

FACTUAL HISTORY

On May 28, 2015 appellant then a 47-year-old-mail handler, filed an occupational disease claim (Form CA-2) alleging that she developed right arm, hand, shoulder, and upper back pain and numbness as a result of repeatedly bending, reaching, pushing, and pulling 450-pound over the road containers (OTR) while in the performance of duty. She first became aware of her condition on March 23, 2015 and realized it was causally related to her employment on May 28, 2015. Appellant did not immediately stop work.

Appellant submitted a work status report from Dr. Mathew Voltz, an osteopath, on May 13, 2015, who diagnosed joint shoulder pain, neck pain, and radiculopathy and advised that she could not work. Dr. Voltz noted that he was unsure that her condition was work related.

Appellant was treated by Dr. Mark Eskander, a Board-certified orthopedist, on May 28, 2015 for cervical neck pain and numbness radiating into her right hand. Appellant reported a gradual onset of pain on March 23, 2015 due to overuse at work. She indicated that her work duties included pushing metal containers which caused her arm and neck pain to flare up. Dr. Eskander noted findings of tenderness and spasm to paraspinals, decrease sensation to light touch on the right at C7 and positive Spurling's sign. He noted a magnetic resonance imaging (MRI) scan of the cervical spine revealed disc osteophyte protrusion lateralized to the right, mild left neural foraminal narrowing at C6-7, and broad-based disc osteophyte protrusion with neural foraminal narrowing at C4-5 and C5-6. Dr. Eskander diagnosed cervical spondylosis and cervical disc displacement. He recommended conservative care.

By letter dated June 10, 2015, OWCP advised appellant of the type of evidence needed to establish her claim, particularly requesting that she submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors.

Appellant responded to OWCP's development questionnaire and noted that she worked as a mail handler and, in an eight-hour day, hooked 40 to 50 OTR containers and 60 to 70 all-purpose containers. She sometimes towed the containers off a truck and through the building. Appellant did not participate in sports.

Appellant submitted a work status report from Dr. Voltz dated April 29, 2015, who diagnosed joint, shoulder, and neck pain and radiculopathy. Dr. Voltz noted that she was disabled from work.

On June 19, 2015 Dr. Eskander treated appellant for radiating neck pain, which began on March 23, 2015. Appellant did not cite a specific work injury, but noted that she performed repetitive lifting, moving, and pushing metal carts which weighed 400 pounds. She advised that her condition was not due to any specific injury, but it was caused by overuse at work. Dr. Eskander noted findings of weakness in the right tricep and cervical spine compression leading to radiculopathy. He diagnosed cervical myopathy stemming from overuse with lifting and pushing heavy carts at work. Dr. Eskander recommended nerve blocks.

In a July 20, 2015 decision, OWCP denied appellant's claim, finding that she failed to establish that she developed a medical condition causally related to factors of her federal employment.

On March 9, 2016 counsel requested reconsideration. Appellant submitted a cervical spine MRI scan dated May 14, 2015, which revealed disc osteophyte protrusion at C6-7 with neural foraminal narrowing, broad-based disc osteophyte protrusion at C4-5 and C5-6, and bilateral mild neural foraminal narrowing. An electromyogram dated June 25, 2015 revealed acute moderate-to-severe right C6 radiculopathy and mild bilateral median nerve entrapment neuropathy across the carpal tunnels.

Appellant was treated by Dr. Voltz on April 29 and May 13, 2015, for constant right shoulder pain with a sudden onset without injury two weeks prior. Dr. Voltz noted findings of restricted range of motion of the right shoulder, intact sensation, and reflexes in the upper extremities. He diagnosed right shoulder joint pain, right neck pain and radiculopathy. Dr. Voltz noted that appellant's subjective history and examination were consistent with neck pain secondary to degenerative disc disease and degenerative joint disease.

Appellant saw Dr. Selina Y. Xing, a Board-certified physiatrist, on July 1 and August 14, 2015, for fluoroscopic guided C6 selective nerve root blocks. In June 25 to August 18, 2015 reports, Dr. Xing noted seeing appellant for pain management for neck, right shoulder, and arm pain. Appellant reported working in a position that involved repetitive heavy lifting, reaching, and moving 400-pound containers, and loading and unloading trucks. She believed that her pain was work related because she performed manual labor when processing mail, and placing into and taking it out of mail trucks. Dr. Xing noted findings of tenderness in upper medial right shoulder blade and trapezius, limited range of motion of the cervical spine, and decreased sensation to light touch at C6-7. She diagnosed brachial neuritis, carpal tunnel syndrome, spinal stenosis of the cervical region, spasm of muscle, and disturbance of skin sensation. Dr. Xing recommended a hand splint at night and sedentary duty.

Appellant continued treatment with Dr. Eskander. On July 9 and August 20, 2015 Dr. Eskander noted her status and diagnosed cervical spondylosis, cervical disc displacement, carpal tunnel syndrome, and cervical radiculopathy. He noted decreased sensation at C7 and positive Spurling's sign. Dr. Eskander diagnosed cervical disc displacement, cervical spondylosis, and cervical spine radiculopathy. He advised conservative treatment failed and on August 24, 2015 performed a C5 to C7 anterior cervical discectomy and fusion and diagnosed cervical stenosis at C5 to C7. In reports dated October 2, 2015 and January 7, 2016, Dr. Eskander noted that appellant was status post cervical fusion surgery and reported improved pain without radiation, numbness, or tingling in the arms. He diagnosed intervertebral disc displacement of the lumbar region, cervical disc displacement, and cervical spondylosis. Dr. Eskander returned appellant to work full-time light duty.

In a report dated April 1, 2016, Dr. Eskander noted a history of appellant's cervical symptoms which she reported began gradually on March 23, 2015 due to overuse at work. He reviewed her work duties noting that she began working as a mail handler in 2000 loading and unloading packages from skids and conveyor belts and pulling and moving OTR containers. Dr. Eskander opined that it was very reasonable given appellant's job description that

degenerative changes could have worsened and caused cervical radiculopathy from stenosis and carpal tunnel syndrome. He noted that appellant's condition improved with nerve block injections and surgery. Dr. Eskander opined that she had degenerative changes that were related to her work duties and became worse with overuse at work and were a significant factor in the development of her cervical condition. He noted that his opinion was given to a reasonable degree of medical certainty, but for the work overuse injuries appellant would not have had these particular problems with cervical radiculopathy and anterior cervical discectomy and fusion. Appellant also submitted physical therapy notes.

In a decision dated June 7, 2016, OWCP denied modification of the decision dated July 20, 2015.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, the employees must submit sufficient evidence to establish that she experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged. Appellant must also establish that such event, incident or exposure caused an injury.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.⁴ To establish fact of injury in 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) 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.⁵

The medical evidence required to establish causal relationship is generally rationalized medical opinion 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, 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

³ See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *S.P.*, 59 ECAB 184, 188 (2007).

⁵ *R.R.*, Docket No. 08-2010 (issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

⁶ *Solomon Polen*, 51 ECAB 341 (2000).

ANALYSIS

It is undisputed that appellant's duties as a mail handler included repeatedly bending and reaching between OTR containers, pulling and moving OTR containers, loading and unloading packages from skids and conveyor belts for eight hours a day, five to six days a week. However, appellant has not submitted sufficient medical evidence to establish that her diagnosed medical conditions are causally related to specific employment factors or conditions.

Appellant submitted reports from Dr. Eskander dated October 2, 2015 and April 1, 2016 who noted that her work duties included loading and unloading packages from skids and conveyor belts and pulling and moving OTR containers. Dr. Eskander opined to a reasonable degree of medical certainty that it was very reasonable given appellant's job description that degenerative changes could have worsened and caused cervical radiculopathy from stenosis and carpal tunnel syndrome. He opined that she had degenerative changes, which worsened due to overuse at work and were a significant factor in the development of her condition. Dr. Eskander noted, but for the work overuse injuries, appellant would not have had these particular problems with cervical radiculopathy and anterior cervical discectomy and fusion. The Board finds that, although he supported causal relationship, he did not provide medical rationale explaining the basis of his opinion regarding the causal relationship between her cervical condition and the factors of employment.⁷ Dr. Eskander did not explain the process by which loading and unloading packages from skids and conveyor belts or taking sacks off the conveyor would cause the diagnosed condition and why such condition would not be due to any nonwork factors such as age-related degenerative changes.⁸ Therefore, this report is insufficient to meet appellant's burden of proof.

Other reports from Dr. Eskander dated May 28, 2015 to January 7, 2016 diagnosed cervical spondylosis, cervical disc displacement, carpal tunnel syndrome, and cervical radiculopathy. Appellant reported that her cervical pain began on March 23, 2015 and was not due to any specific injury, but it was just a gradual onset due to performing repetitive lifting, moving, and pushing metal carts. However, Dr. Eskander appears to be repeating the history of injury given by her instead of providing his own opinion on causal relationship. He did not provide a rationalized opinion regarding the causal relationship between appellant's condition and the factors of employment believed to have caused or contributed to such condition.⁹

Reports from Dr. Xing dated June 25 to August 18, 2015 noted appellant's treatment of nerve blocks for neck, right shoulder, and right arm pain. Appellant reported performing repetitive duties at work including heavy lifting, reaching, moving OTR containers, processing mail, and loading and unloading trucks and she believed that her pain was related to these work duties. Dr. Xing diagnosed brachia neuritis, carpal tunnel syndrome, spinal stenosis of the

⁷ See *T.M.*, Docket No. 08-0975 (issued February 6, 2009) (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).

⁸ *Id.*

⁹ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

cervical region, spasm of muscle, and disturbance of skin sensation. Regarding causal relationship, her reports also appear to merely repeat the history of injury as reported by appellant without providing her own opinion regarding whether her condition was work related. To the extent that Dr. Xing is providing her own opinion, she failed to provide a rationalized opinion regarding the causal relationship between appellant's cervical condition the factors of employment believed to have caused or contributed to such condition.¹⁰ Therefore, these reports are insufficient to meet appellant's burden of proof.

Appellant was also treated by Dr. Voltz on April 29 and May 13, 2015, for a sudden onset of right shoulder pain without injury. Dr. Voltz diagnosed right joint pain in the shoulder, right neck pain, and radiculopathy. He noted that appellant's subjective history and physical examination were consistent with neck pain secondary to degenerative disc disease and degenerative joint disease. However, Dr. Voltz' notes fail to provide a history of injury¹¹ or offer a rationalized opinion addressing how specific work activities caused or contributed to a diagnosed medical condition.¹² Rather, he mostly attributes appellant's condition to degenerative changes.

The remainder of the medical evidence is of limited probative value as it does not provide an opinion on the causal relationship between appellant's job and her diagnosed cervical condition.¹³ Appellant also submitted physical therapy notes. The Board has held that records signed by a physical therapist are not considered medical evidence as physical therapists are not a physician under FECA.¹⁴

On appeal, appellant through counsel disagrees with OWCP's decision denying her claim for compensation and noted that she submitted sufficient evidence to establish her claim. As noted above, the medical evidence does not establish that her diagnosed conditions are causally related to her employment. Reports from appellant's physician's failed to provide sufficient medical rationale explaining how her injuries are causally related to particular 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.

¹⁰ See *Jimmie H. Duckett, id.*

¹¹ *Frank Luis Rembisz*, 52 ECAB 147 (2000).

¹² See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

¹³ *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).

¹⁴ See *David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish an occupational disease causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the June 7, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 21, 2017
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