

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

S.D., Appellant)	
)	
and)	Docket No. 17-1466
)	Issued: October 23, 2018
U.S. POSTAL SERVICE, POST OFFICE,)	
Willoughby, OH, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On June 21, 2017 appellant, through counsel, filed a timely appeal from a May 30, 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 a back, neck, or right shoulder condition causally related to the accepted July 9, 2016 employment incident.

FACTUAL HISTORY

On July 19, 2016 appellant, a 48-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained a back, neck, and shoulder injury on July 9, 2016 as a result of loading a long life vehicle with large amounts of mail and large packages. She stated that she felt pain in her back, neck, and shoulder areas. Appellant stopped work on the date of injury and has not yet returned.

Appellant submitted a duty status report (Form CA-17) and hospital reports dated July 12, 2016 from Dr. Andrew Stemar, an internist, who indicated that appellant was loading a postal truck with packages and mail on July 9, 2016. Dr. Stemar diagnosed neck strain, right shoulder sprain, and lumbar spine and pelvis sprain. He opined that appellant's conditions were work related.

In a July 21, 2016 development letter, OWCP advised appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence and respond to its inquiries.

In two letters dated July 22, 2016, the employing establishment controverted appellant's claim.

In an August 15, 2016 report, Dr. Walter M. Vieweg, a Board-certified family practitioner, diagnosed neck strain and right shoulder sprain.

By decision dated August 29, 2016, OWCP accepted that the July 9, 2016 employment incident occurred as alleged, but denied the claim because the medical evidence of record failed to establish causal relationship between appellant's diagnosed conditions and the July 9, 2016 work incident.

On September 13, 2016 counsel requested an oral hearing by a representative of the Branch of Hearings and Review.

Appellant submitted duty status reports (Form CA-17) dated July 19, 2016 from Dr. Stemar providing work restrictions. She also submitted duty status reports dated July 29, August 26, September 12, and October 5, 2016 from Dr. Vieweg who also provided work restrictions.

In hospital reports dated July 9, 2016, Dr. Michael M. Levinson, a Board-certified emergency medicine specialist, noted that appellant reported a sudden severe lower left abdominal pain with associated left lower back pain. Appellant reported that she had strained her back while loading her truck at work. Dr. Levinson diagnosed a back spasm.

A July 12, 2016 x-ray of the cervical spine demonstrated straightening of the cervical lordosis and mild narrowing of the right C3-4 foramen.

In reports dated July 12 and 26, 2016, Dr. Stemar continued to diagnose neck strain, right shoulder sprain, and lumbar spine and pelvis sprain.

In reports dated July 19 and 29, August 12 and 26, September 12, and October 3, 2016, Dr. Vieweg continued to diagnose neck strain and right shoulder sprain due to a July 9, 2016 injury while lifting and moving an object.

On November 3, 2016 Dr. Timothy J. Nice, a Board-certified orthopedic surgeon, noted that appellant rotated and sustained an injury to her back and neck at work. He indicated that appellant had already had some back issues that day lifting things in and out of the van. Dr. Nice opined that appellant was subsequently seen in the emergency room where “all the concentrated efforts by review of the charts were put on the fact that she had an ovarian cyst and they felt she had aggravated the underlying cyst problem, although she had a normal neurologic examination of her lower extremities.” He noted that x-rays of the lumbar spine were not taken and x-rays of the cervical spine showed straightening of the cervical spine. Dr. Nice agreed with Dr. Vieweg’s diagnosis of cervical strain and also diagnosed right mild C6 radiculopathy on the right side. He found that appellant’s lumbar sprain had resolved.

In a November 3, 2016 duty status report (Form CA-17), Dr. Nice advised that appellant was totally disabled for work.

A magnetic resonance imaging (MRI) scan of the cervical spine dated December 21, 2016 showed right paracentral, right parasagittal, and right foraminal herniation of the C5-6 disc.

On January 9, 2017 Dr. Nice diagnosed a herniated disc at C5 and further found that appellant had weakness in the right triceps and dorsiflexors of the right wrist.

In a February 3, 2017 report, Dr. Toomas Anton, a Board-certified neurosurgeon, diagnosed cervical disc disorder with radiculopathy of the mid-cervical region. In a March 8, 2017 surgical report, he indicated that he had performed an anterior cervical discectomy and disc replacement at C5-6.

On April 19, 2017 a telephonic hearing was held by an OWCP hearing representative. Appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence.

By decision dated May 30, 2017, OWCP’s hearing representative affirmed the prior decision.

LEGAL PRECEDENT

A claimant 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 evidence,

³ *Id.*

including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.⁴

To determine if an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁵ The second component is whether the employment incident caused a personal injury. An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.⁶

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a back, neck, or right shoulder condition causally related to the accepted July 9, 2016 employment incident.

The July 12, 2016 x-ray and December 21, 2016 MRI scan confirmed the diagnoses of straightening of the cervical lordosis and C5-6 disc herniation. However, the diagnostic studies do not address the etiology of appellant's cervical conditions. With respect to Dr. Anton's reports, the Board has held 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.⁷ Consequently, the above-noted evidence is insufficient to satisfy appellant's burden of proof with respect to causal relationship.⁸

Dr. Levinson diagnosed a back spasm. He did not provide any medical rationale explaining how lifting mail and packages at work on July 9, 2016 caused or aggravated the diagnosed

⁴ 20 C.F.R. § 10.115(e), (f); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁵ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁷ See *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

⁸ See *supra* notes 3-7.

condition. Thus, the Board finds that the evidence from Dr. Levinson is insufficient to establish that appellant sustained an employment-related injury on July 9, 2016.⁹

In his reports, Dr. Stemar indicated that appellant was loading a postal truck with packages and mail on July 9, 2016. He diagnosed neck strain, right shoulder sprain, and lumbar spine and pelvis sprain and opined that appellant's conditions were work related. The Board finds that the reports from Dr. Stemar are of limited probative value because he failed to provide a rationalized medical opinion explaining how the accepted July 9, 2016 work incident caused or aggravated the diagnosed conditions.¹⁰ Therefore, this evidence is insufficient for appellant to meet her burden of proof.

Similarly, Dr. Vieweg diagnosed neck strain and right shoulder sprain due to a July 9, 2016 injury while lifting and moving an object. However, the Board finds that Dr. Vieweg failed to provide sufficient medical rationale explaining how lifting and moving an object on July 9, 2016 either caused or contributed to appellant's neck and right shoulder conditions. Consequently, Dr. Vieweg's reports are insufficient to establish that appellant sustained an employment-related injury on July 9, 2016.¹¹

Dr. Nice concurred with Dr. Vieweg's diagnosis of cervical strain and further diagnosed right mild C6 radiculopathy on the right side. He found that appellant's lumbar sprain had resolved. Dr. Nice also diagnosed a herniated disc at C5 and noted that appellant had rotated and sustained an injury to her back and neck at work. However, the fact that a condition manifests itself during a period of employment is not sufficient to establish causal relationship.¹² Temporal relationship alone will not suffice.¹³ Dr. Nice failed to provide sufficient medical rationale explaining how lifting things in and out of a van at work on July 9, 2016 caused or aggravated appellant's cervical conditions. For these reasons, the Board finds that Dr. Nice's reports are insufficient to establish that appellant sustained an employment-related injury on July 9, 2016.

As appellant has not submitted any rationalized medical evidence to support her claim that she sustained a back, neck, or shoulder injury causally related to the July 9, 2016 employment incident, she has failed to meet her burden of proof to establish entitlement to compensation benefits.

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.

⁹ A physician's opinion on causal relationship must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Victor J. Woodhams, supra* note 6.

¹⁰ *See P.S.*, Docket No. 12-1601 (issued January 2, 2013).

¹¹ *Supra* note 10.

¹² 20 C.F.R. § 10.115(e).

¹³ *See D.I.*, 59 ECAB 158, 162 (2007).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a back, neck, or right shoulder condition causally related to the accepted July 9, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the May 30, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 23, 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