

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

P.D., Appellant)	
)	
and)	Docket No. 17-1885
)	Issued: September 17, 2018
U.S. POSTAL SERVICE, POST OFFICE,)	
Lake Charles, LA, Employer)	
)	

Appearances:
Kevin Card, 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 September 6, 2017 appellant, through her representative, filed a timely appeal from an August 29, 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 the 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 record on appeal includes evidence received after OWCP issued its August 29, 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).

ISSUE

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

FACTUAL HISTORY

On October 22, 2015 appellant, then a 52-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she developed cervical and lumbar disc disease, as well as right shoulder pain due repetitive casing of mail, loading packages, pulling trays, loading her long life vehicle (LLV), walking, and carrying her mailbag. She alleged that she first became aware of her claimed conditions and their relationship to her federal employment on September 17, 2015. In an accompanying narrative statement, appellant indicated that, approximately 15 years prior to filing the claim, she had begun seeing a chiropractor a few times a year to keep her back healthy and relieve tightness.

In a May 27, 2015 light-duty work release, an unidentified chiropractor set forth permanent work restrictions for low back pain, mid-back pain, and cervical pain.

In a November 23, 2015 letter, OWCP advised appellant that the evidence submitted was insufficient to establish her occupational disease claim. It requested that she complete the attached development questionnaire to substantiate the factual elements of her claim and provide medical evidence from a physician which provided a comprehensive report on how her diagnosed conditions resulted from her federal employment duties. OWCP afforded appellant 30 days to submit the requested information.

Medical reports from Dr. Todd Peavy, a Board-certified family practitioner, were received. In his October 5, 2015 report, he indicated that x-rays and magnetic resonance imaging (MRI) scans of appellant's cervical and lumbar spine revealed degenerative disc disease and that she felt that those conditions were aggravated by her work. Dr. Peavy diagnosed lumbar and cervical degenerative disc disease, and shoulder pain.

In a December 22, 2015 letter, then counsel, related that appellant's employment injury was separate from the chiropractic services she received.

By decision dated January 7, 2016, OWCP denied appellant's claim, finding that the medical evidence submitted was insufficient to establish that the claimed medical conditions were causally related to the established employment duties.

On February 4, 2016 appellant requested a review of the written record before OWCP's Branch of Hearings and Review.

In a December 23, 2015 report, Dr. Peavy noted that appellant had been under his medical care since September 2, 2015 and had reported a three and a half year history of neck, right shoulder, and low back pain. He noted that objective testing revealed cervical disc disease, lumbar disc disease, and degenerative changes of her right shoulder. Dr. Peavy concluded that, based on review of appellant's medical record, radiographs, MRI scans, and physical examination, it was his medical opinion that her diagnoses of cervical disc disease, lumbar disc disease, and right

shoulder pain were aggravated by her repetitively casing mail, loading packages, pulling trays, walking 10 miles daily, carrying a mailbag, pushing, pulling, lifting, twisting, and bending.

In a January 27, 2016 duty status report (Form CA-17), Dr. William Lowry, a Board-certified orthopedic surgeon, opined that appellant had cervical stenosis, lumbar, and cervical degenerative disc disease, and was unable to work. In January 27 and March 3, 2016 reports, he related that she was unable to return to work due to lumbar and cervical pain.

By decision dated June 30, 2016, an OWCP hearing representative affirmed OWCP's January 7, 2016 decision, finding the medical evidence of record was insufficient to establish causal relationship.

On February 13, 2017 appellant's representative requested reconsideration.⁴

In July 1 and August 2, 2016 reports, Dr. Lowry indicated that appellant was unable to return to work until further evaluated. He indicated that she saw him as needed for pain and that restrictions were in place until further notice. Dr. Lowry did not identify appellant's work restrictions.

In an August 23, 2016 report, Dr. Peavy indicated that appellant had been under his medical care since September 2, 2015 and that her MRI scans supported the diagnoses of cervical disc disease, lumbar disc disease, and shoulder pain. He indicated that she was unable to return to work in any capacity. Dr. Peavy noted that appellant was scheduled to undergo neurosurgical evaluation. He indicated that neurosurgery was likely her only option for symptomatic relief and that it would be at least three months before any return to work could be expected.

November 3, 2016 electromyogram (EMG) and nerve conduction velocity (NCV) tests were interpreted as revealing moderate bilateral median neuropathy at the right wrist.

In notes dated November 30, 2016, and January 3 and 31, 2017, Tara C. Barnes, a nurse practitioner, indicated that appellant was seen those days and requested that she be excused from work.

In a January 3, 2017 Form CA-17, Dr. Erich W. Wolf, a neurosurgeon, diagnosed disc extrusion at C5-6 with narrowing. He opined that appellant was unable to work. In a January 31, 2017 report, Dr. Wolf presented examination findings and diagnosed cervical disc disorder with radiculopathy, mid-cervical region; spinal stenosis, cervical region; and bilateral carpal tunnel syndrome. He indicated that appellant had continued complaints of neck and low back pain and noted that she was previously seen for neck complaints only. With respect to the neck, Dr. Wolf opined that, based upon appellant's MRI scan, EMG, and physical examinations, the diagnosed C5-6 and C6-7 degenerative disc disease, radiculopathy, and bilateral carpal tunnel syndrome were aggravated by her letter carrier duties; specifically, repetitive casing of mail, loading packages,

⁴ The record contains letters from appellant and her former counsel pertaining to the termination of her legal representation and letters from appellant subsequently authorizing her representative.

pulling trays, loading the LLV, and walking while carrying heavy loads of mail. He opined that she was unable to return to work in her previous occupation.

In a March 8, 2017 note, Dr. Wolf reported that appellant was unable to work.

By decision dated April 17, 2017, OWCP denied modification of its June 30, 2016 decision. It noted that there was no medical narrative of record that contained a complete history of injury, a diagnosis or a well-reasoned medical opinion supported by objective findings which explained how appellant's federal employment duties caused or aggravated the diagnosed conditions.

On June 30, 2017 appellant's representative again requested reconsideration. In a June 30, 2017 statement, appellant described the work duties of the positions held while working for the employing establishment. She indicated that the lifting, extending, bending, twisting, turning, stooping, and reaching above the level of her shoulder affected her neck, shoulders, arms, hands, as well as her back, and legs. Appellant related that she received chiropractic treatment from Dr. Damon Cormier. She noted that, in December 2010, she began working as a city carrier. However, by 2013, the chiropractic treatments and physical therapy did not relieve appellant's neck and lower back pain, as such, she sought treatment from Dr. Peavy, her general practitioner, who referred her to pain management in September 2015.

In a May 18, 2017 report, Dr. Wolf noted that appellant reported that her pain was exacerbated on September 11, 2015 after work-related repetitive casing of mail, loading packages daily, pulling trays, loading the LLV, and walking while carrying heavy loads of mail. He noted that those job duties increased pressure on and affect her neck, shoulders, and arms which may contribute to inflammation. Dr. Wolf noted that appellant also reported being off work since reporting the alleged injury. He indicated that a functional capacity evaluation was reviewed. Dr. Wolf opined that, based upon the MRI scan, EMG, and physical examination, that the C5-6 and C6-7 degenerative disc disease and right carpal tunnel syndrome were aggravated by appellant's letter carrier duties as outlined above. He also suspected that she was symptomatic from pathology at the C5-6 and C6-7 level and right carpal tunnel syndrome. Dr. Wolf has discussed various surgical options. He opined that appellant was unable to return to work in her previous occupation.

In a June 22, 2017 letter, Dr. Clark A. Gunderson, a Board-certified orthopedic surgeon, reported that appellant was examined on June 20, 2017 and that he reviewed medical reports and an April 8, 2016 MRI scan she had provided. He indicated that she continued to have neck and bilateral upper extremity complaints and lower back and bilateral lower extremity complaints related to the on-the-job injury of September 17, 2015. Dr. Gunderson indicated appellant's medical course, the results of objective testing, and reviewed a December 12, 2016 functional capacity evaluation. He opined that the cervical radiculopathy and carpal tunnel syndrome were accelerated by her letter carrier duties of repetitive casing of mail, loading packages, pulling trays, and loading her vehicle, as well as walking with heavy loads. Dr. Gunderson advised that the mechanical mechanism of injury was repetitive lifting, reaching, and carrying, which placed pressure on appellant's cervical spine and increased the inflammation in the neck shoulders arms hands, and back. He recommended surgical intervention. Dr. Gunderson also opined that appellant was unable to perform gainful employment.

In a June 29, 2017 letter, Dr. Damon L. Cormier, a chiropractor, noted that he had not provided care to appellant after her work-related injury on September 17, 2015. He also noted that he had no knowledge of cervical or lumbar disc disease.

In a July 18, 2017 note, Dr. Gunderson opined that appellant was unable to work.

By decision dated August 29, 2017, OWCP denied modification of its prior decision. It found that the medical documentation of record failed to provide a well-reasoned explanation as to how the diagnosed conditions were causally related to the accepted factors of appellant's federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence⁶ including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁷

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.⁸

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁹ 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 nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.¹⁰

⁵ *Supra* note 2.

⁶ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁷ *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁹ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

¹⁰ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an occupational disease causally related to the accepted factors of her federal employment.

Appellant alleges that she sustained cervical, lumbar, and right shoulder conditions as a result of her repetitive federal employment duties as a city carrier. OWCP accepted that she had repetitive job duties and that she was diagnosed with several medical conditions. However, it denied appellant's claim because the medical evidence submitted failed to establish that her medical conditions were causally related to her employment.

In support of her claim, appellant submitted medical reports from Dr. Peavy which diagnosed lumbar disc disease, cervical disc disease, and shoulder pain. In his initial reports, as well as in his August 23, 2016 report, Dr. Peavy did not offer any opinion regarding the cause of her conditions and therefore these reports are of limited probative value on the issue of causal relationship.¹¹ Additionally, the Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis.¹²

In his December 23, 2015 report, Dr. Peavy did offer an opinion regarding causal relationship. However, he opined, without any medical rationale, that appellant's diagnosis of cervical disc disease, lumbar disc disease, and right shoulder pain were aggravated by her repetitively casing mail, loading packages, pulling trays, walking 10 miles daily, carrying a mail bag, pushing, pulling, lifting, twisting, and bending. The Board has held that a medical opinion that is not fortified by rationale is of diminished probative value.¹³ Moreover, since the diagnostic studies revealed a degenerative condition of the lumbar and cervical spine, it was especially important that Dr. Peavy discuss whether appellant's preexisting degenerative condition which had progressed beyond what might be expected from the natural progression of that condition.¹⁴ As such, Dr. Peavy's reports are insufficient to establish appellant's claim.

In a January 27, 2016 duty status report, Dr. Lowry opined that appellant had cervical stenosis, lumbar and cervical degenerative disc disease, and was unable to work. However, he did not offer an opinion regarding the cause of her conditions. Therefore, Dr. Lowry's report is of limited probative value on the issue of causal relationship.¹⁵

In reports dated January 31 and May 18, 2017, Dr. Wolf diagnosed cervical disc disorder with radiculopathy, mid-cervical region, spinal stenosis, cervical region, and bilateral carpal tunnel syndrome and opined that appellant was unable to return to work in her previous occupation. In his January 31, 2017 report, he opined that the diagnosed C5-6 and C6-7 degenerative disc disease,

¹¹ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹² *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

¹³ *Cecilia M. Corley*, 56 ECAB 662 (2005).

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

¹⁵ *See C.B.*, *supra* note 11.

radiculopathy and bilateral carpal tunnel syndrome conditions were aggravated by her letter carrier duties of repetitive casing of mail, loading packages, pulling trays, loading the LLV, and walking while carrying heavy loads of mail. However, Dr. Wolf failed to address how the specific employment duties physiologically caused and/or aggravated her conditions. In his May 18, 2017 report, he noted that appellant reported that her pain was exacerbated after the above work-related repetitive activities and explained that those job duties increased pressure on and affect her neck, shoulders, and arms which may contribute to inflammation. Dr. Wolf's use of the term "may" renders his opinion speculative in nature.¹⁶ Furthermore, he failed to provide a sufficient explanation as to the mechanism of injury, namely how the identified work duties would cause or aggravate appellant's cervical disc disorder with radiculopathy, mid-cervical region; spinal stenosis, cervical region; and bilateral carpal tunnel syndrome.¹⁷ As such, Dr. Wolf's reports are of limited probative value and insufficient to meet her burden of proof.¹⁸

In his June 22, 2017 report, Dr. Gunderson indicated that appellant had neck and bilateral upper extremity complaints and lower back and bilateral lower extremity complaints related to the on-the-job injury of September 17, 2015 and that she was unable to work. He opined that the cervical radiculopathy and carpal tunnel syndrome were accelerated by her letter carrier duties of repetitive casing of mail, loading packages, pulling trays, and loading the vehicle, as well as walking with heavy loads. Dr. Gunderson advised that the mechanism of injury was repetitive lifting, reaching, and carrying, which placed pressure on appellant's cervical spine and increased the inflammation in the neck, shoulders, arms, hands, and back. While he provided a declarative statement of causal relationship, he did not discuss the objective examination findings or the diagnostic studies, which revealed a preexisting degenerative condition of the cervical spine. As previously noted, a well-rationalized opinion is particularly warranted when there is a history of a preexisting condition.¹⁹ Thus, Dr. Gunderson failed to provide a fully-rationalized opinion to explain how appellant's diagnosed conditions were causally related to her accepted work factors.

The remaining evidence is of limited probative value. The diagnostic reports, which included a September 11, 2015 cervical MRI scan and a November 3, 2016 EMG/NCV study, provided a medical diagnosis, but no opinion on the cause of the condition.²⁰ Diagnostic studies are of limited probative value as they do not address whether the employment incident caused any of the diagnosed conditions.²¹

¹⁶ *L.R. (E.R.)*, 58 ECAB 369 (2007); *D.D.*, 57 ECAB 734 (2006); *M.W.*, 57 ECAB 710 (2006); *Cecilia M. Corley*, 56 ECAB 662 (2005).

¹⁷ *S.W.*, Docket 08-2538 (issued May 21, 2009).

¹⁸ *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).

¹⁹ *T.M.*, Docket No. 08-0975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

²⁰ *R.E.*, Docket No. 10-0679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

²¹ *See J.S.*, Docket No. 17-1039 (issued October 6, 2017).

The chiropractic reports of May 27, 2015 and July 18, 2017 reports are of limited probative value as neither chiropractor diagnosed a spinal subluxation based on results of an x-ray.²² Therefore, neither chiropractor is considered a physician as defined under 5 U.S.C. § 8101(2). Similarly, the work excuse notes from a nurse practitioner lack probative value as healthcare providers such as physician assistants, physical therapists, or nurse practitioners, are not considered physicians as defined under FECA.²³

The mere fact that work activities may produce symptoms revelatory of an underlying condition does not raise an inference of an employment relation.²⁴ Such a relationship must be shown by rationalized medical evidence of causal relation based upon a specific and accurate history of employment conditions which are alleged to have caused or exacerbated a disabling condition.²⁵ Because appellant has not submitted such rationalized medical evidence in this case, the Board finds that she has not met her burden of proof to establish her occupational disease claim.

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 an occupational disease causally related to the accepted factors of her federal employment.

²² 5 U.S.C. § 8101(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. The term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the secretary. *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

²³ The term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See* 5 U.S.C. § 8102(2); *David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as nurses, physician assistants and physical therapists are not competent to render a medical opinion under FECA). *See also M.M.*, Docket No. 16-1617 (issued January 24, 2017).

²⁴ *See D.R.*, Docket No. 16-0528 (issued August 24, 2016).

²⁵ *Patricia J. Bolleter*, 40 ECAB 373 (1988).

ORDER

IT IS HEREBY ORDERED THAT the August 29, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 17, 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