United States Department of Labor
Employees' Compensation Appeals Board

R.G., Appellant	)	
and	)	**Docket No. 16-1895**
	)	**Issued: October 2, 2017**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Louisville, KY, Employer	)	

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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 27, 2016 appellant filed a timely appeal from an August 22, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant has met his burden of proof to establish that his claimed cervical condition is causally related to accepted factors of his federal employment.

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant submitted additional evidence on appeal. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, the Board lacks jurisdiction to review this additional evidence. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On July 14, 2016 appellant, then a 56-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) for an unspecified condition of which he first became aware of on January 15, 2016. He alleged that repetitive motion caused numbness in his hands, neck, and problems with his spine. Appellant first realized the employment-related nature of his condition(s) on April 15, 2016. He had not stopped working at the time he filed his claim.

In a separate statement also dated July 14, 2016, appellant indicated that sometime in early 2016, when he was putting on labels or sweeping mail, his hands would freeze or lock up and he would have to stop and move his finger for a while. He explained that he would then be okay. However, appellant related that it started to happen about two to three times a day beginning approximately in April 2016, and that his neck would hurt after being at work for a few hours. He initially thought it would go away as he may have slept the wrong way. However, appellant continued to feel tingling in his neck, face, and arms, and it was "really bad" after work. He also noted that he started to feel numbness in both hands and he went to his physician and a nerve specialist for testing. Appellant indicated that he began being treated for carpal tunnel syndrome. He subsequently began to feel weakness in his legs. Appellant indicated that he had a magnetic resonance imaging (MRI) scan which found spine problems.

OWCP received nurses' notes dated June 7 and 14, 2016, which indicated that appellant could work light duty with restrictions that included no repetitive activity for two weeks. It also received a request for a temporary light-duty assignment dated June 14, 2016.

In a June 21, 2016 treatment note, Dr. Brenton C. Bohlig, Board-certified in physical medicine and rehabilitation, indicated that appellant could perform light-duty work with no repetitive pinching, gripping, or heavy lifting with the right hand.

OWCP also received July 12, 2016 treatment notes from Dr. Benedict T. Harter, a Board-certified hand surgeon, who indicated that appellant could return to work on that same date. Dr. Harter recommended light duty with restrictions to include avoiding repetitive use of right hand, pinching, and gripping.

By letters dated July 18, 2016, OWCP informed appellant and the employing establishment of the type of evidence needed to support his claim and requested that he submit such evidence within 30 days. It noted that there was no diagnosis of any condition resulting from an employment activity.

In a July 26, 2016 statement, L.S., a distribution operations supervisor, noted that she was unaware of any problems that appellant was having until he requested light duty. She explained that he initially indicated that the request for light duty was due to his carpal tunnel syndrome and then afterwards, he requested an accident report. L.S. noted that this was the first time that she was aware of any other problems. She also indicated that appellant planned to have surgery for nerve damage on his spine or back on August 2, 2016. L.S. explained that these were the only two things that she was aware of as far as appellant's condition was concerned. She advised that appellant was granted light duty per his restrictions on June 16, 2016 and he had not performed normal duties since that date.

In a July 14, 2016 report, Dr. Haring J. Nauta, a Board-certified neurosurgeon, noted that appellant had a history of weakness in the legs and tingling and numbness and shock like pain in the neck for a month. He noted myelopathy on appellant's MRI scan. Dr. Nauta diagnosed cervical stenosis at C3, C4, C5, and C6, with myelopathy at C3-C4. He recommended a C3, C4, C5, and C6 laminoplasty.

In a July 20, 2016 attending physician's report (Form CA-20), Deborah Fischer, an Advanced Practice Registered Nurse (herein after nurse), noted that appellant's history included hand cramping for approximately six months, neck pain, and weakness in the right leg. She responded "yes" that there was a history of concurrent or preexisting injury or disease of physical impairment and filled in "carpal tunnel syndrome." Nurse Fischer provided findings which included that the MRI scan of the cervical spine revealed cervical stenosis, C3-6, and cervical myelopathy. She diagnosed cervical stenosis with myelopathy. Nurse Fischer checked the box marked "yes" in response to whether she believed the condition was caused or aggravated by an employment activity and wrote "[i]t is possible that his work has aggravated condition of myelopathic symptoms." She recommended a posterior cervical decompression and laminoplasty at C3-6. Nurse Fischer also indicated that it was unknown when appellant could resume light work.

OWCP received a July 19, 2016 neurosurgeon report which indicated that appellant was scheduled for preoperative testing on July 27, 2015 and August 3, 2016 surgery to include a C3, C4, C4, and C6 laminoplasty. It also received a job description for mail processing clerk.

By decision dated August 22, 2016, OWCP denied appellant's claim. It found that the medical evidence of record was insufficient to establish that the medical condition was causally related to the accepted work factors. OWCP explained that there was no medical rationale to support that the diagnosis of cervical stenosis with myelopathy was caused or directly related to appellant's employment factors.

LEGAL PRECEDENT

A claimant seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty, as alleged, and that any specific condition or disability claimed is causally related to the employment injury.[4]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit 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

[3] *Supra* note 1.

[4] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

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]

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered physicians as defined under FECA.[6] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[7]

ANALYSIS

Appellant alleged that he developed a condition affecting his hands, neck, and spine due to repetitive motion when working as a mail processing clerk. OWCP accepted the employment factors. It also noted that a medical condition had been diagnosed. However, the Board finds that appellant submitted insufficient medical evidence to establish that his cervical stenosis with myelopathy was causally related to the accepted work factors.

OWCP received a June 21, 2016 report from Dr. Bohlig who indicated that appellant could perform light-duty work with no repetitive pinching, gripping, or heavy lifting with the right hand. It also received July 12, 2016 treatment notes from Dr. Harter who indicated that appellant could return to light-duty work on July 12, 2016 with restrictions to include avoiding repetitive use of right hand, pinching, and gripping. However, these reports are of limited probative value on the relevant issue as they fail to contain either a medical diagnosis or an opinion on causal relationship.[8]

OWCP received a July 14, 2016 report from Dr. Nauta who noted that appellant had a history of weakness in the legs and tingling and numbness and shock-like pain in the neck for a month and myelopathy on MRI scan. Dr. Nauta diagnosed cervical stenosis C3, C4, C5, and C6 with myelopathy at C3-C4 and recommended a C3, C4, C4, and C6 laminoplasty. However, he merely and provided diagnoses, but did not offer any opinion that work activities as a mail processing clerk caused or aggravated a diagnosed condition. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[9]

[5] *See D.R.*, Docket No. 09-1723 (issued May 20, 2010). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[6] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[7] *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

[8] *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that 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).

[9] *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

Additionally, the record contains nurses' notes dated June 7, 14, and the July 20, 2016 report of Nurse Fischer. Section 8101(2) of FECA[10] provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable state law. Healthcare providers such as nurses are not considered physicians under FECA. Thus, nurses are not competent to give a medical opinion[11] and their opinions on causal relationship do not constitute rationalized medical opinions and have no weight or probative value.[12]

The mere fact that a condition manifests itself during a period of employment does not raise an inference that there is causal relationship between the two.[13] Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[14]

As there is no reasoned medical evidence explaining how appellant's employment duties caused or aggravated a medical condition involving his hands, neck and spine, appellant has not met his burden of proof to establish that his diagnosed cervical condition was causally related to the accepted employment event(s).

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 failed to meet his burden of proof to establish that his claimed cervical condition is causally related to accepted factors of his federal employment.

[10] *See* 5 U.S.C. § 8101(2). *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

[11] *See Bertha L. Arnold*, 38 ECAB 282 (1986).

[12] *Jane A. White*, 34 ECAB 515, 518 (1983). *See* 5 U.S.C. § 8101(2).

[13] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[14] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the August 22, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 2, 2017
Washington, DC

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

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

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