

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

L.B., Appellant

and

**U.S. POSTAL SERVICE, PROCESSING &
DISTRIBUTION CENTER, Tulsa, OK, Employer**

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**Docket No. 17-1678
Issued: February 1, 2018**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 1, 2017 appellant filed a timely appeal from March 16 and June 8, 2017 merit decisions of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish neck and back conditions causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On September 20, 2016 appellant, then a 46-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on September 17, 2016 she felt a pop in her

¹ 5 U.S.C. § 8101 *et seq.*

neck and back as she pulled a wire cage off a piece of equipment at work. She did not stop work.

With the claim, OWCP received a September 20, 2016 Authorization for Examination and/or Treatment form (Form CA-16) in which D.W., a senior manager, authorized appellant's initial medical treatment. Other documents received with the claim included a September 23, 2016 e-mail from an employing establishment supervisor who warned appellant about being absent from work as she no longer had protection under the Family and Medical Leave Act (FMLA).

OWCP, in a September 29, 2016 letter, advised appellant of the deficiencies in her claim and afforded her 30 days to submit additional evidence and respond to its development questionnaire.

OWCP subsequently received the attending physician's report portion of the Form CA-16 which was completed by Dr. Aaron M. McGuire, an attending orthopedic surgeon, on September 26, 2016. Dr. McGuire noted that appellant had neck pain and stiffness and pain in the right trapezius for the past two to three years. Additionally, appellant reported having left elbow pain for the past year. Dr. McGuire indicated that the history of the employment injury provided by appellant was that an aggravating event took place on September 17, 2016. He reported findings and diagnosed degenerative disc of the cervical spine and biceps tendinitis. Dr. McGuire checked a box marked "Yes" indicating that the conditions identified were caused or aggravated by the employment incident. He advised that appellant could resume light work with restrictions.

In an October 3, 2016 letter, the employing establishment controverted appellant's claim. It asserted that accompanying statements from supervisors indicated that appellant may be trying to avoid disciplinary action regarding the exhaustion of her leave options. The employing establishment also asserted that she did not report the accident on the date of injury and instead chose to wait until September 20, 2016 to see a physician. It submitted a September 25, 2016 e-mail from D.W., a senior operations manager, who denied appellant's request for leave. D.W. explained that she had exhausted her leave under FMLA.

In an October 14, 2016 letter, appellant noted that she should have filed an occupational disease claim (Form CA-2) rather than the Form CA-1 for a traumatic injury. She requested that her Form CA-1 claim be revised to reflect a Form CA-2 claim.

On October 17, 2016 appellant responded to OWCP's development questionnaire. She related that her condition was aggravated on September 17, 2016. Appellant contended that she was pushing a wired cage of bundled magazines when she felt a pop in her neck. She informed two employees who were walking past her at that time about her injury. Appellant related that she took Ibuprofen and continued to work on that day. She further treated her condition at home that evening. Appellant noted that she had prior neck pain and stiffness for which she received chiropractic treatment and used home remedies. She further noted that she was treated on September 26, 2016 by Dr. McGuire. In an October 17, 2016 letter, appellant described the regular work duties she performed as a distribution clerk and noted her employment history at the employing establishment. She asserted that her condition had worsened since September 17,

2016 as she had more pain in her neck and upper back, less mobilization in her neck, headaches, and numbness in her fingertips. Appellant maintained that she informed her supervisor about the work incident on the next day.

Appellant also submitted a September 26, 2016 letter from Dr. McGuire. Dr. McGuire described appellant's repetitive work duties, which included pushing wired cages of mail to be dispatched. He noted that she developed pain in her neck along with radicular-type symptoms extending into the right upper extremity due to her repetitive work-related duties. Dr. McGuire indicated that appellant continued to experience pain in her neck that was exacerbated by activities requiring repetitive head movements, prolonged flexion of the neck, overhead work, and lifting. He further indicated that the symptoms in appellant's left arm and hand were consistent with cervical radiculopathy. Dr. McGuire noted appellant's medical, social, and work history. He also provided a review of systems and findings on physical and x-ray examination. Dr. McGuire diagnosed acute traumatic injury to the cervical spine resulting in anatomical abnormalities due to cervical disc displacement, acute traumatic injury to the cervical spine resulting in anatomical abnormalities due to cervicalgia, and acute traumatic injury to the cervical spine resulting in anatomical abnormalities due to other cervical disc degeneration at C5-6. He advised that the post office was the place of occurrence of the external cause. Dr. McGuire restricted appellant from repetitive lifting, gripping, pushing, and pulling. He opined that, based on his evaluation, interview, and examination, she sustained a cervical spine injury as a result of her work-related duties. Dr. McGuire further opined that these injuries arose out of and were causally connected to the above described accident within a reasonable degree of medical certainty. He maintained that appellant continued to have ongoing pain and weakness in her cervical spine which was supported by clinical examination. Dr. McGuire addressed her treatment plan and noted that she continued to work.

By decision dated November 8, 2016, OWCP denied appellant's traumatic injury claim finding that the medical evidence of record did not contain a rationalized opinion from a physician sufficient to establish a causal relationship between a diagnosed condition and the accepted September 17, 2016 employment-related event or events.

OWCP subsequently received progress notes dated October 6 and November 3, 2016 from Dr. McGuire. Dr. McGuire noted that appellant's symptoms related to her cervical spine, right trapezius, and bilateral hands. He provided a review of systems and reported examination findings. Dr. McGuire reiterated his prior diagnoses of acute traumatic injury to the cervical spine resulting in anatomical abnormalities due to cervical disc displacement, acute traumatic injury to the cervical spine resulting in anatomical abnormalities due to cervicalgia, and acute traumatic injury to the cervical spine resulting in anatomical abnormalities due to other cervical disc degeneration at C5-6. He opined that appellant should follow up regarding her course of continuing medical maintenance. Dr. McGuire noted that she continued to work.

On December 16, 2016 appellant requested reconsideration of the November 8, 2016 decision. She did not submit any further evidence.

By decision dated March 16, 2017, OWCP denied modification of its November 8, 2016 decision. It found that the medical evidence of record was insufficient to establish a causal relationship between the diagnosed conditions and factors of her federal employment.

On May 26, 2017 appellant requested reconsideration. She submitted an unsigned partial cervical spine x-ray report dated April 30, 2016 which found no significant abnormality. Appellant also submitted an order for a partial soft tissue neck computerized tomography (CT) scan report dated December 29, 2016 from Ginger McDonald. Ms. McDonald reported a diagnosis of neck pain and mass on the right side of the neck.

In a partial progress note dated December 29, 2016, Dr. John E. Ruffing, a Board-certified internist, provided examination and findings and advised that there were no diagnoses linked to the encounter.

In a January 5, 2017 neck CT scan report, Dr. Kim R. Hauger, a Board-certified radiologist, found a mass on the right side of the neck. In a March 15, 2017 cervical magnetic resonance imaging (MRI) scan report, she provided an impression of cervical kyphosis without acute abnormality and degenerative disc changes most pronounced at C5-6 with spurring greater on the right and to a lesser extent at C4-5. Dr. Hauger found no central stenosis.

In a January 23, 2017 progress note, Dr. Zeeshan I. Kahn, a Board-certified orthopedic surgeon, indicated that appellant complained about neck pain on the right side with left arm pain and leg pain. He reported a normal cervical examination and a negative Hoffman test. Dr. Kahn noted that imaging studies showed cervical kyphosis. He recommended cervical and lumbar spine MRI scans. In a progress note dated March 6, 2017, Dr. Kahn noted appellant's complaints of pain in her neck, left arm, low back, and left leg and numbness and tingling in her finger and thumb. He reported findings on examination and reviewed x-ray test results. Dr. Kahn assessed cervical kyphosis with left-sided cervical radiculopathy.

By decision dated June 8, 2017, OWCP denied modification of its March 16, 2017 decision finding that appellant had not established a causal relationship between her claimed neck and back conditions and factors of her federal employment, such that she had established an occupational disease.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² 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.³

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established.⁴

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton, id.*

⁴ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.⁵

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁶ 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 the identified factors.⁷ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.⁸

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish neck and back conditions causally related to factors of her federal employment. Appellant has failed to submit sufficient medical evidence to establish that her neck and back conditions were causally related to the accepted factors of her federal employment.

Appellant submitted Dr. McGuire's September 26, 2016 form report. Dr. McGuire noted that she reported neck pain and stiffness and pain in the right trapezius for the past two to three years. He also noted that appellant reported left elbow pain for the past year. Dr. McGuire indicated a history of injury that an aggravating event took place on September 17, 2016. He provided findings and diagnosed degenerative disc of the cervical spine and biceps tendinitis. Dr. McGuire checked a box marked "Yes" indicating that the diagnosed conditions were caused or aggravated by the described employment activity. However, a report that addresses causal relationship with a checkmark, without medical rationale explaining how the work condition caused the alleged injury, is of diminished probative value and insufficient to establish causal relationship.⁹ In a September 26, 2016 narrative report, Dr. McGuire noted that appellant related neck and right arm symptoms and described work duties which included pushing wired cages of mail. He examined appellant and diagnosed acute traumatic injury to the cervical spine resulting in anatomical abnormalities due to cervical disc displacement, acute traumatic injury to the cervical spine resulting in anatomical abnormalities due to cervicgia, and acute traumatic injury to the cervical spine resulting in anatomical abnormalities due to other cervical disc degeneration at C5-6. Dr. McGuire opined that the diagnosed conditions were causally related to the described work duties. He failed, however, to explain how factors of appellant's federal employment caused or aggravated her cervical conditions. A medical opinion unsupported by

⁵ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁶ *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

⁷ *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

⁸ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

⁹ See *D.B.*, Docket No. 16-0798 (issued December 2, 2016).

medical rationale is of diminished probative value.¹⁰ In his October 6 and November 3, 2016 progress notes, Dr. McGuire reiterated his prior cervical diagnoses, but failed to offer an opinion on the causal relationship. The Board has held 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.¹¹ For the stated reasons, the Board finds that Dr. McGuire's reports are insufficient to establish appellant's claim.

The diagnostic test reports and progress notes appellant submitted are insufficient to establish her claim as they do not specifically address how the September 17, 2016 employment incident caused or aggravated diagnosed medical conditions.¹²

The December 29, 2016 order from Ms. McDonald who noted a diagnosis of neck pain and mass on the right side of the neck has no probative medical value. It is unclear if it was signed by a physician. The Board finds that this order lacks probative medical value as the author cannot be identified as a physician.¹³

The Board finds that appellant has failed to submit rationalized, probative medical evidence sufficient to establish neck and back injuries causally related to the factors of her federal employment. As such, appellant has not met her burden of proof.

Further, the Board notes that the employing establishment executed a Form CA-16 on September 20, 2016 authorizing medical treatment. The Board has held that where an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim.¹⁴ Although OWCP denied appellant's claim for an injury, it did not address whether she is entitled to reimbursement of medical expenses pursuant to the Form CA-16.¹⁵ Upon return of the case, it should further address this matter.

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 *W.W.*, Docket No. 09-1619 (issued June 2, 2010).

¹¹ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

¹² *Id.*

¹³ See *Ricky S. Storms*, 52 ECAB 349 (2001); *Morris Scanlon*, 11 ECAB 384, 385 (1960).

¹⁴ See *D.M.*, Docket No. 13-535 (issued June 6, 2013). See also 20 C.F.R. §§ 10.300, 10.304.

¹⁵ *L.D.*, Docket No. 16-1289 (issued December 8, 2016).

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish neck and back conditions causally related to the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT June 8 and March 16, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 1, 2018
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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