her job. He reviewed appellant's employment duties as a parcel post distribution clerk and noted that the job required repetitive movements of the neck, shoulders, upper extremities, and mid and low back. Dr. Filippone diagnosed disc herniation at C3, C4, and C6, disc bulging at C5, central L5-S1 disc herniation, L4 disc bulge, and internal derangement of both shoulders. He opined that "the aforementioned abnormalities are directly and solely the result of the injury sustained while at work."

In reports dated December 17, 2013 to March 3, 2014, Dr. Neno indicated that she had treated appellant since 2000 for complaints of neck, shoulder, and back pain, which had worsened over time. She reported that appellant's studies revealed herniated discs in both the cervical and lumbar spine and suffered from herniated discs in both the cervical and lumbar spine. Dr. Neno opined that appellant's current medical condition had developed and was a direct cause of her working at the employing establishment lifting heavy boxes and bags, parcels, and being hunched over a computer keyboard "keying" in data daily over the past 15 to 16 years.

By decision dated August 5, 2014, an OWCP hearing representative affirmed the November 20, 2013 denial decision with modification. She accepted that appellant's job required repetitive movement of her back and upper extremities, but denied the claim finding insufficient medical evidence to establish a diagnosed condition causally related to her employment duties.

On November 3, 2014 OWCP received appellant's request, through counsel, for reconsideration. He reported that he was providing additional medical reports by Dr. Filippone which had additional medical reasons for his conclusion that appellant developed shoulder, neck, and back conditions as a result of her employment.

In an August 15, 2014 report, Dr. Filippone indicated that appellant's medical history and review of systems remained unchanged. He noted appellant's complaints of neck pain, bilateral low back pain, and bilateral shoulder pain. Upon examination, Dr. Filippone observed pain, guarding, and spasm in the cervical paraspinals bilaterally, right more than left, and in the lumbar paraspinals and right sciatic notch. He opined that "all of the above is workers' compensation caused solely."

By decision dated November 7, 2014, OWCP denied modification of the August 5, 2014 decision. It found that the medical evidence of record failed to establish that appellant sustained an occupational disease as a result of her employment.

Appellant appealed to the Board. In a May 15, 2015 decision, the Board affirmed OWCP's November 7, 2014 denial decision. It determined that the medical evidence of record was insufficient to establish appellant's occupational disease claim.⁵

On October 28, 2015 OWCP received appellant's request, through counsel, for reconsideration. Counsel indicated that he was enclosing additional reports from Drs. Filippone and Neno, which supported appellant's occupational disease claim.

In narrative reports dated May 15 to November 18, 2015, Dr. Filippone related appellant's continued complaints of numbness in her hand and cervical, lumbar, and bilateral shoulder pain. He indicated that appellant's history was unchanged and that she reported no interval or intercurrent history of trauma or injury. Dr. Filippone noted that a June 12, 2015 MRI scan of the cervical spine revealed very abnormal findings, including posterior disc herniation at C3 and C4 and left paracentral posterior disc herniation at C5 and C6. Upon examination, Dr. Filippone observed pain, guarding, and spasm in appellant's cervical and lumbar paraspinals and pain in the right shoulder. He noted that central and peripheral neurologic examinations and manual muscle testing were changed. Dr. Filippone reported positive right shoulder Neer's and Hawkin's impingement signs. In the June 23, 2015 report, he indicated that electromyogram (EMG) and nerve conduction velocity (NCV) studies that he performed revealed an abnormal needle EMG examination and indicated bilateral L5-S1 lumbosacral radiculopathy. Dr. Filippone opined that "all of the above is directly and solely the result of the injuries sustained while at work for the U.S. Post Office." He further explained that these symptoms had developed while working on the LMBC processing mail and parcels innervating a lot of keying,

⁵ *Supra* note 4.

trunk rotation, and bending in that activity as well as her other activities as a postal clerk working on the OCR, BCS, DBCS and pouching mail, all of which involves repetitive activities of the low back. Appellant's cervical complaints are also consistent with the repetitive injuries involved in her work as a postal clerk since 1994." Dr. Filippone provided a worksheet of EMG/NCV study findings, as well as handwritten notes pertaining to appellant's physical examination.

Dr. Filippone further clarified in his July 23, 2015 that he reviewed appellant's job description as provided by her attorney and hundreds of pages of U.S. Government internet sites pertaining to job descriptions and equipment specifications. He provided weight and height specifications of the equipment that appellant used at work. Dr. Filippone noted that appellant stood at 5'2 - 1/2," which was lower than the top of the postcon at 69 inches high. He explained that appellant worked repetitively between the scale, the hamper, and the postcon for 120 minutes. Dr. Filippone reported that appellant had to fill five to seven postcons per hour. He related that, according to the employee handbook, a postcon weighed 240 pounds empty and up to 1,200 pounds loaded. Dr. Filippone calculated that appellant lifted between 2,880 and 6,720 pounds per hour. He related that in 2008 appellant began to work as a mail processor/backup keyer, which required processing Priority and First Class and International Mail. Appellant described that she lifted sacks of mail weighing 20 pounds or more from the postcons, weighed the sacks, and placed the sacks in the hampers for separation. She claimed that she did eight or more postcons of sacks in an hour, which contained about 10 bags. Dr. Filippone indicated that appellant also worked as a parcel post distribution clerk and lifted military sacks weighing up to 50 pounds and placed them on a scale about 18 inches off the floor. He related that appellant was lifting 13,400 pounds over a two-hour period, going between the scale, the hamper, and the postcons. Dr. Filippone also noted that the postcons on the top shelf were higher than appellant's head. Therefore appellant had to perform duties which involved bending down to the scale, lifting up to the hamper, down and out of the hamper, in and out of the postcons.

Dr. Filippone explained:

"[Appellant] blew out the herniated dis[c]s causing the cervical radiculopathy (723.4) and shredded the shoulder (718.91) and blew out the thoracic lumbosacral disks causes (724.4) as the result of over-using the hands, elbows, shoulders, and neck both in lifting, bending, extending the neck, low back, and at fast pace without the body's ability to relubricate itself and heal itself ... the setting of her workplace involved constant bending, rotation of the knees, mid back, low back, and upper extremities, and the reaching on a repetitive basis above the level of her head loading the top shelf of the postcon shelf more than explains the injury to the neck, shoulders, mid back, and low back."

Dr. Filippone noted that appellant remained totally disabled.

In a September 10, 2015 report, Dr. Neno opined that appellant was totally and permanently disabled from injuries that she sustained at work while lifting heavy bags, repetitive rapid bending of heavy loads, and pushing heavy loads without any proper rest time. She noted that appellant's symptoms and diagnostic findings confirmed this. Dr. Neno indicated that she agreed with Dr. Filippone's July 23, 2015 report.

Dr. Filippone diagnosed, in October 22, 2015 attending physician and duty status reports, cervical radiculopathy, lumbar radiculopathy, and derangement of the right shoulder. He checked a box marked “yes” that appellant’s condition was caused or aggravated by the described employment activity. Dr. Filippone indicated that appellant was totally disabled.

In a decision dated January 25, 2016, OWCP denied modification of the May 15, 2015 decision. It determined that Dr. Filippone’s reports lacked a well-reasoned medical explanation of how appellant’s work activities caused her cervical, lumbar, and bilateral shoulder conditions.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence⁶ including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁷ In an occupational disease claim, appellant’s burden requires submission of the following: (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.⁸

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁹ The opinion of the physician must be based on a complete factual and medical background of the employee, 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.¹⁰

ANALYSIS

Appellant alleges that she sustained cervical, lumbar, and upper extremity conditions due to the repetitive use of her upper extremities as a parcel post machine operator. OWCP accepted the factors of appellant’s employment, but it denied her claim finding that the medical evidence failed to establish that her diagnosed conditions were causally related to her employment. The Board finds, however, that this case is not in posture for decision and requires further development regarding whether appellant sustained cervical, lumbar, and shoulder conditions causally related to employment factors.

⁶ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁷ *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁹ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

¹⁰ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

Along with her October 28, 2015 reconsideration request, appellant submitted additional medical reports from Dr. Filippone. In reports dated May 15 to November 18, 2015, Dr. Filippone reviewed appellant's work duties in detail and described the physical requirements of her positions as a keyer, parcel post distributor, and mail processor clerk. He provided physical examination findings and discussed appellant's diagnostic examination results. Dr. Filippone diagnosed cervical radiculopathy, lumbar radiculopathy, and derangement of the right shoulder. He consistently opined that appellant's injuries were "directly and solely the result of the injuries sustained while at work for the U.S. Post Office." Dr. Filippone noted that the duties of keying information, rotating his trunk, and bending required repetitive use of appellant's cervical and lumbar spine and appellant's right shoulder. He described how appellant's job duties affected her physically. The Board notes that Dr. Filippone's July 23, 2015 report provided a detailed description of appellant's job duties at the employing establishment, the machines that she used, and the strain that appellant's employment duties took on her cervical spine, lumbar spine, and upper extremities.

Accordingly, the Board finds that Dr. Filippone's reports, when read together, identified specific employment factors which appellant claimed caused her condition, identified physical examination and diagnostic findings, and explained how the identified employment factors caused or contributed to her cervical, lumbar, and bilateral shoulder conditions. He reiterated his opinion on causal relationship in various reports.

The Board finds that Dr. Filippone's opinion, while not sufficiently rationalized to meet appellant's burden of proof, is sufficient, given the absence of any opposing medical evidence, to require further medical development of the record.¹¹ In addition, Dr. Neno's reports dated September 13, 2013 March 3, 2014 also provide an affirmative opinion regarding causal relationship.

It is well established that proceedings under FECA are not adversarial in nature¹² and while appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹³ OWCP has an obligation to see that justice is done.¹⁴ The case, therefore, will be remanded to OWCP for further action consistent with this decision. On remand, after such further development of the case record as OWCP deems necessary, a *de novo* decision shall be issued.

CONCLUSION

The Board finds that the case is not in posture for a decision.

¹¹ See *A.F.*, Docket No. 15-1687 (issued June 9, 2016). See also *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

¹² See e.g., *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769, 770-71 (1956).

¹³ *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985).

¹⁴ *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

ORDER

IT IS HEREBY ORDERED THAT the January 25, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for additional development consistent with this decision.

Issued: November 9, 2016
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board