

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances outlined in the Board's prior decisions are incorporated herein by reference. The facts relevant to this appeal are set forth below.

On May 28, 2015 appellant then a 47-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she developed right arm, hand, shoulder, and upper back pain and numbness due to repeatedly bending, reaching, pushing, and pulling 450-pound over-the-road (OTR) containers at work. She did not immediately stop work.

Dr. Mark Eskander, a Board-certified orthopedist, treated appellant on May 28, 2015 for neck pain and numbness radiating into her right hand. Appellant reported a gradual onset of pain on March 23, 2015 due to pushing metal containers at work which caused her arm and neck pain to flare-up. Dr. Eskander noted positive findings and diagnosed cervical spondylosis and cervical disc displacement. A magnetic resonance imaging (MRI) scan of the cervical spine revealed disc osteophyte protrusion lateralized to the right, mild left neural foraminal narrowing at C6-7, and broad-based disc osteophyte protrusion with neural foraminal narrowing at C5-6 and C4-5. On June 19, 2015 Dr. Eskander related appellant's symptoms of radiating neck pain which began on March 23, 2015. Appellant reported performing repetitive lifting, moving, and pushing metal carts which weighed 400 pounds while at work. Dr. Eskander noted findings and diagnosed cervical myopathy stemming from overuse with lifting and pushing heavy carts at work. He recommended conservative treatment including nerve blocks.

By decision dated July 20, 2015, OWCP denied appellant's claim because she failed to establish that she developed a medical condition causally related to the accepted factors of her federal employment.

On March 9, 2016 counsel requested reconsideration. A June 25, 2015 electromyogram (EMG) revealed acute moderate-to-severe right C6 radiculopathy and mild bilateral median nerve entrapment neuropathy across the carpal tunnels.

Appellant continued to be seen by Dr. Eskander. In July 9 and August 20, 2015 reports, Dr. Eskander diagnosed cervical spondylosis, cervical disc displacement, carpal tunnel syndrome, and cervical radiculopathy. He noted that conservative treatment failed and recommended surgical intervention. On August 24, 2015 Dr. Eskander performed a C5 to C7 anterior cervical discectomy and fusion and diagnosed cervical stenosis at C5 to C7. In reports dated October 2, 2015 and January 7, 2016, he noted that appellant reported improved pain after the cervical fusion surgery without radiation, numbness, or tingling in the arms. Dr. Eskander diagnosed intervertebral disc displacement of the lumbar region, cervical disc displacement and cervical spondylosis and returned appellant to work full-time at light-duty status.

In a report dated April 1, 2016, Dr. Eskander noted appellant's work duties as a mail handler involved loading and unloading packages from skids and conveyor belts and pulling and

³ Docket No. 16-1872 (issued February 21, 2017).

moving OTR containers. He noted that she started working for the post office in January 2000 as a mail handler and that she worked six days a week, six hours a day, and sometimes eight hours a day on weekends. Dr. Eskander noted that she had to load and unload packages from skids and the conveyor belt and load them into large Gaylord boxes. He noted that the packages she unloaded were objects weighing over 20 pounds and some larger items weighed up to 70 pounds. Dr. Eskander reported that in 2005 she became a sack sorter where she was taking sacks off the conveyor and putting them onto the roads with overtime work. He observed that sometimes roads weighed 400 pounds and sometimes 700 pounds when fully loaded. Appellant performed these duties for a number of years and returned to mail handling work. She also drove a forklift, but all the time was working in sorting in a repetitive nature with heavy items. Dr. Eskander noted that she had recently been placed on light duty, basically just walking around sorting the mail that is too long to go in the machine or around. He opined that she had degenerative changes that were related to her work duties and became worse with overuse at work and were a significant factor in the development of her cervical condition. Dr. Eskander noted his opinion was given to a reasonable degree of medical certainty and that, but for the work duties appellant would not have developed these particular problems with cervical radiculopathy requiring anterior cervical discectomy and fusion.

By decision dated June 7, 2016, OWCP denied modification of the prior decision. Appellant appealed to the Board.⁴ By decision dated February 21, 2017, the Board affirmed the June 7, 2016 decision finding that appellant did not meet her burden of proof to establish an occupational disease causally related to accepted factors of her federal employment.

On March 15, 2017 appellant, through counsel, requested reconsideration and submitted additional medical evidence. Dr. Eskander, in a February 9, 2017 report, sought to explain the physiological process of how repetitive duties could cause an aggravation of a cervical condition leading to stenosis and nerve root compression. He cited excerpts from the Academy of Orthopaedic Surgeons and North American Spine Society noting “additionally, spine injuries that result from trauma, repetitive movement or carrying excess weight can hasten a degenerative process or cause a spontaneous degeneration resulting in structural changes that alter the spine and further limiting the space within the neural foramen causing it to become narrower so that the space available for the exiting nerve roots is smaller and therefore causing more compression and pain down the nerve roots from the neck down into the arms.” Dr. Eskander indicated that this was physiologically how the process occurred and how repetitive duties could exacerbate a condition. He noted that “as a mail handler [appellant’s] job duties required repetitive lifting and carrying of packages frequently in excess of 70 pounds.” Dr. Eskander opined with a reasonable degree of medical probability that her assigned employment duties caused an aggravation of appellant’s condition. He further opined with a reasonable degree of medical certainty that the work injury appellant sustained led to the need for surgery and subsequent disability.

By decision dated June 13, 2017, OWCP denied modification of the June 7, 2016 decision.

⁴ *Id.*

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim. When an employee claims an injury in the performance of duty, he or she must submit sufficient evidence to establish that a specific event, incident, or exposure occurred at the time, place, and in the manner alleged. The employee must also establish that such event, incident, or exposure caused an injury.⁶

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁷ To establish fact of injury in 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.⁸

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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.⁹

ANALYSIS

Appellant filed an occupational disease claim alleging that she developed right arm, hand, shoulder, and upper back pain and numbness due to repeatedly bending, reaching, pushing, and pulling 450-pound OTR containers at work.

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

It is undisputed that appellant's duties as a mail handler included bending and reaching between OTR containers, pulling and moving OTR containers, loading and unloading packages from skids and conveyor belts, for eight hours a day, five to six days a week, and up to eight

⁵ *Supra* note 2.

⁶ See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *S.P.*, 59 ECAB 184, 188 (2007).

⁸ *R.R.*, Docket No. 08-2010 (issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

⁹ *Solomon Polen*, 51 ECAB 341 (2000).

hours per day on the weekends. It is further undisputed that this work required her to lift up to 70 pounds and maneuver OTR containers up to 450 pounds.

Appellant submitted various reports from Dr. Eskander in support of her occupational disease claim. In a report dated February 9, 2017, Dr. Eskander provided an explanation of the physiological process of how repetitive employment duties could cause an aggravation of a cervical condition leading to stenosis and nerve root compression. He noted appellant's mail handler duties with specific detail in his prior reports and opined within a reasonable degree of medical probability that these duties caused an aggravation of her condition and led to the need for surgery and her subsequent disability. In support of his opinion, Dr. Eskander cited to excerpts from an Academy of Orthopaedic Surgeons and North American Spine Society text book including excerpts indicating that "spine injuries that result from trauma, repetitive movement, or carrying excess weight can hasten a degenerative process or cause a spontaneous degeneration resulting in structural changes that alter the spine and further limiting the space within the neural foramen causing it to become narrower so that the space available for the exiting nerve roots is smaller and therefore causing more compression and pain down the nerve roots from the neck down to the arms." The Board concludes that although these reports do not provide sufficient medical rationale explaining how the undisputed employment duties caused or contributed to an exacerbation of appellant's diagnosed medical conditions, when read together they strongly suggest and support such a relationship.¹⁰

The Board finds that, while Dr. Eskander's reports are not completely rationalized, they are consistent in indicating that appellant sustained right arm, hand, shoulder, and upper back pain and numbness.¹¹ Although the reports are insufficient to meet appellant's burden of proof to establish her claim, they are sufficient to require OWCP to further develop the medical evidence.¹²

It is well-established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter.¹³ While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence and to see that justice is done.¹⁴ Thus, the Board will remand the case to OWCP for further development to obtain a rationalized medical opinion as to whether appellant's condition is causally related to the employment incident and issue a *de novo* decision on whether she developed an occupational disease due to the accepted employment factors of her federal employment, as alleged.

¹⁰ See *L.F.*, Docket No. 14-1906 (issued August 13, 2015) (the Board determined that while reports by a claimant's treating physician were not completely rationalized to establish a work-related injury they strongly supported a relationship between the employment incident and diagnosed condition and remanded the case for OWCP to further develop the medical evidence)

¹¹ See *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

¹² *Richard E. Simpson*, 55 ECAB 490, 500 (2004); *John J. Carlone* 41 ECAB 354 (1989).

¹³ See *Vanessa Young*, 56 ECAB 575 (2004).

¹⁴ *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *Jimmy A. Hammons*, 51 ECAB 219 (1999); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

On appeal appellant, through counsel, disagrees with OWCP's decision and asserts that she submitted sufficient evidence to establish her claim. As noted above, the reports submitted are sufficient to require additional development of her claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the June 13, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further action consistent with this decision of the Board.

Issued: March 6, 2018
Washington, DC

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

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

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