

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

M.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Toms River, NJ, Employer**

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**Docket No. 18-1267
Issued: February 12, 2019**

Appearances:
*Aaron B. Aumiller, Esq., for the appellant*¹
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 8, 2018 appellant, through counsel, filed a timely appeal from a December 14, 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 that she developed neck and shoulder conditions causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On March 9, 2016 appellant, then a 55-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that, on or about January 14, 2016, she developed a bulging disc and a slight tear in her right rotator cuff due to lifting heavy objects in the performance of duty. She stopped work on that date.

In a March 18, 2016 development letter, OWCP requested additional factual and medical evidence supporting appellant's occupational disease claim. It afforded her 30 days to respond.

Appellant subsequently submitted a narrative statement, in which she explained that, after work on January 14, 2016, her shoulder hurt and she sought medical treatment the next day. She noted that magnetic resonance imaging (MRI) scans of her shoulder and cervical spine demonstrated a bulging disc and partial right rotator cuff tear. Appellant noted that her work duties placed stress on her arms, shoulders, and back.

OWCP also received a note dated January 15, 2016 from Dr. Martin Pollack, a Board-certified internist, which diagnosed a muscle strain.

Diagnostic testing reports revealed that on January 25, 2016 appellant underwent cervical spine and right shoulder MRI scans. Her cervical spine MRI scan demonstrated a C7-T1 broad right disc protrusion blocking the entrance to the right neural foramen. Appellant's right shoulder MRI scan demonstrated rotator cuff tendinosis with a high-grade partial tear.

By decision dated May 6, 2016, OWCP denied appellant's claim, finding that she had not provided sufficient factual information to establish job-related activities or exposures and, thus, she did not establish an injury as defined by FECA.

On May 9, 2016 counsel requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. On January 18, 2017 appellant testified that she had been employed by the employing establishment for 13 years as a rural carrier. She described her work duties of delivering parcels weighing up to 50 pounds with a route of 400 stops. Appellant reported that she had no previous cervical or shoulder injuries.

Following the oral hearing, appellant submitted a form report from Dr. John Mak, a physician Board-certified in pain management, dated March 24, 2016. Dr. Mak diagnosed cervical radiculopathy and a herniated disc at C7-T1. He described appellant's employment duties of heavy lifting and repetitive work. Dr. Mak checked a box marked "yes" indicating that her conditions were caused or aggravated by her employment activities.

By decision dated April 3, 2017, OWCP's hearing representative found that appellant had sufficiently established her work exposure to satisfy the factual component of fact of injury. However, he further found that the medical evidence of record was lacking a reasoned opinion

establishing causal relationship between the established work exposure and appellant's diagnosed conditions.

On May 4, 2017 appellant, through counsel, requested reconsideration of the April 3, 2017 decision. In support of this request, counsel provided a report dated April 12, 2017 from Dr. Mak. Dr. Mak noted examining appellant due to neck and right shoulder pain which began on January 15, 2016. He reported that appellant's job duties as rural carrier for the past 13 years required her to repetitively deliver mail averaging 400 stops per day and carry heavy packages weighing up to 50 pounds. Dr. Mak provided his findings on physical examination and reviewed her MRI scan opining that the cervical herniation was the cause of her pain with right upper extremity radicular symptoms, paresthesia, and diffuse weakness. He opined that appellant's diagnosis was causally related to her repetitive work and heavy lifting. Dr. Mak further determined that appellant's job duties resulted in acceleration of underlying cervical degenerative disc disease leading to cervical herniated nucleus pulposus and cervical radiculopathy. He supported his opinion by noting that appellant had an isolated herniated disc at C7-T1 with no significant disc disease at other levels which likely represented a repetitive injury rather than chronic degenerative disease.

By decision dated December 14, 2017, OWCP denied modification of the April 3, 2017 decision. It noted that appellant had not submitted sufficient medical opinion evidence to establish causal relationship between her diagnosed conditions and her accepted employment duties.

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, 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 establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁵

Causal relationship is a medical question, which requires rationalized medical opinion evidence to resolve the issue.⁶ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factors must be based on a

³ *Id.*

⁴ 20 C.F.R. § 10.115(e), (f); *see C.D.*, Docket No. 17-2011 (issued November 6, 2018); *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁵ *C.D., id.*; *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁶ *See C.D., supra* note 4; *Robert G. Morris*, 48 ECAB 238 (1996).

complete factual and medical background.⁷ 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 factors.⁸

ANALYSIS

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

The records contain medical reports from Dr. Mak dated March 24, 2016 and April 12, 2017. In his March 24, 2016 report, Dr. Mak indicated that appellant's diagnosed cervical radiculopathy and herniated disc C7-T1 were related to her employment duties of heavy lifting and repetitive work. He checked the box marked "yes" indicating that the diagnosed conditions were caused or aggravated by appellant's work. Although the "yes" checkmark indicates support for causal relationship, the Board has held that when a physician's opinion on causal relationship consists only of a checkmark on a form report, without more by way of medical rationale, the opinion is of diminished probative value.⁹ Dr. Mak did not provide medical rationale explaining how heavy lifting and repetitive work caused or aggravated appellant's diagnosed condition. As such, the Board finds that Dr. Mak's March 24, 2016 report is of diminished probative value.

In his April 12, 2017 report, Dr. Mak listed appellant's job duties and diagnosed cervical disc herniation as the cause of her pain with right upper extremity radicular symptoms, paresthesia, and diffuse weakness. He opined that appellant's diagnosis was causally related to her repetitive work and heavy lifting. Dr. Mak explained that appellant's job duties resulted in acceleration of underlying cervical degenerative disc disease leading to cervical herniated nucleus pulposus and cervical radiculopathy. He concluded that as appellant had an isolated herniated disc at C7-T1 with no significant disc disease at other levels and that this likely represented a repetitive injury. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition was related to employment factors.¹⁰ A mere conclusory opinion provided by a physician, without the necessary rationale explaining how and why the work factors were sufficient to result in the diagnosed medical condition, is insufficient to meet a claimant's burden of proof to establish a claim.¹¹ The Board finds that although Dr. Mak has provided a supportive opinion regarding causal relationship,

⁷ *Supra* note 5.

⁸ *Id.*

⁹ *S.W.*, Docket No. 18-0721 (issued November 6, 2018); *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).

¹⁰ *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹¹ *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

he has not provided the medical rationale which is necessary to explain how lifting heavy objects in the performance of duty was sufficient to result in the claimed neck and shoulder conditions. As such, the April 12, 2017 report is insufficient to establish appellant's claim.

The Board finds that appellant has not submitted rationalized, probative medical evidence sufficient to establish neck and shoulder conditions causally related to the accepted factors of her federal employment. Appellant therefore has not met her burden of proof.

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 she developed neck and shoulder conditions causally related to the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the December 14, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 12, 2019
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board