United States Department of Labor
Employees' Compensation Appeals Board

M.C., Appellant	)	
and	)	**Docket No. 17-0363**
	)	**Issued: April 16, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Power Springs, GA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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 December 7, 2016 appellant, through counsel, filed a timely appeal from an October 14, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 USC § 8101 *et seq.*

ISSUE

The issue is whether appellant has established bilateral upper extremity and cervical conditions causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On September 14, 2015 appellant, then a 53-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that her bilateral upper extremity and cervical conditions were caused or aggravated by the repetitive use of both arms for lifting and reaching in the performance of her federal employment duties. She noted that she first became aware of her claimed condition and that it was caused or aggravated by factors of her federal employment in October 2010. Appellant did not stop work.

In an August 17, 2015 report, Dr. Mark Diehl, an orthopedic surgeon, related that appellant, an established patient in his medical practice, presented with pain in both shoulders, worse in the right dominant shoulder, which she indicated had been present for "at least a couple of years." He noted that the injections provided only temporary relief. Appellant also complained of trapezial and parascapular pain with some neck pain, which was also chronic, along with occasional tingling to the arms and elbow. Dr. Diehl noted that appellant worked as a mail carrier and did a lot of repetitive lifting at work, especially with her right arm out the mail truck window. He noted examination and x-ray findings of the shoulder. An assessment of bilateral shoulder impingement and rotator cuff tendinitis, chronic, recurrent right greater than left, and cervical degenerative disc disease was provided. Diagnostic testing of the right and left shoulders and the cervical spine were recommended.

On August 24, 2015 a magnetic resonance imaging (MRI) scan of the right shoulder was performed. It revealed a complete tear of the supraspinatus tendon with torn fibers retracted to the mid humeral head and a complete tear of the intraarticular bicep tendon and widening of the acromioclavicular joint.

In an August 28, 2015 report, Dr. Diehl reviewed the MRI scan and presented examination findings. He noted that appellant's cervical spine seemed to be responding to use of the soft collar. An assessment of complete tear of tendon of rotator cuff and biceps tendon rupture was provided. Dr. Diehl noted that appellant thought she may have injured the shoulder 15 years ago. He recommended that appellant undergo surgery and advised that she could continue to work modified duty as tolerated until the surgery.

A September 4, 2015 work status report from Jennifer Morrison, a certified physician assistant, noted appellant's work restrictions.

In a September 4, 2015 note, Dr. Diehl indicated that appellant needed medical clearance, hematology clearance, and platelet correction before her elective shoulder surgery.

In a September 11, 2015 attending physician's report (Form CA-20/20a), Dr. Diehl indicated that appellant reported pain in both shoulders for the past two years. He diagnosed shoulder impingement bursitis/tendinitis, cervical degenerative disc disease, and bilateral shoulder

impingement and rotator cuff tear, chronic and recurrent, right greater than left. Dr. Diehl advised that appellant had a complete tear of the right rotator cuff tendon and checked a box marked "yes" indicating that the condition was caused or aggravated by an employment activity. He indicated: "patient does work as a mail carrier and does a lot of repetitive lifting at work, especially with R arm out the mail truck window." Dr. Diehl also noted that appellant was scheduled for surgery. In a September 11, 2015 duty status report (Form CA-17), he indicated that appellant could return to full-time work with restrictions.

In an October 21, 2015 development letter, OWCP advised appellant of the deficiencies in her claim and provided her the opportunity to provide additional factual and medical evidence needed to establish her claim. This included a questionnaire concerning the job activities appellant believed contributed to her condition and a narrative medical report from her physician which contained a detailed description of findings and diagnoses and the physician's opinion, supported by a medical explanation, as to how the reported work activities caused or aggravated a medical condition. Appellant was afforded 30 days to submit the requested information. No further information was received.

By decision dated January 13, 2016, OWCP noted that appellant had not responded to the questionnaire requesting additional factual information. It denied the claim as the medical evidence of record was insufficient to support that appellant's diagnosed conditions were caused, aggravated, accelerated, or precipitated by the accepted factors of her federal employment.

On January 29, 2016 OWCP received counsel's January 27, 2016 request for a telephonic hearing before an OWCP hearing representative. A telephonic hearing was held on September 8, 2016. During the hearing, appellant was advised that additional information was needed regarding the factual component of the claim. She, therefore, described in detail the employment-related activities she believed to be the cause of her conditions. Appellant also confirmed that she became aware of her conditions in 2010 and was last exposed to the work factors believed to be the cause of her condition in September 2015. She denied any preexisting shoulder conditions and indicated that she did not know or understand why her physician indicated that she had injured herself 15 years prior. Appellant also denied any other injuries to her shoulders. She testified that she was still symptomatic, but had not undergone surgery for her condition as her platelets were too low. Counsel indicated that Dr. Diehl had retired before he provided an opinion regarding causation and that Dr. Nicholas S. Bonnaig, an orthopedic surgeon, did not want to get involved with workers' compensation claims.

In an October 30, 2015 report, Dr. Bonnaig indicated that appellant was formally Dr. Diehl's patient, but he was now assuming her care. He noted that her right shoulder rotator cuff repair surgery was cancelled on the day of the procedure as her platelets were too low. Dr. Bonnaig indicated that appellant had since received clearance from her hematologist, but would see her liver doctor next week. He reported that she had a full-thickness rotator cuff tear of her right shoulder that was caused from her work as a mail carrier. Dr. Bonnaig indicated that appellant was a surgical candidate and that surgery would be scheduled at appellant's convenience.

In a February 16, 2016 report, Dr. Bonnaig noted that appellant was a mail carrier who performed repetitive lifting upwards of 70 pounds. He diagnosed a complete tear of the right rotator cuff, bicipital tendinitis of the right shoulder, and impingement syndrome of the right

shoulder. Dr. Bonnaig opined, "with the repetitive lifting she likely injured her rotator cuff. There was no specific injury, but lifting upwards of 70 [pounds] repetitively could cause a rotator cuff tear." He indicated that shoulder arthroscopy with rotator cuff repair, decompression, and biceps tenotomy was the best option for treatment. A February 16, 2016 work status report restricted appellant to light-duty work.

By decision dated October 14, 2016, OWCP's hearing representative found that the factual evidence of record was sufficient to support the alleged factors of her federal employment, but affirmed the denial of the claim as the medical evidence of record was insufficient to establish that appellant's diagnosed conditions were caused, aggravated, accelerated, or precipitated by her employment factors.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[5]

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established. To establish 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.[6]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.[7] The weight of medical evidence is determined by its reliability, its probative value, its convincing

[3] *Id.*

[4] *Joe D. Cameron,* 41 ECAB 153 (1989).

[5] *See Irene St. John,* 50 ECAB 521 (1999); *Michael E. Smith,* 50 ECAB 313 (1999).

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

[7] *I.J.,* 59 ECAB 408 (2008).

quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[8]

ANALYSIS

The Board finds that appellant has not established that her bilateral upper extremity and cervical conditions were causally related to the accepted factors of her federal employment.

OWCP accepted that appellant's job duties involved repetitive duties such as casing mail, loading the postal truck, and delivering letters and packages. It denied the claim, however, as the medical evidence of record was insufficient to establish that appellant's diagnosed conditions were caused, aggravated, accelerated, or precipitated by her employment duties. The Board finds that the evidence of record is insufficient to establish causal relationship.[9]

Reports from Dr. Diehl were received in support of appellant's claim. In his August 17 and August 28, 2015 reports, Dr. Diehl noted that appellant worked as a mail carrier doing repetitive lifting, especially with her right arm. A diagnosis of bilateral shoulder impingement and rotator cuff tendinitis, chronic, recurrent right greater than left, and cervical degenerative disc disease was provided. However, Dr. Diehl failed to offer a rationalized opinion establishing the cause of appellant's condition.[10] In his September 11, 2015 attending physician report, Dr. Diehl diagnosed shoulder impingement bursitis/tendinitis, cervical degenerative disc disease, and bilateral shoulder impingement and rotator cuff tear, chronic and recurrent, right greater than left. He advised that appellant had a complete tear of the right rotator cuff tendon and checked the box marked "yes" indicating that this condition was caused or aggravated by an employment activity. The Board has long held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without sufficient rationale, is of diminished probative value and is insufficient to establish a claim.[11] While Dr. Diehl indicated that the "patient does work as a mail carrier and [did] a lot of repetitive lifting at work, especially with R arm out the mail truck window," he failed to provide any medical rationale to support his conclusion on causal relationship. Medical evidence that states a conclusion, but does not offer any rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[12] Dr. Diehl noted that appellant performed a lot of repetitive lifting at work, but he did not specifically describe the process or mechanism by which appellant's specific

[8] *James Mack,* 43 ECAB 321 (1991).

[9] *See Robert Broome*, 55 ECAB 339 (2004).

[10] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *Jaja K. Asaramo,* 55 ECAB 200 (2004).

[11] *See C.D.*, Docket No. 17-1915 (issued February 21, 2018).

[12] *J.F., supra* note 10; *A.D.*, 58 ECAB 149 (2006).

employment duties resulted in her right rotator cuff tendon tear.[13] Thus, his reports are insufficient to establish appellant's claim.

Medical reports from Dr. Bonnaig were also received. In his October 30, 2015 report, Dr. Bonnaig noted that appellant had a full-thickness rotator cuff tear of her right shoulder that was caused by her work as a mail carrier. However, he failed to provide any medical rationale to support his conclusion on causal relationship.[14] A mere conclusory opinion provided by a physician without the necessary rationale explaining how and why the work factors were sufficient to result in the diagnosed medical condition is insufficient to meet the claimant's burden of proof to establish her claim.[15]

In his February 16, 2016 report, Dr. Bonnaig diagnosed a complete tear of the right rotator cuff, bicipital tendinitis of the right shoulder, and impingement syndrome of the right shoulder. He opined that, with the repetitive lifting, she "likely" injured her rotator cuff and lifting upwards of 70 [pounds] repetitively "could" cause a rotator cuff tear. This opinion, however, is vague and speculative in nature and failed to explain the causal relationship between appellant's work and her condition.[16] Thus, these reports are insufficient to establish appellant's claim.

The August 24, 2015 MRI scan of the right shoulder is of little probative value as the diagnostic report did not provide any opinion on the cause of appellant's condition. The Board has found that 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.[17]

Finally, the September 4, 2015 work status note from Ms. Morrison, a certified physician assistant, is of no probative value to establish appellant's claim because physician assistants are not considered physicians as defined by FECA.[18]

As noted above, appellant bears the burden of proof to establish the essential elements of her claim. Because she has failed to provide sufficient medical evidence to establish that her diagnosed conditions were causally related to factors of her employment, she has failed to meet her burden of proof to establish her claim.

[13] *D.B.*, Docket No. 16-0210 (issued June 14, 2016); *M.M.*, Docket No. 15-0607 (issued May 15, 2015); *M.W.*, Docket No. 14-1664 (issued December 5, 2014).

[14] *J.F.*, *supra* note 10; *A.D.*, *supra* note 12.

[15] *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

[16] *Roy L. Humphrey*, 57 ECAB 238, 242 (2005); *Michael E. Smith*, 50 ECAB 313 (1999).

[17] *R.E.*, Docket No. 10-0679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

[18] 5 U.S.C. § 8101(2) 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 State law. *L.L.*, Docket No. 13-0829 (issued August 20, 2013) (a physician assistant is not considered a physician under FECA). *See* 5 U.S.C. § 8101(2).

On appeal counsel contends that OWCP's decision is contrary to fact and law. As discussed above, appellant has not established causal relationship between her diagnosed conditions and factors of her federal employment.

Appellant may submit new evidence or argument as part of 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 her bilateral upper extremity and cervical conditions were causally related to the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 14, 2016 is affirmed.

Issued: April 16, 2018
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