

ISSUE

The issue is whether appellant met her burden of proof to establish cervical and left shoulder conditions causally related to the accepted March 4, 2014 employment incident.

FACTUAL HISTORY

On March 15, 2014 appellant, then a 50-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on March 4, 2014, she sustained an arm and neck injury after lifting some heavy baskets in the performance of duty. She notified her supervisor, stopped work, and first received medical treatment on March 10, 2014. On the reverse side of the claim form, appellant's supervisor controverted the claim, noting that appellant alleged a pinch in her neck which caused left arm pain while lifting buckets of mail from a hamper.⁴

On March 10, 2014 the employing establishment issued appellant a properly completed authorization for examination (Form CA-16) which indicated that appellant was authorized to seek medical treatment for a March 4, 2014 strain at Ironbound Medical Services.

In an accompanying March 10, 2014 attending physician's report, Dr. F. Kennedy Gordon, Board-certified in sports medicine, reported that appellant experienced severe neck pain while lifting heavy mail buckets. Dr. Gordon noted clinical findings of severe neck spasm and left cervical nerve irritation. He diagnosed cervical radiculitis and checked a box marked "yes" when asked if the condition was caused or aggravated by the employment activity described.

In March 10 and 19, 2014 medical reports, Dr. Gordon reported that appellant was a mail carrier who was lifting heavy buckets of mail on March 4, 2014 when she experienced acute left neck pain that increasingly radiated to her left upper arm. Appellant took the next three days off, but continued to have pain when she tried to return to work. Dr. Gordon provided findings on physical examination, noted no prior symptoms, and diagnosed left cervical radiculopathy/radiculitis.

By letter dated April 2, 2014, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the medical and factual evidence needed and was directed to submit such evidence within 30 days.

On April 9, 2014 appellant responded to OWCP's development letter and provided additional details pertaining to her traumatic injury claim. She reported that on March 4, 2014,

⁴ The Board notes that appellant has other traumatic injury claims with the following date of injury: October 15, 1993 in OWCP File No. xxxxxx385; May 17, 1995 in OWCP File No. xxxxxx048; November 29, 2002 in OWCP File No. xxxxxx182; and May 14, 2009 in OWCP File No. xxxxxx855.

On October 15, 1993 appellant's right foot caught in the strap of her satchel, causing her body to pitch forward. OWCP accepted the claim for cervical herniated disc, dislocation of the 4th and 5th cervical vertebrae, lumbago, lumbosacral sprain/strain, lumbar herniated disc, and degeneration of the lumbar spine under OWCP File No. xxxxxx385.

On May 17, 1995 appellant sustained a work-related injury when she was robbed while delivering mail, grabbed by her neck, and thrown to the floor. OWCP accepted the claim for dislocation of the 2nd, 3rd, 4th, and 6th cervical vertebrae under OWCP File No. xxxxxx048.

she was lifting a bucket full of mail into the back of her truck and felt a pinch in her neck. This caused a sharp pain that radiated from appellant's neck down to her left arm. She continued to work by picking up parcels of mail as well as approximately 20 buckets of mail. Appellant informed her supervisor that day that she felt like she had pulled a muscle in her neck and self-medicated at home later that evening. She thought her injury would heal on its own, but as time passed, the pain in her neck and left arm continued to worsen, causing her to file a Form CA-1 on March 10, 2014. Appellant noted no similar disability or symptoms prior to her injury. In support of her claim, she submitted various witness statements from her coworkers attesting to her complaints and the circumstances surrounding her injury.

In a March 10, 2014 medical report, Dr. Ruth Robles-Galvez, a Board-certified internist, reported that appellant was lifting a bucket of mail at work on March 4, 2014 and felt pain on the left side of her neck. Her pain continued to increase over the next few days, radiating into the left shoulder and arm. Dr. Robles-Galvez diagnosed cervical spine strain and provided light-duty work restrictions.

Physical therapy progress notes dated March 12 through April 18, 2014 were submitted documenting treatment for neck and left shoulder pain.

In medical reports dated April 11 through 21, 2014, Dr. Gordon reported that appellant was undergoing physical therapy and continued to experience neck and left shoulder pain. In his April 11, 2014 report, he diagnosed a history of left cervical radiculopathy sprain/strain and left shoulder rotator cuff irritation/impingement including biceps tendinitis (proximally). Dr. Gordon noted that due to her recurring symptoms, pain, decreased strength, and range of motion, she should proceed with a cervical and left shoulder magnetic resonance imaging (MRI) scan to rule out herniated discs of the cervical spine and rotator cuff/biceps tendon tear.

In April 18 and 21, 2014 reported, Dr. Gordon diagnosed cervical radiculopathy (left side) and left rotator cuff tendinitis/possible rotator cuff tear. He recommended cervical and lumbar spine MRI scans to rule out herniated discs and rotator cuff abnormalities.

By decision dated May 6, 2014, OWCP denied appellant's claim finding that the evidence of record failed to establish that her diagnosed conditions were causally related to the accepted March 4, 2014 employment incident. It noted that the medical evidence did not contain a complete and accurate history as both Dr. Gordon and appellant noted no previous similar disability or symptoms. However, appellant had an October 15, 1993 injury under OWCP File No. xxxxxx385 which was accepted for dislocation of cervical discs.

On May 22, 2014 appellant, through counsel, requested a telephone hearing before an OWCP hearing representative.

In support of her claim, appellant submitted physical therapy notes dated April 30 through August 21, 2014.

By letter dated December 29, 2014, counsel for appellant noted enclosure of a December 17, 2014 report from Dr. Gordon in support of appellant's claim. He further discussed records from appellant's prior October 15, 1993 claim under OWCP File No. xxxxxx385. Counsel argued that appellant's prior records documented an absence of complaints regarding her neck shortly after the original October 15, 1993 employment incident. A July 3, 1995 MRI scan of the

cervical spine indicated a normal study and a July 21, 2003 report from Dr. Schob noted treatment for low back pain only. Dr. Ahmad's February 24, 2004 report also documented appellant's complaints as strictly limited to her low back. Counsel further referenced an August 31, 2004 report from Dr. Aboody which indicated that appellant was strictly treated for an L5-S1 herniation. He noted that Dr. Stark's January 15, 2008 report noted no physical examination findings related to the neck with no subjective complaints, stating that appellant had recovered from any injury she could have sustained to her neck as a result of the incident with no residuals and no permanent impairment. Counsel concluded that he was enclosing a May 14, 2014 MRI scan which revealed damage to appellant's cervical spine at C3-4 and C4-5.

The only medical report submitted accompanying counsel's December 29, 2014 letter was a May 14, 2014 MRI scan of the cervical spine. Dr. Alan Heideman, a Board-certified radiologist, reported that the cervical spine MRI scan revealed multilevel disease with varying degrees of neural compromise. He noted loss of signal from the intervertebral discs reflecting disc desiccation and degeneration, right posterior vertebral osteophytes at C2-3, C3-4 broad-based left central disc protrusion indenting the ventral thecal sac and partially impinging upon the spinal cord associated with posterior spondylosis, C4-5 broad-based left disc protrusion with posterior spondylosis compromising the spinal canal with marginal impingement upon the spinal cord, C5-6 posterior spondylosis with an annular bulge and bilateral uncovertebral joint hypertrophy, and unremarkable findings at the C6-7 and C7-T1 levels.

A hearing was held on January 5, 2015. Appellant testified that her prior work-related injuries related to her lumbar spine, for which she underwent surgery and was assigned a limited-duty job as a result of her restrictions. She noted that her prior employment-related neck injury had healed as evidenced by diagnostic testing. Appellant noted that her limited-duty assignment contained no restrictions pertaining to her cervical spine condition and only related to her lumbar injury. She described the circumstances surrounding her March 4, 2014 injury noting that the buckets she was lifting weighed 10 to 25 pounds. The hearing representative noted that appellant also had a May 17, 1995 traumatic injury claim that was accepted for dislocation of the second, third, fourth, fifth, and sixth cervical vertebrae under OWCP File No. xxxxxx048. Counsel reported that this was inaccurate as her July 3, 1995 cervical MRI scan revealed totally normal findings. He argued that her neck and left shoulder conditions were new injuries unrelated to her prior claims as her neck condition had resolved with no symptoms reported until the March 4, 2014 employment incident. Appellant was advised of the type of medical evidence needed to establish her claim and the record was held open for 30 days for submission of additional evidence.

Following the hearing, counsel for appellant submitted a January 16, 2015 addendum report from Dr. Gordon.

In a January 16, 2015 report, Dr. Gordon reported that he was submitting an addendum to his December 17, 2014 report. He confirmed a diagnosis of left cervical C5-6 radiculopathy as documented by electromyography (EMG) and nerve conduction velocity (NCV) studies. Dr. Gordon opined that this condition was directly related to the injury that appellant sustained at work on March 4, 2014, noting that she did not have any pain prior to this incident. In addition, he reported that her acute left cervical radiculopathy was most likely intensified by her underlying disc protrusions at C3-4, C4-5, and C5-6. Dr. Gordon noted that, due to the longevity of appellant's cervical radiculopathy and pain, her condition was permanent and she would not be able to return to her prior job.

By decision dated February 24, 2015, OWCP's hearing representative affirmed the May 6, 2014 decision, finding that the evidence of record failed to establish that appellant's diagnosed conditions were causally related to the accepted March 4, 2014 employment incident.

On August 28, 2015 appellant, through counsel, requested reconsideration of the February 24, 2015 OWCP decision. Counsel noted submission of an April 1, 2015 medical report from Dr. Gordon in support of appellant's claim.

In an April 1, 2015 report, Dr. Gordon described the March 4, 2014 employment incident when appellant was lifting and placing heavy buckets of mail on a truck and immediately felt pain on the left side of her neck. He last examined her on March 4, 2015 with a diagnosis of persistent left cervical C5-6 radiculopathy. Dr. Gordon noted that cervical radiculopathy had been documented by EMG and MRI scan testing which revealed disc protrusions at the C3-4, C4-5, and C5-6 levels. Dr. Gordon opined that the left cervical nerve impairment documented by EMG was directly related to lifting heavy buckets of mail on March 4, 2014. The abnormal EMG/NCV study and residuals of neck/left arm and left hand weakness showed that there was significant damage related to the injury at work. Dr. Gordon further argued that direct correlation was established because appellant did not have cervical or left arm pain or numbness prior to this incident at work, as well as no prior history of cervical radiculopathy.

By decision dated March 7, 2016, OWCP denied modification of the February 24, 2015 decision, finding that the evidence of record failed to establish that appellant's diagnosed conditions were causally related to the accepted March 4, 2014 employment incident. OWCP explained that Dr. Gordon noted no cervical or shoulder pain prior to the March 4, 2014 incident. OWCP further explained that this statement made no sense and was medically incorrect because appellant has an extensive history of cervical conditions involving four previously filed workers' compensation claims.

On August 10, 2016 appellant, through counsel, requested reconsideration of the March 7, 2016 OWCP decision. Counsel argued that OWCP improperly dismissed the reports of Dr. Gordon because he indicated that appellant was not having cervical pain prior to her March 4, 2014 employment incident. He noted that Dr. Gordon's statement was correct and referenced appellant's testimony from the hearing transcript. Counsel enclosed a July 3, 1995 MRI scan of the cervical spine which he argued showed normal cervical spine findings. He also submitted the May 14, 2014 MRI scan which revealed disc protrusions and other conditions at various levels. Counsel requested OWCP provide a list of all of the cases referred to in its decision when discussing four work injuries involving the cervical spine. He reported that Dr. Michael Vigman conducted an OWCP examination on October 6, 1995 and reported no cervical subluxation and no complaints of neck pain. Counsel argued that this report showed that there were no previous abnormalities to her cervical spine. He explained that, while a prior workers' compensation case was accepted for cervical subluxation, the focus of the case actually related to her lower back.

In support of his arguments, counsel resubmitted Dr. Heideman's May 14, 2014 MRI scan of the cervical spine. He also submitted a July 3, 1995 diagnostic report from Dr. Heideman who

provided cervical spine MRI scan findings which revealed a normal study with no evidence of disc herniation or spinal stenosis.⁵

By decision dated September 21, 2016, OWCP denied appellant's request for reconsideration, finding that she neither raised substantive legal questions nor included relevant and pertinent new evidence sufficient to warrant merit review.

On December 6, 2016 appellant, through counsel, again requested reconsideration of the March 7, 2016 decision. In support of appellant's claim, counsel noted submission of an October 17, 2016 report from Dr. Gordon.

In an October 17, 2016 report, Dr. Gordon reported that appellant was diagnosed with disc protrusion at C3-4, C4-5, and C5-6, with persistent left cervical C5-6 radiculopathy post March 4, 2014 work injury. He described the employment incident stating that appellant was lifting and placing heavy buckets of mail on a truck and immediately felt pain on the left side of her neck. Dr. Gordon noted cervical radiculopathy was apparent on physical examination and also documented by EMG studies. He reported that lifting buckets of mail weighing 10 to 25 pounds on March 4, 2014 caused damage to the cervical discs and nerves. Dr. Gordon noted that a cervical disc injury can occur with lifting lighter weights, pending the cervical arm/angle and repetition. He reported that appellant had a cervical spine MRI scan on July 3, 1995 which revealed normal findings. Appellant did not have any neck pain for several years prior to the workers' compensation injury on March 4, 2014. As such, this was a relatively new injury and the herniated disc abnormalities previously documented were causally related to the most recent March 4, 2014 accident. Dr. Gordon concluded that due to the longevity of appellant's symptoms and the most recent MRI scan abnormalities, her condition was permanent and causally related to the March 4, 2014 employment incident.

By decision dated February 1, 2017, OWCP denied modification of its March 7, 2016 decision, finding that the evidence of record failed to establish that appellant's diagnosed conditions were causally related to the accepted March 4, 2014 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ 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.⁷ 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.⁸

⁵ The report referenced back to OWCP File No. xxxxxx385.

⁶ *Supra* note 2.

⁷ *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁸ *Michael E. Smith*, 50 ECAB 313 (1999).

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁹ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.¹⁰ The opinion of the physician must be based on a complete factual and medical background of the claimant, 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹¹

ANALYSIS

OWCP accepted that the March 4, 2014 employment incident occurred as alleged. The issue is whether appellant has established that the March 4, 2014 employment incident caused her diagnosed cervical and left shoulder conditions. The Board finds that she has not submitted sufficient medical evidence to support that her cervical and left shoulder conditions were causally related to the March 4, 2014 employment incident.¹²

In support of her claim, appellant submitted medical reports dated March 10, 2014 through October 17, 2016 from Dr. Gordon, her attending physician. The Board finds that the opinion of Dr. Gordon is not well rationalized. Initially, in his March 10, 2014 report he diagnosed cervical radiculitis and checked a box marked "yes" indicating that the condition was caused or aggravated by the employment activity described. The Board has held that a report that addresses causal relationship with a checkmark, without medical rationale explaining how the employment incident caused the alleged injury, is of diminished probative value and insufficient to establish causal relationship.¹³

Subsequently, Dr. Gordon diagnosed left cervical C5-6 radiculopathy and disc protrusions at the C3-4, C4-5, and C5-6 levels. He opined that lifting buckets of mail weighing 10 to 25

⁹ *Elaine Pendleton, supra* note 7.

¹⁰ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

¹¹ *James Mack*, 43 ECAB 321 (1991).

¹² *See Robert Broome*, 55 ECAB 339 (2004).

¹³ *See R.A.*, Docket No. 17-1472 (issued December 6, 2017).

pounds caused damage to the cervical discs and nerves. While Dr. Gordon opined that appellant's injuries were caused by the March 4, 2014 employment incident, he failed to provide a sufficient explanation as to the mechanism of injury pertaining to this traumatic injury claim, namely, how lifting buckets of mail would cause or aggravate appellant's cervical injury.¹⁴ He noted that a cervical disc injury can occur from lifting lighter weights, pending the cervical arm/angle and repetition. The Board finds this statement to be vague and generalized without sufficient detail explaining how these movements caused her injury. Moreover, Dr. Gordon opined that appellant sustained a work-related injury because she had no neck pain for several years until the March 4, 2014 employment incident. The Board has held that an opinion that a condition is causally related because the employee was asymptomatic before the injury is insufficient, without adequate rationale, to establish causal relationship.¹⁵ Dr. Gordon's statement that appellant's symptoms were a direct result of the injury is highly speculative as he is attributing symptoms to the employment incident and not her diagnosed conditions.¹⁶ The Board notes that Dr. Gordon referenced the July 3, 1995 MRI scan of the cervical spine which revealed normal findings and argued that the May 4, 2014 cervical MRI scan documenting herniated disc abnormalities established a new cervical injury. While the more recent diagnostic testing provides some support for a new cervical injury, the reports alone fail to establish the cause of appellant's injury. Dr. Gordon failed to sufficiently explain how the specific employment incident caused a left cervical C5-6 radiculopathy and C3-4, C4-5, and C5-6 disc protrusions. Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.¹⁷ The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record, and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.¹⁸ Without explaining how physiologically the movements involved in the employment incident caused or contributed to the diagnosed condition, Dr. Gordon's opinion on causal relationship is equivocal in nature and of limited probative value.¹⁹

Dr. Robles-Galvez's March 10, 2014 medical report is also insufficient to establish causal relationship. While she provided a diagnosis of cervical spine strain, she failed to provide any opinion on causal relationship. Dr. Robles-Galvez only generally repeated appellant's allegations pertaining to the employment incident. Such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how this physical activity actually caused the diagnosed conditions.²⁰ The Board has held that medical evidence that does not offer any opinion regarding the cause of

¹⁴ *S.W.*, Docket No. 08-2538 (issued May 21, 2009).

¹⁵ *M.R.*, Docket No. 14-0011 (issued August 27, 2014).

¹⁶ *Id.*

¹⁷ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

¹⁸ *See Lee R. Haywood*, 48 ECAB 145 (1996).

¹⁹ *See L.M.*, Docket No. 14-0973 (issued August 25, 2014); *R.G.*, Docket No. 14-0113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-0548 (issued November 16, 2012).

²⁰ *K.W.*, Docket No. 10-0098 (issued September 10, 2010).

an employee's condition is of limited probative value on the issue of causal relationship.²¹ Thus, Dr. Robles-Galvez's report is of limited probative value and insufficient to meet appellant's burden of proof.²²

The remaining medical evidence of record is also insufficient to establish appellant's claim. Dr. Heideman's July 3, 1995 and May 14, 2014 reports simply interpret diagnostic studies pertaining to the cervical spine without an opinion regarding causal relationship. The Board has held that diagnostic test reports are of limited probative value as they fail to provide an opinion on the causal relationship between appellant's employment duties and the diagnosed conditions. For this reason, this evidence is insufficient to meet his burden of proof.²³

The physical therapy notes dated March 12 through August 21, 2014 are also insufficient to establish appellant's claim as they were not signed by a physician. Since physical therapists are not physicians as defined under FECA, their opinions are of limited probative value.²⁴

OWCP's decisions placed emphasis on appellant's prior work-related October 15, 1993 and May 17, 1995 cervical spine injuries. However, the Board does not have access to the record from these prior claims. The only medical evidence considered from these claims are those reports which have been submitted by appellant in support of her March 4, 2014 traumatic injury claim.²⁵ Appellant argued that her prior cervical injuries had resolved and were unrelated to her current condition. In support of her claim, she submitted Dr. Heideman's July 3, 1995 diagnostic report which revealed a normal cervical MRI scan with no disc herniation or spinal stenosis. Both appellant and Dr. Gordon have asserted that her current cervical conditions are unrelated to the previously accepted employment-related injuries.

The Board finds that the record lacks rationalized medical evidence establishing causal relationship between the March 4, 2014 employment incident and her diagnosed cervical and left

²¹ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

²² *Supra* note 19.

²³ It is not possible to establish the cause of a medical condition, if the physician has not stated a firm medical diagnosis. *T.G.*, Docket No. 13-0076 (issued March 22, 2013).

²⁴ 5 U.S.C. § 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See also Roy L. Humphrey*, 57 ECAB 238 (2005).

²⁵ While counsel referenced older medical reports of record from appellant's prior claims, he failed to submit these reports for consideration under this claim, OWCP File No. xxxxxx559. As noted, the Board does not have access to the record from the prior claims to address findings made in the claimed reports.

shoulder conditions. An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.²⁶ Thus, appellant has failed to meet her burden of proof.²⁷

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's 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 cervical and left shoulder conditions are causally related to the accepted March 4, 2014 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated February 1, 2017 is affirmed.

Issued: March 27, 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

²⁶ *D.D.*, 57 ECAB 734 (2006).

²⁷ The Board notes that the employing establishment executed a Form CA-16 on March 10, 2014 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. 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. *See I.S.*, Docket No. 16-1813 (issued March 16, 2015).