

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

Y.C., Appellant)	
)	
and)	Docket No. 17-1938
)	Issued: January 7, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Philadelphia, PA, Employer)	
)	

Appearances:
Russell T. Uliase, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 15, 2017 appellant, through counsel, filed a timely appeal from a June 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 the 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 her claim should be expanded to include a right shoulder condition causally related to the accepted April 30, 2001 employment injury.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts follow.

On July 18, 2001 appellant then a 44-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on April 30, 2001, she experienced neck, shoulder, and arm pain while in the performance of duty. She noted carrying mail on her right shoulder. Appellant was treated by Dr. Stuart L. Trager, a Board-certified orthopedist, on May 2, 2001 for right shoulder pain. Dr. Trager noted findings of positive Phalen's and Tinel's signs, pain of the right shoulder with range of motion, and positive impingement sign. He recommended a course of physical therapy for appellant's right shoulder and to avoid casing mail for two weeks.

Appellant stopped work on July 18, 2001 and returned on September 26, 2002 and worked intermittently thereafter. OWCP subsequently accepted her claim for aggravation of degenerative disc disease of the cervical spine, based on reports by Dr. Steven J. Valentino, an osteopath, who began treating appellant on June 13, 2001, for cervical degenerative disc disease and neck pain radiating into the right arm. OWCP paid appellant wage-loss compensation benefits.

By decision dated August 15, 2011, OWCP reduced appellant's compensation to reflect her wage-earning capacity as an accounting clerk, effective August 28, 2011.

Reports from Dr. Valentino from March 19 to July 23, 2013 diagnosed facet mediated pain, cervical degenerative disc disease, cervical radiculitis, and spinal stenosis. In a March 20, 2013 report, he noted that appellant complained of right shoulder pain when she was treated on June 13, 2001. Dr. Valentino noted her written account of her work injury established that her right shoulder symptoms were related to her work injury. He noted that a magnetic resonance imaging (MRI) scan of the right shoulder dated November 8, 2012 revealed a full-thickness supraspinatus tendon tear. Dr. Valentino opined that after reviewing records, the etiology of appellant's right shoulder injury, along with the rotator cuff tear was apportioned to her work injury. He found no other etiology. OWCP referred appellant's case record to an OWCP medical adviser for a determination as to whether the acceptance of her claim should be expanded to include right shoulder rotator cuff tear.

³ Docket No. 08-1545 (issued March 10, 2009); Docket No. 12-1407 (issued January 24, 2013), *petition for recon. denied*, Docket No. 12-1407 (issued August 13, 2013); Docket No. 14-1605 (issued November 21, 2014); *Order Remanding Case*, Docket No. 15-1302 (issued October 8, 2015); and Docket No. 17-0380 (issued March 9, 2018).

In a September 22, 2013 report, OWCP's medical adviser opined that there was no medical evidence that supported causal relationship between the right shoulder rotator cuff tear to the employment injury that occurred 11 years prior.

On January 8, 2014 appellant requested reconsideration. She asserted that a prior loss of wage-earning capacity (LWEC) determination dated August 15, 2011 was erroneous as it was based solely on the accepted condition of aggravation of cervical disc disease when she sustained a right shoulder injury causally related to the April 30, 2001 work injury.⁴ In an April 14, 2014 decision, OWCP denied appellant's request for reconsideration as the evidence submitted was insufficient to warrant a merit review.

Appellant appealed to the Board. By decision dated November 21, 2014, the Board set aside the April 14, 2014 decision. The Board found that appellant requested modification of the August 25, 2011 LWEC determination and was entitled to a merit review of the wage-earning capacity issue and remanded the matter for further development.⁵

On September 9, 2014 OWCP referred appellant to Dr. Robert F. Draper, Jr., a Board-certified orthopedist, for a second opinion to determine whether she had residuals of her work-related conditions, whether she sustained a right shoulder injury causally related to the April 30, 2001 work injury, and whether she could return to work subject to restrictions. In a September 26, 2014 report, Dr. Draper diagnosed aggravation of preexisting degenerative cervical disc disease and right shoulder pain associated with cervical disc disease. He opined that appellant continued to have residuals of the work injury of April 30, 2001. Dr. Draper opined that the right shoulder discomfort was related to the aggravated degenerative cervical disc disease, likely C5-6 levels. He opined that there was no evidence of a separate pathological injury involving the right shoulder which could be related to the April 30, 2001 work injury. Dr. Draper concluded that the right shoulder complaints were due to the aggravation of the cervical degenerative disc disease and not due to an injury to the right shoulder. He opined that appellant could work full-time light duty, no lifting greater than 20 pounds occasionally and 10 pounds frequently, standing and walking for six hours a day, and sitting for six hours a day, and avoid excessive overhead use of the right shoulder. In a work capacity evaluation (Form OWCP-5c) he noted that she could work full time subject to restrictions of no lifting greater than 20 pounds occasionally and 10 pounds frequently.

Appellant was treated by Dr. Valentino on September 23 and November 18, 2014 for worsening complaints of neck, right shoulder, and arm pain. He noted positive findings and diagnosed neck pain, facet mediated pain, cervical degenerative joint disease, cervical radiculitis, and cervical spinal stenosis.

In reports dated February 10 and 12, 2015, Dr. Scott M. Fried, an osteopath, diagnosed cervical strain/sprain with radiculopathy on the right, disc bulges at C5-6 and C6-7, radial and median neuropathy on the right, brachial plexopathy/cervical radiculopathy on the right, thoracic

⁴ By decision dated August 15, 2011, OWCP had reduced appellant's compensation to reflect her wage-earning capacity as an accounting clerk, effective August 28, 2011.

⁵ Docket No. 14-1605 (issued November 21, 2014).

neuritis, scapular winging, right rotator cuff strain, capsulitis of the shoulder, and neuralgia of the right side. He noted that appellant could not return to regular work.

By decision dated March 19, 2015, OWCP denied modification of the August 15, 2011 LWEC determination.

Appellant was treated by Dr. Fried on April 6 and 16, 2015, who diagnosed cervical strain/sprain with radiculopathy on the right, disc bulges at C5-6 and C6-7, radial and median neuropathy on the right, brachial plexopathy/cervical radiculopathy on the right, thoracic neuritis, scapular winging, right rotator cuff strain, capsulitis of the shoulder, and neuralgia of the right side. Dr. Fried noted that she could not return to regular work.

In a report dated April 14, 2015, Dr. Valentino treated appellant for neck pain localized at C4 to C7 and right shoulder and arm pain. He diagnosed neck pain, facet mediated pain, and cervical degenerative joint disease. On June 16, 2015 appellant presented with bilateral L3-S1 pain with radiation into the legs and Dr. Valentino diagnosed sciatica, lumbago and chondromalacia patellae of the left knee.

Appellant again appealed to the Board. By order dated October 8, 2015, the Board set aside the March 19, 2015 decision. The Board found that OWCP had failed to review all the medical evidence submitted at the time of the March 19, 2015 decision and remanded the case for further development.⁶

Appellant submitted a November 10, 2015 report from Dr. Valentino who treated her for neck pain localized at C4 to C7 and right shoulder and arm pain related to her work injury. Dr. Valentino diagnosed cervical disc degeneration, cervical pain, neck pain, and facet arthritis of the cervical region.

Dr. Fried treated appellant on October 27, 2015 and January 4, 2016 for a flare-up of symptoms at the cervical/neck area. He diagnosed cervical strain/sprain with radiculopathy on the right, disc bulges at C5-6 and C6-7, median neuropathy on the right and left side, and radial and medial neuropathy on the right. Dr. Fried noted other problems including scapular winging, right rotator cuff strain, and capsulitis of the shoulder and noted that appellant could not return to regular work.

By decision dated February 2, 2016, OWCP denied modification of the August 15, 2011 LWEC determination.

Appellant subsequently submitted reports from Dr. Valentino dated January 19 and April 5, 2016 who treated her for neck pain localized at C4 to C7. Dr. Valentino opined that her right shoulder symptoms were related to her work injury. He noted findings of significant limitations in all planes. Dr. Valentino diagnosed cervical disc degeneration, cervical pain, neck pain, facet arthritis of the cervical region, cervical strain, and neck pain. He performed bilateral cervical facet injections at C4 to C7.

⁶ Docket No. 15-1302 (issued October 8, 2015).

In a report dated March 28, 2016, Dr. Fried treated appellant for neck and shoulder pain. He noted the cervical spine injections helped her symptoms locally, but she still experienced radiating pain. Dr. Fried diagnosed cervical strain/sprain with radiculopathy on the right, disc bulges at C5-6 and C6-7, median neuropathy on the right and left side, radial and median neuropathy on the right. He noted other problems including brachial plexopathy/cervical radiculopathy on the right, thoracic neuritis, scapular winging, right rotator cuff strain, capsulitis of the shoulder, and neuralgia of the right side. Dr. Fried noted that appellant could not return to regular work.

On July 12, 2016 appellant through counsel, requested reconsideration. She referenced a May 25, 2016 report from Dr. Clancy McKenzie, a Board-certified psychiatrist,⁷ which supported that her right shoulder and depression were related to the work injury and that she could not perform the accounting clerk position because of these conditions.

Appellant submitted a May 25, 2016 report from Dr. McKenzie who opined that based on his review of the medical records her claim should be expanded to include a right shoulder injury. Dr. McKenzie noted that the records dating back to 2001 acknowledged that the shoulder condition was part of the original injury. He explained that appellant carried a mailbag on her right shoulder, delivered mail with her right hand, cased and slotted mail with her right hand, and drove a postal vehicle with manual operation on the right side. Dr. McKenzie indicated that her shoulder condition was exacerbated by drafting résumés and applying for jobs on the computer.

Appellant submitted reports from Dr. Fried dated June 6 to September 12, 2016, who diagnosed cervical strain/sprain with radiculopathy on the right, disc bulges at C5-6 and C6-7, median neuropathy on the right and left side, radial and medial neuropathy on the right. Dr. Fried noted other problems including scapular winging, right rotator cuff strain, and capsulitis of the shoulder. He noted that appellant could not return to regular work.

Appellant was treated in follow-up by Dr. Valentino on June 7, 2016 for neck pain localized at C4 to C7 and right shoulder symptoms related to her work injury. Dr. Valentino noted findings and diagnosed cervical disc degeneration, cervical pain, facet arthritis of the cervical region, and cervical strain. He performed bilateral cervical facet injections at C4 to C7. In a separate statement dated June 7, 2016, Dr. Valentino noted reviewing Dr. McKenzie's and Dr. Fried's reports and agreed that appellant was disabled from her carrier job. In a report dated September 13, 2016, he treated her for neck pain localized at C4 to C7 and right shoulder symptoms and more recently left shoulder pain. Dr. Valentino diagnosed cervical disc degeneration, cervical pain, facet arthritis of the cervical region, cervical strain and neck pain. He performed bilateral cervical facet injections at C4 to C7.

By decision dated October 7, 2016, OWCP denied modification of its February 2, 2016 decision.

In a January 5, 2017 report, Dr. Fried noted appellant's symptoms of neck and cervical spine pain radiating down the right arm limiting her activity. He noted diagnoses and other problems including right rotator cuff strain, capsulitis of the shoulder, and neuralgia of the right

⁷ Dr. McKenzie treated appellant since September 14, 2011 for severe chronic pain and major depression.

side. Dr. Fried further noted that the right shoulder was getting progressively worse, but was not accepted. He noted that appellant could not return to regular work.

On October 25, 2016 Dr. Valentino noted appellant symptoms of bilaterally localized C4 to C7 radiation into the right arm with paraesthesia and weakness. He noted range of motion was significantly limited in all planes and diagnosed cervical pain and cervical degenerative disc disease. Appellant underwent trigger point injections about the cervical spine. In a letter dated December 13, 2016, Dr. Valentino opined that appellant's right rotator cuff tear was a direct result of her work-related injury as she was carrying mail with the mailbag on her right shoulder. He found no other etiology and opined that appellant could not return to work and was totally disabled.

In a letter dated January 13, 2017, appellant, through counsel, requested that appellant's right shoulder condition be accepted as work related.

In a report dated December 13, 2016, Dr. Valentino noted symptoms of neck pain bilaterally localized C4 to C7 with right shoulder pain and weakness. He noted range of motion was significantly limited in all planes and diagnosed cervical pain and strain, cervical degenerative disc disease, and facet arthritis of the cervical region. Appellant underwent cervical facet injections.

By decision dated February 9, 2017, OWCP denied appellant's request to expand the acceptance of her claim to include a right shoulder condition. It noted that the medical evidence of record was insufficient to establish that the diagnosed medical conditions were causally related to accepted work events.

On February 16, 2017 appellant, through counsel, requested an oral hearing before an OWCP hearing representative, which was held on May 10, 2017.

An electromyogram (EMG) dated March 1, 2017 revealed evidence of bilateral mid-cervical nerve root impairment at C5, C6, and C7, mild bilateral brachial plexus impairment, moderate left ulnar nerve impairment at medial elbow level, and borderline bilateral median nerve impairments at wrist levels.

Reports from Dr. Valentino dated March 21 to May 16, 2017, noted appellant's symptoms of neck pain bilaterally localized C4 to C7 radiation into the right arm with paraesthesia and weakness. He noted that range of motion was significantly limited in all planes and diagnosed cervical pain, cervical radiculopathy, spinal stenosis, cervical strain, and facet arthritis of the cervical region. In a work capacity evaluation (OWCP-5c) dated March 21, 2017 Dr. Valentino diagnosed cervical disc degeneration and noted that appellant reached maximum medical improvement and was totally disabled due to neck pain.

A cervical spine MRI scan dated May 2, 2017 revealed midline focal disc protrusions at C2-3 and C3-4, midline disc herniations at C4-5, central disc protrusions at C5-6, disc degeneration, and disc protrusion at C6-7 and C7-T1.

By decision dated June 14, 2017, an OWCP hearing representative affirmed the February 9, 2017 decision denying expansion of the claim.

LEGAL PRECEDENT

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁸

Causal relationship is a medical issue that must be established by rationalized medical opinion evidence.⁹ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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.¹⁰ 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 the medical evidence of record is insufficient to establish that appellant's claim should be expanded to include a right shoulder condition causally related to the April 30, 2001 work injury.

In a March 20, 2013 report, Dr. Valentino noted that appellant complained of right shoulder pain when she was treated on June 13, 2001. He noted a right shoulder MRI scan dated November 8, 2012 revealed a full-thickness supraspinatus tendon tear. Dr. Valentino opined that after reviewing records the etiology of her right shoulder injury along with the rotator cuff tear was apportioned to her work injury. He found no other etiology. Other reports from Dr. Valentino dated November 10, 2015 to June 7, 2016 noted treatment for neck pain localized at C4-7. He opined that appellant's right shoulder symptoms related to her work injury. Dr. Valentino diagnosed cervical disc degeneration, cervical pain, neck pain, facet arthritis of the cervical region, cervical strain, and neck pain. Similarly, in a letter dated December 13, 2016, he noted that appellant had shoulder problems since 2001 noting the pain never ceased and she continued to have difficulty using her right upper extremity. Dr. Valentino opined that her right rotator cuff tear was a direct result of her work-related injury as she was carrying mail with the mailbag on her right shoulder. The Board finds that, although he supported causal relationship, he did not provide medical rationale explaining the basis of his conclusory opinion regarding the causal relationship

⁸ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁹ *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005).

¹⁰ *Leslie C. Moore*, 52 ECAB 132 (2000).

¹¹ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

between appellant's right shoulder condition and the April 30, 2001 work injury.¹² That is, there is no medical explanation regarding how her letter carrier duties which include carrying mail on her right shoulder would have caused or aggravated these conditions. Thus, this evidence is insufficient to meet appellant's burden of proof.

In his remaining reports, Dr. Valentino did not specifically address how a right shoulder condition was causally related to the accepted work injury of April 30, 2001. As the Board has held, medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹³

Appellant was treated by Dr. Fried who likewise did not specifically address how a right rotator cuff strain and capsulitis of the shoulder or other nonaccepted conditions were due to the accepted work injury of April 30, 2001. Thus, these reports are of no probative value and are insufficient to establish that any additional conditions are employment related.

Dr. McKenzie, noted appellant's duties included carrying a mailbag on her right shoulder, delivering mail, and casing mail with her right hand. He opined that her right shoulder condition was causally related to her accepted employment injury. However, Dr. McKenzie did not specifically explain the mechanism of how appellant's letter carrier duties also resulted in a right shoulder injury causally related to her April 30, 2001 work injury. As such, his opinions are insufficient to establish appellant's claim.¹⁴

OWCP referred appellant to Dr. Draper for a second opinion evaluation to determine whether appellant had residuals of her work injury and whether she sustained a right shoulder injury causally related to the April 30, 2001 work injury. In a September 26, 2014 report, Dr. Draper diagnosed aggravation of preexisting degenerative cervical disc disease and right shoulder pain associated with cervical disc disease. He opined that appellant continued to have residuals of the work injury of April 30, 2001. Dr. Draper opined the right shoulder discomfort was related to the aggravated degenerative cervical disc disease, likely C5-6 levels. He opined that there was no evidence of a separate pathological injury involving the right shoulder which could be related to the April 30, 2001 work injury. Dr. Draper concluded that the right shoulder complaints were due to the aggravation of the cervical degenerative disc disease and not due to an injury to the right shoulder. He opined that appellant could work full-time light duty.

On appeal appellant asserts that OWCP improperly denied her request to expand the acceptance of her claim to include a right shoulder condition. She asserts that she submitted sufficient evidence to establish causal relationship between the work injury and the right shoulder condition. As found above, the evidence submitted did not provide medical rationale from a

¹² See *T.M.*, Docket No. 08-0975 (issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

¹³ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ See *C.F.*, Docket No. 18-0583 (issued October 16, 2018).

physician explaining the causal relationship between appellant's right shoulder conditions and the factors of employment.¹⁵

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 claim should be expanded to include a right shoulder condition causally related to the accepted April 30, 2001 employment injury.

ORDER

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

Issued: January 7, 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

¹⁵ See *supra* note 12.