

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

D.C., Appellant)	
)	
and)	Docket No. 17-1553
)	Issued: June 27, 2018
U.S. POSTAL SERVICE, POST OFFICE,)	
Louisville, KY, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
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 July 10, 2017 appellant, through counsel, filed a timely appeal from a May 24, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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 U.S.C. § 8101 *et seq.*

ISSUE

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

FACTUAL HISTORY

On June 28, 2016 appellant, then a 50-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging a muscle strain resulting from the performance of duty. She did not stop work.

In an undated supplemental statement, appellant related that she started working for the employing establishment in February 1999 as a substitute for one route with a Long Life Vehicle (LLV), right-hand drive. She received another route four months later, which was a left-hand drive. Appellant explained that she was five foot, three inches tall, so she had to reach across the vehicle to deliver mail. She noted that in 2003 she began to experience hip and back pain. Appellant indicated that she eventually was given a right-hand drive vehicle, but the pain did not go away. She reported that in 2004, her chiropractor informed her that her hip bone was being pulled out of the socket, which was what caused her hip pain. Appellant related that in 2005, she began to have serious problems with her back and shoulders. She noted that she started to work full time in 2008. Appellant explained that it took her approximately four hours of sitting to deliver her route, which caused severe hip pain. She reported that she also stood and cased mail for 1½ to 2 hours, which caused a burning sensation in her back.

Appellant received medical treatment from Dr. Richard Hefner, a Board-certified family practitioner. Dr. Hefner indicated in a June 15, 2016 examination note that appellant was diagnosed with left hip pain, right shoulder pain, left piriformis syndrome, and muscle strain of the left gluteal region.

In a June 22, 2016 initial physical therapy evaluation report, Gary Costelle, a physical therapist, related appellant's complaints of left hip pain for the past 10 years. He noted that she worked as a mail carrier who constantly shifted her body weight when leaning in and out of her mail truck at work.

OWCP received handwritten chiropractic notes dated June 24 and 29, 2016.

Appellant was also treated by Amy Adkission, a certified physician assistant. In handwritten examination notes dated June 27 and 30, 2016, Ms. Adkission related that appellant complained of pain to her left hip, between shoulders, and right arm. She indicated that appellant had worked at her current job since 1999. Ms. Adkission noted diagnoses of chronic left hip pain, right shoulder pain, thoracic spine pain, and suspected right carpal tunnel syndrome. The examination note indicated that appellant could return to regular duty without restrictions on June 27, 2016.

In a July 5, 2016 letter, the employing establishment controverted appellant's claim. It reported that she did not provide any mechanism of injury to relate to performance of duty or

rationalized medical evidence to demonstrate causal relationship. The employing establishment further noted that appellant complained of chronic pain, which is not a compensable diagnosis.

OWCP advised appellant in a July 6, 2016 letter that the evidence submitted was insufficient to establish her claim. It requested that she respond to the attached development questionnaire in order to substantiate the factual elements of her claim and that she provide additional medical evidence to establish that she sustained a diagnosed condition causally related to her federal employment. Appellant was afforded 30 days to submit this additional evidence.

In a July 21, 2016 letter, D.D., the Postmaster, reported that appellant was appointed as a substitute mail carrier on February 27, 1999. She explained that appellant was required to carry a mail route when the regular mail carrier was on vacation, sick leave, and on nonscheduled days. D.D. indicated that appellant was assigned a right-hand drive LLV. She related that on March 31, 2007 appellant was promoted to a full-time regular rural carrier working six days per week, was assigned to an H-route, and instructed to drive her right-hand Subaru for the route. D.D. explained that rural carriers performed several different tasks during the course of the day. She further related that on April 27, 2016 appellant reported that she had strained her back while lifting a spare while changing a flat tire.

The employing establishment provided a job description for a rural carrier. It also provided an employing establishment's accident report, which described an April 27, 2016 incident when appellant strained her back after she lifted a spare tire.

OWCP denied appellant's claim by decision dated August 9, 2016, finding that the evidence of record was insufficient to establish fact of injury. It determined that she did not provide sufficient details regarding the employment factors which she believed caused her condition. OWCP noted that appellant had not responded to questions regarding the employment-related activities she believed caused her condition, therefore, the factual portion of her claim remained vague. It further found that the medical evidence failed to establish a diagnosed condition causally related to her federal employment.

On January 20, 2017 appellant requested reconsideration. In a January 18, 2017 letter, she explained that she went to her primary physician on June 15, 2016 for right shoulder pain, but he did not take workers' compensation cases. Appellant then went to Ms. Adkission. She explained that she did not realize that OWCP only accepted reports from medical physicians. Appellant indicated that she was also treated by Dr. Eugene Jacob, an orthopedic surgeon.

In a January 5, 2017 report, Dr. Jacob noted that appellant's right shoulder magnetic resonance imaging (MRI) scan arthrogram showed a small, complete tear of the supraspinatus tendon and partial tearing of the infraspinatus tendon. He reported: "this is related to [appellant's] work duties as a mail deliverer repetitive-type action such as pushing and pulling collection trays, sorting mail, in the employing establishment as well as in her vehicle and over the head repetitive movements and lifting heavy containers of mail with that right arm." Dr. Jacob noted that this type of repetitive work had caused appellant's shoulder issue and tear. He reviewed her history and conducted an examination. Dr. Jacob reported active range of motion pain with abduction and extension against resistance. He diagnosed right shoulder bursitis/tendinitis and a complete tear

of the right shoulder rotator cuff. Dr. Jacob opined that appellant's best treatment option was surgical repair.

OWCP also received a June 27, 2016 diagnostic examination report by Dr. Anna Kogan, a Board-certified diagnostic radiologist. Dr. Kogan noted no fracture, malalignment, or significant degenerative changes of appellant's right shoulder. She also reported normal findings of appellant's thoracic spine.

By decision dated February 23, 2017, OWCP affirmed the August 9, 2016 denial decision with modification. It accepted appellant's repetitive duties as a rural carrier and that she was diagnosed with a right shoulder condition, but denied her claim because the medical evidence of record failed to establish that her right shoulder condition was causally related to the accepted employment factors.

On March 13, 2017 appellant again requested reconsideration. She related that she had seen another specialist for her shoulder and indicated that she was unable to work because of permanent aggravation of her shoulder condition. Appellant alleged that her right shoulder was worsening and that she needed surgery. She resubmitted Dr. Kogan's June 27, 2016 right shoulder and thoracic diagnostic examination report and Ms. Adkission's June 27, 2016 examination note.

OWCP received a December 30, 2016 right shoulder MRI scan arthrography examination report by Dr. George Dunn, a Board-certified diagnostic radiologist. Dr. Dunn reported a full-thickness tear of the supraspinatus insertion, additional articular-sided partial tearing of the remainder of the supraspinatus, and tendinopathy and bursal surface irregularity of the infraspinatus, without additional significant tear.

Appellant submitted additional reports by Dr. Jacob. In a December 21, 2016 report, Dr. Jacob related that she was examined for complaints of right shoulder symptoms for approximately six months. He noted that appellant had no specific injury, but experienced pain and discomfort with work activity. Dr. Jacob explained that she worked both in the office and delivering mail, which required using her right arm to open and close mailboxes and place mail in the mailbox. Upon physical examination of appellant's right shoulder, he reported mildly positive impingement and moderately positive O'Brien's test. Dr. Jacob noted no motor deficit, but that she complained of paresthesia of the hand. Extension and abduction against resistance were mildly painful. He diagnosed right shoulder bursitis/tendinitis and labral tear.

In a January 16, 2017 progress note, Dr. Jacob indicated that a right shoulder arthrogram showed a small complete tear of the supraspinatus tendon and partial tearing of the infraspinatus tendon. He opined that it was related to appellant's work duties as a mail deliverer repetitive-type action, such as pushing, pulling, and collecting trays, sorting mail in the postal vehicle, and overhead repetitive movements and lifting heavy containers in the employing establishment and in her vehicle with her right arm. Dr. Jacob diagnosed complete tear of the right shoulder rotator cuff, right shoulder bursitis/tendinitis, and right shoulder labral tear. In a January 23, 2017 work status note, he indicated that appellant could return to light-duty restrictions of no more than two pounds and no repetitive motion until her next visit.

Dr. Jacob further explained in a March 1, 2017 report that although appellant did not have a specific date of injury with her job as a mail carrier, however, he felt strongly that “this is work[-] related repetitive-type work” that caused the rotator cuff tear. He indicated that her examination was unchanged as far as pain and discomfort with active range of motion. Dr. Jacob diagnosed complete tear of the right shoulder rotator cuff. In a work status note, he indicated that appellant should be off work until her next appointment on March 22, 2017. In a March 22, 2017 work status note, Dr. Jacob reported that she should be off work until her next appointment.

In a March 30, 2017 statement, appellant provided a detailed account of the employment-related activities, which she believed contributed to her condition. She explained that she arrived at work at 7:45 a.m. and when she entered the employing establishment she had to bend over to pick up a tray of mail from the floor and lift the tray to a ledge approximately three feet tall. Appellant noted that the tray was about three feet long, which required her to extend her arms out past shoulder length. She indicated that she sorted through the mail by pulling handfuls of mail to the front of the tray with her right arm. Appellant reported that she received approximately four to five trays on Mondays and three trays from Tuesdays through Saturdays. She related that she cased the mail by reaching above her head and pushing the mail in each slot on the case for each individual customer. Appellant noted that there were approximately 455 customers on her route.

Appellant reported that the next step was magazines, which were in tubs approximately one foot high. She explained that she lifted the tubs off the floor onto the ledge, pulled the plastic off each bundle of magazines, and cased them, using the same repetitive motion, into each individual case. Appellant indicated that on Mondays the route usually had two to three tubs, from Tuesdays through Saturdays around two tubs, and the day after a holiday, around four to six tubs. She related that they next sorted parcels. Appellant explained that she pulled out each parcel, walked to the case, and pushed a parcel marker into the case. She reported that she also separated the small parcels from the large ones. Appellant noted that the parcels were all shapes and sizes, which could weigh up to 70 pounds. She explained that it required her to use her shoulders for lifting, then extending the parcels out to give to customers or pushing the small ones into mail boxes. Appellant indicated that she then pulled down the mail by reaching above her head with her right arm, pulling the mail out by gathering about five or six slots of mail into her left hand, taking two rubber bands with her right hand and pulling it around the mail with her left hand, and placing the mail into a tray about three feet long. She reported that when the tray was full, she picked up the tray, extending her arms past shoulder width, and placed it into the cart that the parcels were in.

After pulling down all the mail out of the case, appellant picked up all parcels and parcel tubs and placed them into the cart. She then loaded her postal vehicle by wheeling the cart full of parcels and parcel tubs down a ramp and pulling the parcels and parcel tubs out of the cart into her vehicle. Appellant explained that on her route she drove up to the customer’s mailbox, pulled the box open, pushed the mail into the box, and reached down for the lid of the mailbox and pushed it shut. She noted that she had to stretch across her vehicle to reach for mail then reach for mail boxes out of various heights. Appellant reported that she would only like her right shoulder considered for her claim as she wanted to undergo surgery. She alleged that she had new medical records that she wanted to submit along with the answers to the questionnaire that was sent on July 6, 2016.

By decision dated May 24, 2017, OWCP affirmed the denial of appellant's claim with modification. It found that she failed to establish fact of injury because inconsistencies in the evidence of record cast serious doubt as to what work factors she alleged caused or contributed to her right shoulder condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence⁴ including that he or she sustained an injury in the performance of duty, and that any specific condition or disability for work for which compensation is claimed is causally related to that employment injury.⁵ In an occupational disease claim, appellant's burden requires submission of 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 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

To determine whether a federal employee has sustained an injury in the performance of duty, it first must be determined whether fact of injury has been established.⁷ There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.⁸ Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.⁹

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹⁰ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the

³ *Id.*

⁴ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁵ *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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

⁷ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁸ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁹ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.¹¹

ANALYSIS

Appellant alleged that she sustained left hip and back pain and a right shoulder condition due to the repetitive duties of her employment. OWCP denied her claim finding that she failed to establish fact of injury.

In its May 24, 2017 decision, OWCP found that appellant had not established fact of injury because of inconsistent descriptions in the evidence of record regarding her repetitive work duties as a mail carrier. It noted that she initially attributed her medical condition to driving and sitting in her postal vehicle and casing mail, but the medical evidence of record described pushing, pulling, and collecting mail trays, sorting mail, and lifting heavy containers with her right arm as the cause of appellant's condition. OWCP determined that these inconsistent descriptions casted serious doubt as to whether the alleged work factors occurred in the manner that appellant alleged.

The Board finds, however, that the evidence of record substantiates that appellant's duties as a rural mail carrier required casing, sorting, and collecting mail, as well as driving, sitting and reaching in her postal vehicle.¹²

In a July 21, 2016 letter, D.D. indicated that rural carriers performed several different tasks during the course of the day. In addition, appellant provided a detailed description of her employment duties in a March 30, 2017 statement. She stated that her duties in the employing establishment included casing, sorting, and collecting mail, which required bending over to pick up trays of mail, pushing and pulling mail in each slot, and reaching over her head. Appellant also reported that her duties while delivering mail required sitting in her postal vehicle, driving up to mailboxes, pulling the box open, pushing the mail into the box, and reaching to close the lid of the mailbox. She noted that she often had to stretch across her vehicle to reach for mail and also reach up for mailboxes of various heights. There is no evidence in the record to refute appellant's claimed employment factors to include casing and sorting mail and delivering mail in a postal vehicle. The position description also provided by the employing establishment indicated that the duties and responsibilities of a rural carrier required sorting mail in delivery sequence, loading mail in vehicles, and delivering mail to customers along a prescribed route. It also noted that the physical requirements of the position included prolonged standing, walking, bending, reaching above shoulder, handling and lifting heavy containers of mail, and operation of a truck or motor vehicle. Consequently, the Board finds that appellant has established her alleged employment factors.¹³

Appellant did submit medical evidence to the record from Dr. Jacobs which related a diagnosis of left hip pain, bursitis/tendinitis, and tear of right rotator cuff. As OWCP has not yet

¹¹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

¹² *See S.R.*, Docket No. 14-1086 (issued February 26, 2015).

¹³ *See V.R.*, Docket No. 09-1701 (issued March 9, 2010).

evaluated the medical evidence, the case will be remanded to OWCP for evaluation of the medical evidence to determine whether she sustained a medical condition and/or disability due to her employment. After such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹⁴

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the May 24, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this opinion.

Issued: June 27, 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

¹⁴ See generally, *J.C.*, Docket No. 16-1206 (issued November 17, 2016).