

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

C.E., Appellant)	
)	
and)	Docket No. 19-0192
)	Issued: July 16, 2019
U.S. POSTAL SERVICE, CONWAY POST)	
OFFICE, Little Rock, AR, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On November 6, 2018 appellant filed a timely appeal from an October 15, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 cervical spine conditions causally related to accepted factors of her federal employment.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances as presented in the prior Board decision are incorporated herein by reference. The relevant facts are as follows.

On January 4, 2016 appellant, then a 60-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she developed a neck and shoulder condition on October 8, 2015. She first became aware of her claimed condition on October 8, 2015 and attributed it to her federal employment on November 12, 2015. Appellant stopped work on November 14, 2015.

On October 8, 2015 Dr. Robert F. McCarron, a Board-certified orthopedic surgeon, initially examined appellant due to neck complaints which began in approximately 2001. He noted that appellant fell down several stairs while working as a postal carrier. Appellant developed neck pain with radiation into her left arm and underwent cervical fusion. She returned to work and in 2011 was diagnosed with degenerative discs above and below her fusion site. Dr. McCarron diagnosed chronic cervical pain syndrome, as well as degenerative cervical discs at C4-5 and C6-7. He recommended testing.

In a report dated October 29, 2015, Dr. McCarron listed appellant's date of injury as 2001. He listed her conditions arthritis, back problems, ruptured disc in neck, and irritable bowel syndrome. Dr. McCarron reviewed appellant's magnetic resonance imaging (MRI) scan of the cervical spine and found that she had degenerative changes in her cervical spine. He noted that she had a 10-pound lifting restriction and that she experienced discomfort casing mail. Dr. McCarron reported positive impingement test in both shoulders during physical examination. He diagnosed cervical degenerative disc disease at C4-5 and C6-7, cervical fusion at C5-6, chronic pain syndrome, and bilateral cervical stenosis C4-5. Dr. McCarron provided additional work restrictions of lifting no more than 10 pounds, and curtailing driving. He opined, "I believe that driving and lifting as well as reaching and casing mail would aggravate the degenerative changes in [appellant's] neck."

In a January 8, 2016 development letter, OWCP requested additional factual and medical evidence in support of appellant's occupational disease claim. It provided a factual questionnaire for her completion and requested that she provide additional medical evidence. OWCP afforded appellant 30 days to respond.

Appellant completed the questionnaire and noted her employment duties of casing mail above shoulder height, lifting packages, loading her vehicle, and delivering mail. She alleged that lifting trays of mail and packages as well as pushing buggies caused excessive pain and tingling down her arms to her fingers. Appellant noted that she had begun dropping things, tripping, and falling down.

On February 3, 2016 Dr. McCarron completed a note and diagnosed cervical degenerative disc disease, bilateral cervical stenosis, and chronic pain. He noted that appellant fell down several stairs about 15 years ago and that this fall initiated her neck pain. Dr. McCarron opined, "I believe

² Docket No. 17-0010 (issued March 1, 2017).

that driving and lifting as well as reaching and casing mail have aggravated [appellant's] current condition.”

On February 10, 2015 OWCP requested that Dr. McCarron provide a detailed narrative medical report which described the relationship between appellant's current condition and her federal employment duties. In a report dated February 25, 2016, Dr. McCarron described appellant's employment as a postal carrier and noted that she reported falling down several stairs approximately 15 years prior in the performance of her job duties. Appellant developed neck pain which she attributed to this fall and eventually underwent a cervical fusion. After several years, she again developed neck pain and had MRI scan documentation of degenerated discs above and below her fusion site. Dr. McCarron diagnosed degenerative cervical disc disease at C4-5 and C6-7 based on MRI scan and cervical stenosis at C4-5 shown on x-ray. He noted, “Historically, the fall was temporally related to the cervical disc injury at C5-6 as a causative factor. I have no further documentation beside [appellant's] history regarding this injury. The patient has two work-related factors that would contribute to the permanent aggravation of the cervical degenerative disc disease. One is driving and one is lifting.”

On October 22, 2015 appellant underwent a cervical MRI scan which demonstrated multilevel degenerative spondylosis most prominent at C4-5 and C6-7 with mild spinal canal stenosis at both of these levels.

Beginning on July 7, 2014 Dr. Christopher K. Mocek, a Board-certified anesthesiologist, completed a series of reports noting appellant's symptoms of central neck pain and bilateral shoulder pain. In a note dated November 3, 2014, he indicated that her shoulder pain was associated with numbness and weakness. Appellant underwent a bone density scan on November 10, 2014 which demonstrated osteopenia of the lumbar spine and right femoral neck. Dr. Mocek examined her on March 2, 2015 and again on April 27, 2015 due to neck and shoulder pain. On August 24, 2015 appellant reported intense neck pain with bilateral shoulder pain radiating to both arms. Dr. Mocek found that she had numbness and tingling in both upper extremities. He diagnosed thoracic spine pain, cervical radiculitis, and cervical spine pain. In his October 19, 2015 note, Dr. Mocek indicated that appellant was experiencing low back pain radiating to her legs and feet. On December 7, 2015 he reported that she was experiencing both low back and neck pain as well as bilateral shoulder pain. Dr. Mocek repeated his diagnoses.

By decision dated March 31, 2016, OWCP denied appellant's occupational disease claim. It found that she had not submitted sufficient medical evidence to establish a causal relationship between her current cervical conditions and her job duties.

On April 18, 2016 appellant requested reconsideration from OWCP. By decision dated May 19, 2016, OWCP declined to reopen her claim for consideration of the merits. It noted that appellant had submitted two compact discs which were unreadable.

On May 27, 2016 appellant requested reconsideration of the May 19, 2016 OWCP decision and submitted additional medical records. In a report dated April 13, 2016, Dr. McCarron opined that driving, lifting, casing mail, and reaching put force on the cervical spine. He opined that the more weight that was lifted the more physical stress placed through the cervical discs. Dr. McCarron opined that driving and lifting were two work-related factors that would contribute

to the permanent aggravation and causation of cervical degenerative disc disease. He concluded that appellant's x-rays and MRI scan both documented her degenerative disc disease.

On June 7, 2011 Dr. Richard D. Peek, a Board-certified orthopedic surgeon, examined appellant due to lower back pain, neck pain, and headaches which began in 2003. He diagnosed severe cervical degenerative disc disease at C6-7 and C4-5 with a solid C5-6 fusion. Dr. Peek examined appellant on August 12, 2011 due to bilateral full spine pain. He diagnosed degeneration of cervical intervertebral disc.

On August 20, 2012 Dr. Mocek examined appellant due to neck and bilateral shoulder pain. He noted that she was involved in a motor vehicle accident approximately two to three weeks prior to his examination, and that she believed that she had "whiplash." On March 11, 2013 Dr. Mocek diagnosed cervical radiculitis and shoulder pain. In a note dated June 3, 2013, he diagnosed cervical spondylosis. On December 12, 2013 appellant reported increased pain due to pulling a jammed mail truck door. Dr. Mocek diagnosed cervical spondylosis, upper radiculitis, and pain in the thoracic spine on January 9, 2014. On November 3, 2014 he diagnosed thoracic spine pain, cervical radiculitis, and cervical spine pain. Appellant underwent cervical x-rays on November 10, 2014 which demonstrated an anterior interbody fusion at C5-6, degenerative changes at C4-5 and C5-6 with minimal retrolisthesis of C4 on C5, but no subluxations.

By decision dated August 24, 2016, OWCP denied modification of its March 31, 2016 merit decision, finding that appellant had not submitted sufficient medical opinion evidence to establish that her diagnosed condition was due to her employment duties.

Appellant appealed to the Board and, by decision dated March 1, 2017,³ the Board affirmed OWCP's August 24, 2016 decision. The Board found that she had submitted insufficient rationalized medical opinion evidence to establish causal relationship between her diagnosed cervical degenerative disc disease and her accepted employment duties.

On March 14, 2017 appellant requested reconsideration of the March 1, 2017 merit decision. She argued that Dr. McCarron's April 13, 2016 report established her occupational disease claim.

By decision dated July 27, 2017, OWCP denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant merit review.

On December 18, 2017 appellant again requested reconsideration of the March 1, 2017 merit decision. In a November 29, 2017 note, Dr. Kenneth M. Rosenzweig, a Board-certified orthopedic surgeon, noted that she ruptured a disc in her cervical spine at C5-6 more than 15 years previously, had undergone a single level spinal fusion at that level, and had developed adjacent level syndrome with progression of degenerative disc disease at the adjacent levels. He noted appellant's job duties of lifting, pushing, pulling, reaching, and lifting overhead. Dr. Rosenzweig opined that chronic repetitive use of stiff body parts can result in the progression of degeneration of those body parts manifested as inflammation and swelling. He found that pain and stiffness were the unavoidable consequences of a spinal fusion resulting in adjacent level pathology

³ *Id.*

particularly if one were required to reach, push, pull, or perform heavy lifting. Dr. Rosenzweig opined that all of these activities were known to cause strain to the neck and aggravation to adjacent level syndrome. He found that appellant had a permanent aggravation of her underlying cervical condition due to her employment duties.

By decision dated May 29, 2018, OWCP denied modification of its prior decision, finding that appellant had not submitted rationalized medical opinion evidence.

On September 18, 2018 appellant requested reconsideration and submitted additional medical evidence. In a note dated August 24, 2018, Dr. Rosenzweig reported that she underwent a noninstrumented interbody fusion at C5-6 and was experiencing ongoing neck pain. He performed a physical examination and found minimal neck flexion and extension. Dr. Rosenzweig reviewed appellant's cervical x-rays and found spinal stenosis, fusion at C5-6, collapsed discs at C4-5 and C6-7, and arthritis. He diagnosed adjacent level syndrome with advanced degenerative disc disease and facet hypertrophy at levels above and below. Dr. Rosenzweig opined that appellant's degree of hypertrophic changes and degenerative changes were consistent with repetitive trauma as a rural carrier due to reaching, pushing, pulling, and overhead activities. He noted that her changes were atypical and represented the results of the initial fusion and the occupational hazard of intensive upper extremity and neck use.

By decision dated October 15, 2018, OWCP denied modification, finding that appellant had not submitted rationalized medical evidence establishing causal relationship between her diagnosed cervical degenerative disc disease and her accepted factors of employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 timely filed within the applicable time limitation period of FECA,⁴ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁵ 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.⁶

In an occupational disease claim, appellant's burden of proof 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

⁴ *T.H.*, Docket No. 18-1585 (issued March 22, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *T.H.*, *id.*; *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *T.H.*, *id.*; *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).

claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁷

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.⁸ 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.⁹

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish cervical spine conditions causally related to accepted factors of her federal employment.

Preliminarily, the Board notes that it is unnecessary for it to consider the evidence appellant submitted prior to the issuance of OWCP's August 24, 2016 decision because the Board considered that evidence in its March 1, 2017 decision and found it insufficient to establish causal relationship. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹¹ The Board notes that it has been accepted that appellant sustained employment factors, *i.e.*, her rural carrier duties which include casing mail above shoulder height, lifting packages and trays of mail, loading her vehicle, pushing buggies, and delivering mail. However, appellant has not met her burden of proof to establish causal relationship between a diagnosed medical condition and the accepted employment factors.

In a November 29, 2017 note, Dr. Rosenzweig reported that 15 years previously appellant had ruptured a disc in her cervical spine at C5-6, had undergone a single level spinal fusion at that level, and had since developed adjacent level syndrome with progression of degenerative disc disease. He opined that chronic repetitive use of stiff body parts can result in progression of degenerative of those body parts manifested as inflammation and swelling. Dr. Rosenzweig found that pain and stiffness were the unavoidable consequences of a spinal fusion resulting in adjacent level pathology particularly if one were required to reach, push, pull, or perform heavy lifting. He opined that all of these activities were known to cause strain to the neck and aggravation to adjacent

⁷ *T.H., id.; R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁸ *T.H., id.; I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

⁹ *T.H., id.; I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *M.W.*, Docket No. 18-1624 (issued April 3, 2019); *L.C.*, Docket No. 18-1707 (issued April 3, 2019); *C.D.*, Docket No. 17-2011 (issued November 6, 2018); *Victor J. Woodhams, id.* at 345 (1989).

¹¹ *See B.R.*, Docket No. 17-0294 (issued May 11, 2018).

level syndrome. Dr. Rosenzweig found that appellant had a permanent aggravation of her underlying cervical condition due to her employment duties. While he attributed her diagnosed conditions to her employment duties, his opinion was merely conclusory.¹² The Board has held that a medical opinion is of limited probative value if it is speculative and conclusory in nature.¹³ A medical opinion must provide an explanation of how the specific employment factors physiologically caused or aggravated the diagnosed conditions.¹⁴ Without medical reasoning explaining how the accepted employment activities caused or contributed to the diagnosed condition(s), Dr. Rosenzweig's report is insufficient to establish the claim.

In a note dated August 24, 2018, Dr. Rosenzweig reported that appellant underwent a noninstrumented interbody fusion at C5-6 and was experiencing ongoing neck pain. He diagnosed adjacent level syndrome with advanced degenerative disc disease and facet hypertrophy above and below. Dr. Rosenzweig opined that appellant's degree of hypertrophic changes and degenerative changes were consistent with repetitive trauma as a rural carrier due to reaching, pushing, pulling, and overhead activities. He noted that her changes were atypical and represented the results of the initial fusion and the occupational hazard of intensive upper extremity and neck use.

Dr. Rosenzweig indicated that there was a causal relationship between appellant's employment activities and aggravation of her underlying cervical conditions, but he did not clearly describe the medical mechanism through which specific work activities could have caused or aggravated the diagnosed medical conditions. The Board has held that 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.¹⁵ Dr. Rosenzweig indicated that his findings were "consistent" with appellant's work duties, but he did not adequately explain his reasoning for reaching such a conclusion. His August 24, 2018 note contains conclusory opinions without the necessary rationale explaining how and why the employment factors were sufficient to result in or aggravate the underlying medical condition. The Board has held that such an opinion is insufficient to meet a claimant's burden of proof to establish a claim.¹⁶

As the evidence of record does not contain sufficient rationale explaining causal relationship between the claimed condition and the accepted employment factors, the Board finds that appellant has not met her burden of proof.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

¹² *R.G.*, Docket No. 18-1778 (issued April 9, 2019); *L.C.*, *supra* note 10; *R.V.*, Docket No. 18-1037 (issued March 26, 2019); *B.H.*, Docket No. 18-1219 (issued January 25, 2019).

¹³ *R.G.*, *id.*; *S.B.*, Docket No. 18-1296 (issued January 24, 2019).

¹⁴ *R.G.*, *id.*; *V.T.*, Docket No. 18-0881 (issued November 19, 2018).

¹⁵ *R.G.*, *id.*; *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

¹⁶ *R.G.*, *id.*; *L.C.*, *supra* note 10; *R.V.*, *supra* note 12; *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish cervical spine conditions causally related to accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the October 15, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 16, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board