

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

|                                   |   |                                  |
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| A.P., Appellant                   | ) |                                  |
|                                   | ) |                                  |
| and                               | ) | <b>Docket No. 18-1690</b>        |
|                                   | ) | <b>Issued: December 12, 2019</b> |
| U.S. POSTAL SERVICE, POST OFFICE, | ) |                                  |
| Coppell, TX, Employer             | ) |                                  |
|                                   | ) |                                  |

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On September 6, 2018 appellant filed a timely appeal from May 3 and August 2, 2018 merit decisions of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has met her burden of proof to establish a right shoulder and neck condition causally related to the accepted factors of her federal employment.

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<sup>1</sup> The Board notes that following the August 2, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On March 28, 2018 appellant, then a 44-year-old carrier technician, filed an occupational disease claim (Form CA-2) alleging that she experienced right shoulder pain causally related to factors of her federal employment. She did not stop work.

In a development letter dated April 2, 2018, OWCP advised appellant of the factual and medical evidence necessary to establish her claim, including a detailed description of the employment activities that she believed caused or contributed to her condition and a detailed medical report explaining how the identified employment factors resulted in a diagnosed condition. It also provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the required evidence.

Thereafter, OWCP received a report dated March 13, 2018, Dr. Rory Allen, an osteopath specializing in family medicine. Dr. Allen evaluated appellant for pain and burning in her lower neck radiating into her shoulder and right trapezius. He noted that her employment duties required continual use of the right upper extremity and that her pain decreased when she was off work. Dr. Allen diagnosed right shoulder and cervical pain/strain. He additionally diagnosed paresthesia of the right arm as a result of repetitive movements.

A March 20, 2018 magnetic resonance imaging (MRI) scan of appellant's right shoulder revealed mild subacromial/subdeltoid interstitial edema that was likely inflammatory, a small glenohumeral joint effusion, and a cyst in the anterior humeral head. A cervical spine MRI scan of even date revealed mid-anterior wedging at C5 "suspected to be due to axial loading stress," multilevel spondylosis with disc dehydration, endplate irregularity, disc bulges mildly impingement the ventral cord at C5-6, mild-to-moderate right neural foraminal narrowing at C3-4, and left foraminal narrowing mild at C3-4 and minimal at C4-5.

An electromyogram and a nerve conduction velocity (EMG/NCV) study obtained on April 10, 2018 revealed bilateral carpal tunnel syndrome greater on the left side, right elbow ulnar motor neuropathy, and left ulnar sensory neuropathy with no evidence of cervical radiculopathy or underlying peripheral neuropathy.

In an April 18, 2018 progress report, Dr. Allen noted that appellant's neck and right shoulder pain increased when working, at night, and with increased activity. He reviewed the result of diagnostic testing and diagnosed multilevel cervical spondylosis with disc dehydration, endplate irregularity, annular and disc bulges with mild C5-6 cord impingement, neuroforminal narrowing mild-to-moderate at C3-4 on the right and minimal from C3 to C5 on the left, cervical sprain and pain with radiculopathy, left more than right bilateral carpal tunnel syndrome, right ulnar motor neuropathy, and left ulnar sensory neuropathy. Dr. Allen opined that appellant should "[a]void aggravating activity."

On April 24, 2018 appellant described the work duties to which she attributed her condition, including the repetitive use of her right hand to case and deliver mail, and lifting and carrying boxes.

By decision dated May 3, 2018, OWCP denied appellant's occupational disease claim. It found that the medical evidence of record was insufficient to establish that she had sustained a medical condition causally related to the accepted employment factors.

On May 22, 2018 Dr. Allen discussed appellant's complaints of intermittent right shoulder and neck pain. He noted that she had experienced increased pain and paresthesias of the right "lower extremity" after working 11 hours.<sup>3</sup> Dr. Allen provided the same diagnoses as in his April 18, 2018 report and advised that she should avoid painful or aggravating activities.

In a report dated May 29, 2018, Dr. Allen advised that appellant's right shoulder pain had begun when she worked as a mail carrier and had increased after she was transferred and began performing extensive pushing and pulling with her upper extremity for six days a week while working in a new location. Appellant initially experienced symptoms on December 14, 2017 after working a 12-hour day. Dr. Allen indicated that appellant had sustained employment-related neck and right shoulder injuries and also carpal tunnel syndrome. He requested that OWCP accept the diagnoses of multilevel cervical spondylosis with disc dehydration, endplate irregularity, annular and disc bulges with mild C5-6 cord impingement, neuroforaminal narrowing mild-to-moderate at C3-4 on the right and minimal from C3 to C5 on the left, cervical sprain and pain with radiculopathy, left more than right bilateral carpal tunnel syndrome, right ulnar motor neuropathy, and left ulnar sensory neuropathy. Dr. Allen related, "Based on the mechanism of pulling, pushing using [her] right upper extremity constantly [8 to 10] hours per day repetitively has caused the diagnosis listed in the diagnostic test results."

On May 31, 2018 appellant requested reconsideration.

On June 25, 2018 Dr. Allen indicated that appellant had experienced increased pain in her shoulder and right side of her neck after working 52 hours per week. He diagnosed cervical sprain with radiculopathy, bilateral carpal tunnel syndrome more on the left, right ulnar motor neuropathy, and left ulnar sensory neuropathy.

In a report dated July 19, 2018, Dr. J. Kevin Kaufman, a neurosurgeon, evaluated appellant for right shoulder and neck pain. He advised that her pain had worsened in December 2017. Dr. Kaufman noted that appellant performed repetitive work duties reaching out of her vehicle to deliver mail and had a history of carrying heavy bags of mail. He diagnosed cervical radiculopathy, cervical spondylosis without myelopathy or radiculopathy, and cervicgia. Dr. Kaufman referred her for physical therapy.

By decision dated August 2, 2018, OWCP denied modification of its May 3, 2018 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> 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

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<sup>3</sup> It appears from the context of Dr. Allen's report that he meant increased pain and paresthesia of the right upper rather than lower extremity.

<sup>4</sup> *Supra* note 2.

United States within the meaning of FECA, that the claim was filed within the applicable time limitation period of FECA,<sup>5</sup> 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.<sup>6</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>7</sup>

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.<sup>8</sup>

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence. 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.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right shoulder and neck condition causally related to the accepted factors of her federal employment.

On March 13, 2018 Dr. Allen reviewed appellant's symptoms of pain and burning in her lower neck radiating into her shoulder and right trapezius. He noted that she repetitively used her right upper extremity performing her employment duties. Dr. Allen diagnosed right shoulder and cervical pain/strain. He additionally diagnosed paresthesia of the right arm as a result of repetitive movements. While he discussed appellant's work duties, Dr. Allen did not specifically address the cause of the diagnosed conditions. Medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>10</sup>

In progress reports dated April 18 and 22, 2018, Dr. Allen evaluated appellant for neck and right shoulder pain that increased with work. He diagnosed multilevel cervical spondylosis with

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<sup>5</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>7</sup> *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>8</sup> *R.M.*, Docket No. 18-0976 (issued January 3, 2019); *P.D.*, Docket No. 17-1885 (issued September 17, 2018).

<sup>9</sup> *H.B.*, Docket No. 18-0781 (issued September 5, 2018).

<sup>10</sup> *See J.H.*, Docket No. 19-0838 (issued October 1, 2019); *S.G.*, Docket No. 19-0041 (issued May 2, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

disc dehydration, endplate irregularity, disc bulges with mild C5-6 cord impingement, neuroforminal narrowing mild-to-moderate at C3-4 on the right and minimal from C3 to C5 on the left, cervical sprain and pain with radiculopathy, left more than right bilateral carpal tunnel syndrome, right ulnar motor neuropathy, and left ulnar sensory neuropathy. Dr. Allen advised that appellant should avoid activity that aggravated her symptoms. He did not, however, address causation, and thus these progress reports are of no probative value regarding the cause of the diagnosed conditions.<sup>11</sup>

On May 29, 2018 Dr. Allen related that appellant had a history of right shoulder pain while working as a mail carrier that had increased after she had transferred to her current location and had begun performing significant upper extremity pushing and pulling at work six days a week. He opined that she had sustained employment-related neck and right shoulder injuries and also carpal tunnel syndrome. Dr. Allen requested that OWCP accept the conditions he had diagnosed. He attributed the diagnosed conditions to appellant's repetitive use of her right upper extremity pushing and pulling for 8 to 10 hours per day. Although he supported causal relationship, Dr. Allen did not explain the process by which repetitive use of her right upper extremity at work would have caused the diagnosed conditions.<sup>12</sup> A medical opinion must provide an explanation of how the specific employment factors physiologically caused or aggravated the diagnosed conditions.<sup>13</sup> As Dr. Allen's opinion regarding causal relationship was conclusory and unexplained, it is insufficient to meet appellant's burden of proof to establish her claim.<sup>14</sup>

In a progress report dated June 25, 2018, Dr. Allen discussed appellant's complaints of increased shoulder and neck pain on the right side after working overtime. He diagnosed cervical and upper extremity conditions. In a July 19, 2018 progress report, Dr. Kaufman discussed appellant's complaints of right shoulder and neck pain and her history of performing repetitive employment duties. He again diagnosed cervical and upper extremity conditions. Neither Dr. Allen nor Dr. Kaufman offered a medical opinion finding that the diagnosed conditions were due to the accepted employment factors. As noted above, the Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>15</sup> The Board finds, therefore, that these reports are insufficient to meet appellant's burden of proof.

Additionally, the March 20, 2018 MRI scans and April 10, 2018 electrodiagnostic testing are insufficient to establish appellant's claim, as the Board has held that diagnostic test reports lack probative value as they do not provide an opinion on causal relationship between the accepted employment factors and a diagnosed condition.<sup>16</sup>

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<sup>11</sup> *Id.*

<sup>12</sup> *A.P.*, Docket No. 19-1158 (issued October 29, 2019).

<sup>13</sup> *A.H.*, Docket No. 19-0270 (issued June 25, 2019); *M.W.*, Docket No. 18-1624 (issued April 3, 2019).

<sup>14</sup> *Id.*

<sup>15</sup> *K.B.*, Docket No. 19-0411 (issued July 19, 2019); *S.S.*, Docket No. 17-1256 (issued December 13, 2018).

<sup>16</sup> *See R.M.*, Docket No. 18-0976 (issued January 3, 2019).

As appellant has not provided sufficiently rationalized medical evidence to establish that her neck and right shoulder condition were causally related to the accepted factors of her federal employment, the Board finds that she has not met her burden of proof to establish her occupational disease claim.<sup>17</sup>

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 a right shoulder or neck condition causally related to the accepted factors of her federal employment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 2 and May 3, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 12, 2019  
Washington, DC

Christopher J. Godfrey, 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

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<sup>17</sup> *A.P.*, *supra* note 12.