United States Department of Labor
Employees' Compensation Appeals Board

S.F., Appellant	)	
and	)	**Docket No. 18-0444**
	)	**Issued: October 4, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Santa Clarita, CA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 28, 2017 appellant, through counsel, filed a timely appeal from an October 5, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[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.*

[3] The Board notes that appellant submitted additional evidence after OWCP rendered its October 5, 2017 decision. The Board's jurisdiction is limited to the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from considering this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

ISSUE

The issue is whether appellant met her burden of proof to establish that her knees, right hip, back, neck, right shoulder, and right arm conditions are causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On May 23, 2015 appellant, then a 53-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed right shoulder, bilateral knee, right hip, and low back conditions as a result of her federal employment duties. She alleged that her conditions were a result of walking with a satchel on her right shoulder, standing all day, constant stepping in and out of a mail truck, pulling a heavy door open and closed, lifting heavy trays, and pushing, pulling, lifting, and bending required by her job duties. Appellant noted that she first became aware of her claimed condition on September 1, 2001, and first related it to factors of her federal employment on August 1, 1992. She initially received medical care on December 7, 2012. In an accompanying narrative statement, appellant described her employment duties dating back to 1987.

In a February 11, 2015 medical report, Dr. Domenick Sisto, a Board-certified orthopedic surgeon, reported that appellant was working her customary job duties for the employing establishment and sustained an industrial injury to her musculoskeletal system on September 1, 2001 secondary to repetitive work. Appellant presented for complaints of low back and bilateral knee pain. Dr. Sisto provided physical examination and x-ray findings. Diagnostic testing of the lumbar spine revealed degenerative disc disease at L5-S1 while x-rays of the knees revealed bilateral mild-to-moderate medial compartment osteoarthritis. He diagnosed evidence of L5-S1 disc herniation and bilateral medial meniscus tears of both knees. Dr. Sisto opined that there was "an industrial causation for the patient's lumbar spine and bilateral knee complaints following the industrial injury of September 1, 2001." He recommended a magnetic resonance imaging (MRI) scan of the lumbar spine and knees for further assessment.

A December 7, 2012, lumbosacral spine x-ray report showed grade 1 spondylolisthesis of L4 over L5 and mildly severe degenerative facet disease at L4-5 and L5-S1. A thoracic spine x-ray of the same date showed mild-to-moderate spondylosis.

A May 27, 2014, lumbar spine x-ray report noted grade 1 spondylolisthesis of L4 over L5 with mild disc space narrowing at L3-4, L4-5, and L5-S1, as well as moderate-to-severe degenerative facet disease at L3-4, L4-5, and L5-S1. A lumbar spine MRI scan report of the same date showed severe facet arthropathy and grade 1 anterolisthesis at L4-5 with bulging disc contributing to mild overall central canal stenosis without foraminal narrowing, tiny right paracentral protrusion at L5-S1 without significant stenosis, and asymmetric disc bulging to the right at L3-4 causing minimal foraminal stenosis without central canal compromise.

A June 15, 2014 cervical spine MRI scan revealed posterior disc protrusion at C5-6 causing moderate acquired central stenosis with uncovertebral hypertrophy contributing to severe bilateral foraminal stenosis, posterior disc protrusion at C6-7 causing mild acquired central stenosis without significant foraminal narrowing, posterior disc protrusion at T1-2 with mild associated central

stenosis, small posterior protrusion at C3-4 without associated central stenosis, and borderline mild central stenosis from a 3 millimeter disc protrusion at C4-5.

By development letter dated June 11, 2015, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the type of medical and factual evidence needed to establish her claim. OWCP afforded her 30 days to submit the necessary evidence.

By letter dated June 17, 2015, appellant requested OWCP change the date of injury in her claim to June 15, 2014, the date of her MRI scan. She reported that she mistakenly thought she had to use the same date from a previous injury.[4]

In a July 1, 2015 report, Dr. Sisto reported that appellant complained of neck and low back pain. He reported that she was performing her usual and customary job duties for the employing establishment when she sustained an industrial injury to her neck and low back on June 15, 2014. Dr. Sisto reported that, on that date, secondary to prolonged walking and carrying items, appellant developed neck and low back pain. He provided examination findings and review of the cervical and lumbar spine x-rays. Dr. Sisto noted that a June 15, 2014 lumbar MRI scan revealed disc herniation at L4-5 with stenosis at L3-4. He diagnosed herniated disc at C5-6 and herniated disc at L5-S1. Dr. Sisto opined that there was industrial causation for appellant's cervical and lumbar spine complaints following the industrial injury of June 15, 2014. He requested an MRI scan of the cervical spine to assess her pathology. Dr. Sisto further noted that appellant reported injuring both knees and her bilateral shoulders at the time of the original June 15, 2014 industrial injury and requested to evaluate these body parts on an industrial basis.

By decision dated August 13, 2015, OWCP denied appellant's claim, finding that the medical evidence of record failed to establish that her diagnosed conditions were causally related to the established factors of federal employment.

On August 31, 2015 appellant, through counsel, requested a telephone hearing before an OWCP hearing representative.

In support of her claim, appellant submitted Dr. Sisto's medical reports dated September 23, 2015 through March 16, 2016. In a September 23, 2015 report, Dr. Sisto reported that appellant stated that she sustained an industrial injury to her knees, right hip, low back, and neck on a cumulative trauma basis secondary to her repetitive job duties which included repetitive lifting, carrying, twisting, and turning. He opined that there was industrial causation for appellant's complaints. In his December 16, 2015 report, Dr. Sisto reported that she complained mainly of bilateral knee pain, but had also developed foot and ankle pain due to prolonged standing at work. He reported that a right shoulder x-ray revealed mild increased spurring on the undersurface of the acromion, an x-ray of the thoracolumbar spine showed loss of lumbar lordosis, and bilateral knee x-rays revealed progression of degenerative arthritis. Dr. Sisto diagnosed right

[4] The record reflects that appellant had a prior occupational disease claim with a September 1, 2001 date of injury which OWCP accepted for bilateral carpal tunnel syndrome under OWCP File No. xxxxxx695. The record also reflects a prior traumatic injury claim with an October 22, 2001 date of injury under OWCP File No. xxxxxx192 and an occupational disease claim with a December 29, 2014 date of injury under OWCP File No. xxxxxx581. The record before the Board contains no other information pertaining to appellant's prior claims.

should impingement syndrome, lumbar spine disc herniation, and bilateral knee arthritis which he opined that were industrially related. He further reported that he believed that there was industrial causation for appellant's foot and ankle complaints.

A hearing was held on April 14, 2016 where appellant testified in support of her claim. She described her various physical conditions and treatment and further denied any prior injuries or conditions related to the relevant body parts.

By decision dated June 24, 2016, OWCP's hearing representative affirmed the August 13, 2015 decision, finding that the evidence of record failed to establish that her diagnosed conditions were causally related to the established factors of federal employment.

On September 2, 2016 appellant, through counsel, requested reconsideration of the June 24, 2016 decision of OWCP's hearing representative. Counsel noted submission of Dr. Sisto's August 10, 2016 report not previously considered.

In support of her request, appellant submitted medical reports dated August 10, 2016 through May 3, 2017. In his August 10, 2016 report, Dr. Sisto reported that she worked for a long period of time for the employing establishment as a letter carrier. He reported that appellant worked 10 hours per day and did repetitive heavy work which led to injury of both her knees, right hip, low back, and neck. Dr. Sisto related that she was evaluated for a specific injury which occurred on June l5, 2014 to her cervical and lumbar spine on a repetitive basis secondary to her work. He noted that appellant had clinical evidence of injury to her both knees, right hip, and right shoulder on a repetitive basis as a cumulative trauma dating back to September 1, 2001 to the present. Dr. Sisto concluded that she had been working for the employing establishment since April 1987 and that there was causal relationship, based on the history of employment and her physical examination, that the diagnoses of bilateral knee traumatic arthritis, right hip abductor tendinitis, early degenerative changes, and right shoulder impairment syndrome were caused by the cumulative trauma during exposure at the employing establishment.

In a November 23, 2016 report, Dr. Sisto related that appellant complained of right shoulder and bilateral knee issues. He diagnosed clinical evidence of a rotator cuff tear of the right shoulder and clinical evidence of medial meniscus tears of both knees. Dr. Sisto requested an MRI scan of the right shoulder and knees to further assess the pathology. In a May 3, 2017 report, she reported that x-rays of appellant's right and left knee showed no increase of osteoarthritis.

In a June 28, 2017 medical report, Dr. Neil Allen, Board-certified in internal medicine and neurology, reported that appellant's records were reviewed in order to establish whether causal relationship existed between her cervical spine, thoracic spine, lumbar spine, right shoulder, and bilateral knee injuries and work-related trauma sustained prior to and on June 15, 2014. He provided diagnoses of aggravation intervertebral disc disorders with radiculopathy of the lumbar region; impingement syndrome of the right shoulder; primary osteoarthritis of the left knee; and primary osteoarthritis of the right knee. Dr. Allen reported that appellant denied symptoms related to the aforementioned conditions prior to her employment as a city letter carrier. He provided research stating that, as an individual ages, the intervertebral discs of the spine lose hydration resulting in loss of intervertebral disc height. Cervical spine degeneration often results in compression of nerves and repetitive torsion of loading of the disc over time, as occurs with

repetitive flexion, extension, and rotational motion of the cervical spine needed for loading mail trays and processing mail, leads to further degradation of the annulus, subsequent local inflammation, and resulting periods of increased local and radicular pain. Dr. Allen quoted medical research explaining the effects of repeated flexion where a patient may describe an isolated flexion movement causing injury to the lumbar spine which, in many cases, the offending movement was probably the last in succession of repeated flexion movement. He quoted the meaning of shoulder impingement as "a condition that occurs when there is impingement of tendons and/or bursa in the subacromial space." Dr. Allen reported that these structures are most commonly compressed by repetitive lifting at work above the shoulder level. These activities reduce the subacromial space, compressing the bursal and/or tendinous structures. When these actions are performed repetitively, without adequate rest, the bursa and/or tendons become inflamed, producing pain and associated functional deficits. Dr. Allen reported that appellant's position required all of the aforementioned "high risk" activities including lifting heavy parcels and trays, pushing and pulling large heavy carts, and reaching and lifting above the shoulder. He noted that the most common complaints of those suffering from shoulder impingement included pain over the affected shoulder extending down the upper arm, reduced mobility with reaching, and weakness with pushing, pulling, and lifting, findings documented by Dr. Sisto.

Dr. Allen further repeated research pertaining to osteoarthritis which occurs when cartilage repair does not keep pace with degeneration. Research *via* an osteoarthritis study noted important risk factors include knee injury, chondrocalcinosis, and occupational knee bending and physical labor. Dr. Allen reported that appellant possessed two of the four risk factors associated with osteoarthritis of the knee, both being occupationally related. He noted that this repetitive wear, more than what would be normally expected environmentally, resulted in the exacerbation of her underlying arthritic condition in both of her knees. Dr. Allen reported that it was well documented in the literature, citing that repetitive activity contributes to the progression of degenerative disease. He stated that, as a city letter carrier, appellant performed prolonged walking, standing, bending, lifting, and repetitive reaching, pushing, pulling, and stair climbing daily in order to complete the tasks required by her position. Dr. Allen explained that this repetitive activity precipitated the aforementioned conditions diagnosed by Dr. Sisto.

By decision dated October 5, 2017, OWCP denied modification of the June 24, 2016 decision, finding that the evidence of record was insufficient to establish causal relationship between the diagnosed conditions and the accepted factors of federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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

[5] *Supra* note 2.

employment injury.[6] These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury an occupational disease.[7]

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.[8] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, 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.[9]

To establish causal relationship between the claimed 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

The Board finds that appellant has not submitted sufficient medical evidence to establish that her knees, right hip, back, neck, right shoulder, and right arm conditions are causally related to the accepted factors of her federal employment.

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

[7] *Michael E. Smith*, 50 ECAB 313 (1999).

[8] *Elaine Pendleton*, *supra* note 6.

[9] *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

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

[11] *James Mack*, 43 ECAB 321 (1991).

Dr. Sisto generally related appellant's multiple diagnosed conditions to her employment as a letter carrier, however, his reports were not well rationalized as he did not indicate a real understanding of what her duties entailed. Rather, he repeated her assertions that work caused her injury without substantial basis for such assertions. This was particularly evidenced in Dr. Sisto's early reports where he indicated a September 1, 2001 industrial injury based on appellant's claims of a work-related injury, later revising the date of injury to June 14, 2014 at her request. Such generalized statements do not establish causal relationship because they merely repeat her allegations and are unsupported by adequate medical rationale explaining how this physical activity actually caused the diagnosed conditions.[12] The Board further notes that Dr. Sisto failed to discuss appellant's medical history when determining that her injuries were work related and did not address why her complaints were not caused by her preexisting degenerative conditions as evidenced on diagnostic reports. A well-rationalized opinion is particularly warranted when there is a history of a preexisting condition.[13] While Dr. Sisto demonstrated an understanding of appellant's employment duties, his statement on causation failed to provide any explanation as to the mechanism of injury pertaining to this occupational disease claim, namely, how repetitive walking, lifting, carrying, twisting, and turning would cause or aggravate her low back, neck, right shoulder, and bilateral knee conditions.[14] As there were multiple diagnoses involved, the physician should discuss the employment duties and mechanism of injury for each condition. Without explaining how, physiologically, the movements involved in appellant's employment duties caused or contributed to her diagnosed conditions, Dr. Sisto's opinion on causal relationship is equivocal in nature and of limited probative value.[15]

In a June 24, 2017 report, Dr. Allen reported that appellant's medical records were reviewed in order to establish whether causal relationship exists between her cervical spine, thoracic spine, lumbar spine, right shoulder, and bilateral knee injuries and the work-related trauma sustained prior to and on June 15, 2014. He diagnosed aggravation of intervertebral disc disorders with radiculopathy of the lumbar region; impingement syndrome of the right shoulder; primary osteoarthritis of the left knee; and primary osteoarthritis of the right knee which he opined were causally related to her employment duties.

Similarly, the Board finds that the report of Dr. Allen is also not well rationalized. While Dr. Allen reviewed the reports of Dr. Sisto, these reports only date back to 2015. He failed to discuss appellant's overall medical history to determine if there was evidence of preexisting injuries sustained prior to these diagnosed conditions. Moreover, Dr. Allen failed to examine her and relied on the medical reports of her attending physician. OWCP's procedures indicate that greater probative value is given to a medical opinion based on an actual examination.[16]

[12] *K.W.*, Docket No. 10-0098 (issued September 10, 2010).

[13] *T.M.*, Docket No. 08-0975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

[14] *S.W.*, Docket 08-2538 (issued May 21, 2009).

[15] *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); and *A.J.*, Docket No. 12-0548 (issued November 16, 2012).

[16] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.6(a)(4) (September 2010).

Although the Dr. Allen opined that appellant's diagnoses were causally related to her employment duties, he did not explain what these employment duties entailed other than generally stating high risk activities of lifting heavy parcels and trays, pushing and pulling large heavy carts, and reaching and lifting above the shoulder. He failed to detail the specifics of these repetitive duties, the number of hours worked daily, time spent performing each task, and the frequency of the physical movements which she attributes to her injury. Generally, listing duties of prolonged walking, standing, bending, lifting, and repetitive reaching, pushing, pulling, and stair climbing daily fails to establish an adequate understanding of her employment duties to provide an opinion on the cause of her injuries. Moreover, Dr. Allen discussed causal relationship by providing literature pertaining to degenerative conditions and the impact repetitive movements can have on these conditions. While he noted how repetitive movements can aggravate some of these degenerative conditions, he failed to discuss whether appellant's preexisting injury had progressed beyond what might be expected from the natural progression of that condition other than generally noting repetitive wear more than what would be normally expected environmentally.[17] Dr. Allen generally quoted medical research as an explanation for causation. The Board notes that he diagnosed five different conditions, but failed to adequately discuss the mechanism of injury for each specific injury by applying appellant's specific examination and diagnostic findings to the medical research cited in order to establish causal relationship. Dr. Allen's opinion on causation lacks the specificity and detail needed to establish a work-related occupational exposure.[18]

The remaining medical evidence of record is also insufficient to establish appellant's occupational disease claim. The diagnostic reports of record only interpreted imaging studies. They did not include an opinion on the cause of appellant's injury.[19] The Board has held that diagnostic evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[20]

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relationship.[21] Appellant's honest belief that her occupational employment duties caused her medical injury, however sincerely held, does not constitute medical evidence necessary to establish causal relationship.[22]

The Board finds that the record lacks rationalized medical evidence establishing causal relationship between appellant's federal employment duties and her diagnosed conditions. Thus, appellant has failed to meet her burden of proof.

[17] *R.E.*, Docket No. 14-0868 (issued September 24, 2014).

[18] *P.O.*, Docket No. 14-1675 (issued December 3, 2015); *S.R.*, Docket No. 12-1098 (issued September 19, 2012).

[19] *D.H.*, Docket No. 11-1739 (issued April 18, 2012).

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

[21] *Daniel O. Vasquez*, 57 ECAB 559 (2006).

[22] *J.S.*, Docket No. 18-0477 (issued August 28, 2018); *H.H.*, Docket No. 16-0897 (issued September 21, 2016).

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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that her knees, right hip, back, neck, right shoulder, and right arm conditions are causally related to the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated October 5, 2017 is affirmed.

Issued: October 4, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy 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