

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

C.E., Appellant

and

U.S. POSTAL SERVICE, CONWAY POST
OFFICE, Little Rock, AR, Employer

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**Docket No. 17-0010
Issued: March 1, 2017**

Appearances:
Appellant, pro se
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 5, 2016 appellant filed a timely appeal from an August 24, 2016 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 to consider the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish an occupational disease causally related to factors of her federal employment.

FACTUAL HISTORY

On January 4, 2016 appellant, then a 60-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she developed a neck and shoulder injury beginning on October 8, 2015. She first attributed her condition to her employment duties on November 12, 2015. Appellant stopped work on November 14, 2015.

¹ 5 U.S.C. § 8101 *et seq.*

Dr. Robert F. McCarron, a Board-certified orthopedic surgeon, initially examined appellant on October 8, 2015 due to neck problems which began in approximately 2001. He noted that appellant fell down some stairs while working as a postal carrier. Appellant developed neck pain with radiation into her left arm and underwent cervical fusion. She returned to work and in 2011 was diagnosed with degenerative discs above and below her fusion site. Dr. McCarron diagnosed chronic cervical pain syndrome, as well as degenerative cervical discs at C4-5 and C6-7. He recommended testing.

In a report dated October 29, 2015, Dr. McCarron listed appellant's date of injury as 2001. He listed appellant's conditions as arthritis, back problems, ruptured disc in neck, and irritable bowel syndrome. Dr. McCarron reviewed appellant's magnetic resonance imaging (MRI) scan of the cervical spine and found that she had degenerative changes in her cervical spine. He noted that appellant had a lifting restriction of 10 pounds and that she experienced discomfort casing mail. Dr. McCarron reported positive impingement test in both shoulders during physical examination. He diagnosed cervical degenerative disc disease at C4-5 and C6-7, cervical fusion at C5-6, chronic pain syndrome, and bilateral cervical stenosis C4-5. Dr. McCarron provided additional work restrictions of lifting no more than 10 pounds, and curtailing driving. He opined, "I believe that driving and lifting as well as reaching and casing mail would aggravate the degenerative changes in her neck."

By letter dated January 8, 2016, OWCP requested that appellant provide additional factual and medical evidence in support of her occupational disease claim, and complete a factual questionnaire. It afforded her 30 days to respond.

Appellant completed the development questionnaire and described her employment duties of casing mail above shoulder height, lifting packages, loading her vehicle, and delivering mail. She alleged that lifting trays of mail and packages as well as pushing buggies caused excessive pain and tingling down her arms to her fingers. Appellant noted that she began dropping things, tripping, and falling down.

Dr. McCarron completed a note on February 3, 2016 and diagnosed cervical degenerative disc disease, bilateral cervical stenosis, and chronic pain. He noted that appellant fell down several stairs approximately 15 years ago and that this fall initiated her neck pain. Dr. McCarron opined, "I believe that driving and lifting as well as reaching and casing mail have aggravated her current condition."

OWCP, on February 10, 2015, requested that Dr. McCarron provide a detailed narrative report which described the relationship between appellant's current condition and her work duties. In a February 25, 2016 report, Dr. McCarron described appellant's job as a postal carrier and noted that she reported falling down stairs approximately 15 years ago in the performance of her job duties. Appellant developed neck pain which she attributed to this fall and later had cervical fusion. After several years, she again developed neck pain and a cervical spine MRI scan documented degenerated discs above and below her fusion site. Dr. McCarron diagnosed degenerative cervical disc disease at C4-5 and C6-7 based on MRI scan and cervical stenosis at C4-5 shown on x-ray. He noted, "Historically, the fall was temporally related to the cervical disc injury at C5-6 as a causative factor. I have no further documentation beside her history regarding this injury. The patient has two work-related factors that would contribute to the

permanent aggravation of the cervical degenerative disc disease. One is driving and one is lifting.”

Appellant underwent a cervical MRI scan on October 22, 2015 which demonstrated multilevel degenerative spondylosis most prominent at C4-5 and C6-7 with mild spinal canal stenosis at both of these levels.

Dr. Christopher K. Mocek, a Board-certified anesthesiologist, completed a series of reports beginning on July 7, 2014. He noted appellant’s symptoms of central neck pain and bilateral shoulder pain. On November 3, 2014 Dr. Mocek indicated that appellant’s shoulder pain was associated with numbness and weakness. Appellant underwent a bone density scan on November 10, 2014 which showed osteopenia of the lumbar spine and right femoral neck. Dr. Mocek examined appellant on March 2, and April 27, 2015 due to neck and shoulder pain. On August 24, 2015 appellant reported intense neck pain with bilateral shoulder pain radiating to both arms. Dr. Mocek found that appellant had numbness and tingling in both arms. He diagnosed thoracic spine pain, cervical radiculitis, and cervical spine pain. In his October 19, 2015 note, Dr. Mocek indicated that appellant was having low back pain radiating to her legs and feet. On December 7, 2015 he reported that appellant was experiencing both low back and neck pain as well as bilateral shoulder pain. Dr. Mocek repeated his diagnoses.

By decision dated March 31, 2016, OWCP denied appellant’s occupational disease claim. It found that she had not submitted sufficient medical evidence establishing causal relationship between her current cervical conditions and her job duties.

Appellant requested reconsideration on April 25, 2016. By decision dated May 19, 2016, OWCP denied her request for reconsideration of the merits. It noted that appellant had submitted two compact discs (CDs) which were unreadable.

Appellant again requested reconsideration on May 31, 2016 and submitted additional medical records. Dr. Richard D. Peek, a Board-certified orthopedic surgeon, examined appellant on June 7, 2011 due to lower back pain, neck pain, and headaches which began in 2003. He diagnosed severe cervical degenerative disc disease at C6-7 and C4-5 with a solid C5-6 fusion. Dr. Peek examined appellant on August 12, 2011 due to bilateral full spine pain. He diagnosed degeneration of cervical intervertebral disc.

Dr. Mocek examined appellant on August 20, 2012 due to neck and bilateral shoulder pain. He noted that appellant was involved in a motor vehicle accident about two or three weeks prior to his examination and that appellant believed she had “whiplash.” On March 11, 2013 Dr. Mocek diagnosed cervical radiculitis and shoulder pain. In a note dated June 3, 2013, he diagnosed cervical spondylosis. On December 12, 2013 appellant reported increased pain due to pulling a jammed mail truck door. Dr. Mocek diagnosed cervical spondylosis, upper radiculitis, and pain in the thoracic spine on January 9, 2014. On November 3, 2014 he diagnosed thoracic spine pain, cervical radiculitis, and cervical spine pain. Appellant underwent cervical x-rays on November 10, 2014 which showed an anterior interbody fusion at C5-6, degenerative changes at C4-5 and C5-6 with minimal retrolisthesis of C4 on C5, but no subluxations.

By decision dated August 24, 2016, OWCP denied modification of its March 31, 2016 merit decision, finding that appellant had not submitted sufficient medical opinion evidence to establish that her diagnosed condition was due to her employment duties.

LEGAL PRECEDENT

OWCP's regulations define an occupational disease as "a condition produced by the work environment over a period longer than a single workday or shift."² 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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.

The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is insufficient to establish causal relation.³

ANALYSIS

The Board finds that appellant failed to meet her burden of proof to establish an occupational disease due to factors of her federal employment.

In support of her occupational disease claim, appellant provided factual evidence describing her job duties which she felt caused or contributed to her cervical conditions. She also submitted medical diagnoses of cervical degenerative disc disease at C4-5 and C6-7, cervical fusion at C5-6, chronic pain syndrome, and bilateral cervical stenosis C4-5.

Appellant submitted several reports from Drs. Peek and Mocek. The Board notes that while these physicians provided diagnosis of medical conditions, these physicians did not address the causal relationship between appellant's diagnosed conditions and her federal job duties. As the reports of Drs. Peek and Mocek provided no opinion on causal relationship they are insufficient to meet appellant's burden of proof.⁴

Appellant also submitted several reports from Dr. McCarron beginning on October 8, 2015. Dr. McCarron provided a history of a work-related fall down stairs in 2001 which she believed initially caused her neck condition. He also described appellant's cervical fusion and her diagnosis of degenerative disc disease. Dr. McCarron reviewed appellant's

² 20 C.F.R. § 10.5(q).

³ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

⁴ *See C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

cervical MRI scan and found that she had degenerative cervical degenerative disc disease at C4-5 and C6-7, cervical fusion at C5-6, chronic pain syndrome, and bilateral cervical stenosis C4-5. He repeatedly opined that appellant's job duties of driving, lifting, reaching, and casing mail "would aggravate" the degenerative changes in her neck. Dr. McCarron further opined that driving and lifting "would contribute to the permanent aggravation of the cervical degenerative disc disease." His reports include a description of appellant's work duties and diagnosed conditions. Dr. McCarron also provided an opinion that driving and lifting resulted in permanent aggravation of appellant's underlying cervical degenerative disc disease. However, his reports are insufficient to meet appellant's burden of proof as he failed to provide medical reasoning explaining how and why he reached his conclusions. Without medical rationale explaining how driving and lifting would result in a permanent aggravation of appellant's underlying cervical degenerative disc disease, Dr. McCarron's reports are insufficient to establish appellant's occupational disease 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 has not met her burden of proof to establish that she developed an occupational disease due to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the August 24, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 1, 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