

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

_____)	
E.W., Appellant)	
)	
and)	Docket No. 18-1423
)	Issued: March 19, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Los Angeles, CA, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On July 17, 2018 appellant filed a timely appeal from a March 26, 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 a medical condition causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On March 29, 2017 appellant, then a 35-year-old foreign air mail clerk, filed an occupational disease claim (Form CA-2) alleging migraines, neck pain, and back pain as a result of her employment duties which entailed pulling, pushing, and lifting. She noted that she first

¹ 5 U.S.C. § 8101 *et seq.*

became aware of her claimed conditions on February 24, 2016 and realized their relationship to her federal employment on March 1, 2016.

In a June 24, 2016 statement, appellant reported that, on March 1, 2016, she was working intake mail from drivers when she started to experience a headache. She notified her supervisor who instructed her to seek medical attention from the employing establishment's physician. Appellant reported seeking treatment with three different neurologists as a result of her condition.

In a statement dated March 15, 2017, appellant alleged that, while working on March 1, 2016, she experienced a bad headache which felt like a brain freeze. She noted that she initially experienced neck pain which escalated into unbearable headaches. Appellant also noted complaints of back pain for which she had previously sought treatment due to issues resulting from pushing, pulling, and lifting while at work. She reported that she had been off work since March 1, 2016.

By letter dated April 5, 2017, the employing establishment controverted the claim. It reported that appellant was evaluated on March 1, 2016 after she complained of a bad headache. The physician diagnosed an upper respiratory infection and acute sinusitis which was inconsistent with a work-related injury. The employing establishment asserted that appellant filed this claim because she had received a notice of removal on November 16, 2016, as she had not returned to work since February 24, 2016.

In support of her claim, appellant submitted medical reports documenting treatment for her alleged conditions. In a March 1, 2016 work status note, Dr. Stephen Greene, Board-certified in emergency medicine, diagnosed acute upper respiratory infection and acute sinusitis. He reported that, based on the history provided along with physical examination findings, appellant's medical condition was inconsistent with a work-related injury. Dr. Greene advised appellant to follow-up with her attending physician on a nonindustrial basis. In a March 1, 2016 duty status report (Form CA-17), he reported that appellant could return to work without restrictions.

In an August 22, 2016 form report, Dr. Raymond R. Lopez, an occupational physician, reported that appellant's employment entailed repetitive work, including pulling stacks of mail and putting them into containers. He noted her complaints of headaches and neck pain. Dr. Lopez diagnosed headaches and a herniated nucleus pulposus (HNP).

By development letter dated April 18, 2017, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded her 30 days to submit the necessary evidence.

In response, appellant submitted work status notes dated February 24, 2016 through April 24, 2017 excusing her from work due to treatment for her conditions.

In a May 10, 2016 diagnostic report, Dr. Alyssa Watanabe, a Board-certified radiologist, reported that a magnetic resonance imaging (MRI) scan of appellant's brain revealed unremarkable findings.

In a May 17, 2016 diagnostic report, Dr. Madeleine Fisher, a Board-certified diagnostic radiologist, reported that a cervical spine MRI scan revealed C5-6 broad-based central protrusion-extrusion with associated posterior annular fissure, mild-to-moderate narrowing of the central canal, and no significant narrowing of the foramen.

In a February 14, 2017 medical report, Dr. Garnik Yegyan, a treating neurologist, reported that appellant presented for follow-up evaluation of migraine headaches which had been occurring in an increasing pattern. He noted that the migraines and neck pain occurred without any known injury. Dr. Yegyan reported that the MRI scan of appellant's brain revealed normal findings while the cervical spine MRI scan revealed a C3-4 disc bulge. He diagnosed tension headaches and chronic neck pain secondary to C3-4 disc bulge.

In an April 25, 2017 medical report, Dr. Artin Minaeian, a Board-certified neurologist, reported that appellant presented for evaluation of migraine headaches. He provided findings on physical examination and diagnosed headaches.

By decision dated June 13, 2017, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish that her diagnosed conditions were causally related to the accepted factors of her federal employment.

On June 30, 2017 appellant requested an oral hearing before an OWCP hearing representative.

A hearing was held on January 17, 2018 and appellant testified in support of her claim. The hearing representative advised appellant of the medical evidence needed to establish her claim. The record was held open for 30 days. In support of her claim, appellant resubmitted medical reports previously of record.

In response to the hearing transcript, the employing establishment also submitted additional factual evidence further controverting appellant's claim. By decision dated March 26, 2018, OWCP's hearing representative affirmed the June 13, 2017 decision, finding that the medical evidence of record was insufficient to establish that her diagnosed conditions were causally related to the accepted factors of her federal 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 filed within the applicable time limitation, 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.² These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.³

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (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.⁴

To establish causal relationship between the condition, as well as any attendant disability claimed, and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.⁵ 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. 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.⁶

ANALYSIS

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

In a March 1, 2016 work status note, Dr. Greene diagnosed acute upper respiratory infection and sinusitis. The Board finds that the report of Dr. Greene is insufficient to establish appellant's claim as he opined that her diagnosed conditions were not caused by a work-related injury.⁷ Rather, Dr. Greene explained that her upper respiratory infection and sinusitis were due to a nonindustrial cause. As his report does not support a work-related occupational injury it is insufficient to meet appellant's burden of proof.⁸

² *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

³ *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).

⁴ See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁵ See 20 C.F.R. § 10.110(a); *M.M.*, Docket No. 18-1366 (issued February 27, 2019); *John M. Tornello*, 35 ECAB 234 (1983).

⁶ *S.H.*, Docket No. 17-1660 (issued March 27, 2018); *James Mack*, 43 ECAB 321 (1991).

⁷ *S.R.*, Docket No. 12-1098 (issued September 19, 2012).

⁸ *G.M.*, Docket No. 15-1288 (issued September 18, 2015).

In an August 22, 2016 form report, Dr. Lopez reported that appellant's employment entailed repetitive work, including pulling stacks of mail and putting them into containers. He diagnosed headaches and herniated disc, but provided no opinion as to the cause of appellant's conditions. 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.⁹ As such, Dr. Lopez' report is insufficient to establish that the diagnosed conditions are a result of the accepted employment factors.¹⁰

In a February 14, 2017 medical report, Dr. Yegyan diagnosed chronic neck pain secondary to C3-4 disc bulge. The Board has consistently held that pain is a symptom, not a compensable medical diagnosis.¹¹ While Dr. Yegyan also noted diagnoses of headaches and a C3-4 disc bulge, he failed to provide an opinion on the cause of those conditions.¹² He related that the migraines and neck pain occurred without any known injury. As such Dr. Yegyan failed to provide an opinion on causal relationship reports are of no probative value and insufficient to meet appellant's burden of proof.¹³

The remaining medical evidence of record is also insufficient to establish appellant's occupational disease claim. Dr. Minaeian's April 25, 2017 medical report only generally diagnosed headaches and provided no discussion pertaining to her federal employment duties. Without mentioning appellant's employment duties, any findings made could not establish causal relationship.¹⁴

The record also includes a May 10, 2016 brain MRI scan which revealed unremarkable findings, as well as a May 17, 2016 cervical spine MRI scan. Diagnostic studies lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.¹⁵ Therefore the Board finds that the diagnostic studies of record are insufficient to establish appellant's claim.

The work status notes dated February 24, 2016 through April 24, 2017 are also insufficient to establish appellant's claim as they fail to provide a firm medical diagnosis which can be attributed to appellant's occupational employment duties. The Board has held that medical

⁹ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁰ *P.O.*, Docket No. 14-1675 (issued December 3, 2015); *S.R.*, Docket No. 12-1098 (issued September 19, 2012).

¹¹ *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

¹² *D.H.*, Docket No. 11-1739 (issued April 18, 2012).

¹³ *Supra* note 10.

¹⁴ *Supra* note 10.

¹⁵ *E.R.*, Docket No. 18-0391 (issued August 24, 2018); see also *D.H.*, Docket No. 11-1739 (issued April 18, 2012).

evidence of record lacks probative value if it is inconsistent as to a diagnosis and the nature of any pathology.¹⁶ Accordingly, these reports are insufficient to meet appellant's burden of proof.¹⁷

The Board finds that the medical evidence of record is insufficient to establish causal relationship between the accepted employment factors and her diagnosed medical conditions.¹⁸

Appellant may submit additional evidence, together 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 medical conditions causally related to the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the March 26, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 19, 2019
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

¹⁶ See *Jerry L. Johnson*, Docket No. 05-0050 (issued April 13, 2005).

¹⁷ *John W. Montoya*, 54 ECAB 306 (2003).

¹⁸ *T.O.*, Docket No. 18-0139 (issued May 24, 2018).