

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

S.S., Appellant)	
)	
and)	Docket No. 20-1141
)	Issued: December 14, 2020
U.S. POSTAL SERVICE, IRVINGTON POST OFFICE, Irvington, NJ, Employer)	
)	

Appearances:
Michael D. Overman, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 12, 2020 appellant, through counsel, filed a timely appeal from a November 26, 2019 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 a cervical spine condition causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On October 11, 2018 appellant, then a 38-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that she developed neck pain, pinched nerves in her hands and herniated discs due to factors of her federal employment. She indicated that she first realized her conditions were caused or aggravated by her federal employment in April 2018. Appellant stopped work on April 24, 2018.

In a May 1, 2018 medical report, Dr. Kaixuan Liu, Board-certified in pain management, noted that appellant presented with complaints of her neck pain and bilateral hand tingling with numbness she developed from several years of wear and tear working at the employing establishment. On evaluation he diagnosed other spondylosis with radiculopathy, cervical region and radiculopathy, cervical region. Dr. Liu recommended that appellant undergo a magnetic resonance imaging (MRI) scan for further evaluation.

In a May 4, 2018 diagnostic report, Dr. Jason Arora, Board-certified in pain management, performed an electromyogram and nerve conduction velocity (EMG/NCV) study that revealed moderate-to-severe bilateral carpal tunnel syndrome, double crush syndrome, and cervical radiculopathy. In a separate diagnostic report of even date, Dr. Ronald Aboody, a Board-certified radiologist, conducted a cervical spine MRI scan that showed C4-5 central disc herniation, C5-6 paracentral disc herniation, C6-7 right-sided disc herniation, and a suspected thyroid module versus cyst on the right lobe of the thyroid gland.

Dr. Liu, in a May 8, 2018 medical report, noted appellant's diagnostic tests and diagnosed other spondylosis with radiculopathy, cervical region and radiculopathy, cervical region. He recommended that she receive a cervical epidural steroid injection (ESI) and physical therapy to treat her conditions.

Sridhar Yalamanchili, a physical therapist, provided an assessment of appellant's symptoms in a May 10, 2018 therapy note.

In a May 21, 2018 operative report, Dr. Kaliq Chang, Board-certified in pain management, administered a cervical ESI to treat appellant's cervical spondylosis and disc herniation.

Appellant also submitted additional physical therapy reports dated from May 23 to 31, 2018.

In a development letter dated October 29, 2018, OWCP advised appellant of the factual and medical deficiencies of her claim. It asked her to complete a questionnaire to provide further details regarding the circumstances of her claimed injury and requested a narrative medical report from her treating physician, which contained a detailed description of findings and diagnoses, explaining how her work activities caused, contributed to, or aggravated her medical condition. OWCP afforded appellant 30 days to respond. No additional evidence was received.

By decision dated December 3, 2018, OWCP denied appellant's occupational disease claim finding that the evidence of record was insufficient to establish the employment events occurred as alleged. It explained that she had not provided a description of the claimed factors of her employment she believed caused her condition. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On December 17, 2018 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on April 11, 2019. Counsel explained that he had received a November 25, 2014 MRI scan of appellant's cervical spine that showed disc bulges that are now herniated as seen in her more recent MRI scans. Appellant detailed her history of employment beginning January 21, 2006 and described her employment duties, including casing, sorting, lifting, loading, and walking routes to deliver mail while carrying approximately 35 pounds for varying amounts of time throughout the week. She began experiencing symptoms in 2011 in her cervical spine when she had difficulty getting out of bed as well as neck pain. Appellant asserted that she did not have any previous problems with her neck and began physical therapy to treat her symptoms that were present until she stopped work in April 2018. She believed that the continuous bending, twisting, raising her arms, pushing carts, loading, and carrying mail aggravated her neck symptoms. Appellant also reasoned that the repetitive grasping and casing of mail aggravated her bilateral hand symptoms. She noted that she was involved in a motor vehicle accident in 2014, but claimed that none of her symptoms worsened due to the accident. Counsel contended that new medical evidence from Dr. Chang would be sufficient to establish causal relationship. The hearing representative concluded that the information appellant provided that day was sufficient to establish the factual component of fact of injury and detailed the medical evidence necessary to establish her claim. She held the case record open for 30 days for the submission of additional evidence.

In a June 5, 2018 medical report, Dr. Liu reviewed diagnostic studies of appellant's cervical spine and subsequent medical treatment, including an ESI and physical therapy. He diagnosed other spondylosis with radiculopathy, cervical region and radiculopathy, cervical region, and recommended that she continue her physical therapy.

In medical reports dated from June 19 to August 23, 2018, Dr. Chang noted appellant's continued neck and arm pain and referenced her twelve and a half years of work as a mail carrier. He indicated that she had been treated for her neck pain several years prior and that she continued her work duties carrying heavy loads of mail on her right shoulder and stacks of magazines in her left arm. Dr. Chang reviewed MRI scans of appellant's cervical spine demonstrating worsening disc damage that was now herniated and opined that her cervical spine condition was the result of years of heavy loads on her arms and neck during her daily work duties. He recommended that she continue physical therapy and advised that she was 100 percent temporarily disabled from work.

Appellant submitted physical therapy notes dated from June 1 to September 19, 2018, detailing her continued treatment for other spondylosis with radiculopathy, cervical region and radiculopathy, cervical region

In a September 11, 2018 medical report, Dr. Liu noted that appellant continued to experience neck pain and bilateral hand tingling with numbness and recommended that she consult

with an orthopedist for further evaluation. He diagnosed other spondylosis with radiculopathy, cervical region, radiculopathy, cervical region, and carpal tunnel syndrome, unspecified upper limb.

Dr. Chang, in an October 30, 2018 medical report, noted that he had evaluated appellant for her continued neck pain and bilateral hand numbness and tingling. On evaluation he diagnosed other spondylosis with radiculopathy, cervical region, radiculopathy, cervical region, and carpal tunnel syndrome, unspecified upper limb. Dr. Chang recommended that she undergo a C6-7 interlaminar ESI to treat her conditions.

In a November 5, 2018 operative report, Dr. Chang administered a cervical ESI to treat appellant's cervical spondylosis and disc herniation. In a subsequent November 20, 2018 medical report, he reported that she experienced approximately 60 percent relief of her neck and arm pain after the ESI.

Along with an April 15, 2019 statement, counsel submitted a November 25, 2014 diagnostic report in which Dr. Alkies Lapas, a Board-certified diagnostic radiologist, conducted a cervical spine MRI scan and found wisteria disc bulges at C3-4 and C4-5, a posterior disc bulge at C5-6 and a right central disc herniation at C6-7. Counsel reasoned that the diagnostic test clearly demonstrated that appellant's condition had worsened because she had developed a herniated disc that was not present in the 2014 scan.

By decision dated May 23, 2019, OWCP's hearing representative affirmed, as modified, the December 3, 2018 decision, finding that the new evidence submitted by appellant was sufficient to establish the factual component of fact of injury. The claim remained denied, however, because appellant failed to submit a rationalized opinion from her treating physician explaining how her diagnosed conditions were causally related to the accepted factors of her federal employment.

On September 5, 2019 appellant, through counsel, requested reconsideration of OWCP's May 23, 2019 decision. Counsel argued that a new narrative medical report from Dr. Chang would be sufficient to establish causal relationship.

In an attached narrative medical report dated June 27, 2019, Dr. Chang recounted treating appellant for neck pain he deemed was due to chronic wear and tear from her federal employment. He observed that she had undergone physical therapy and other treatment for several years and also noted that she was involved in a motor vehicle accident in 2014. Dr. Chang reviewed appellant's history of medical treatment, including physical therapy and ESIs, as well as diagnostic studies of her cervical spine. He diagnosed cervical radiculopathy, cervical disc displacement, cervical spondylosis, and carpal tunnel syndrome. Dr. Chang referenced appellant's employment duties, including sorting, loading, and delivering mail, standing, lifting, twisting, reaching, and carrying up to 30 pounds, and opined that her cervical spine condition had significantly worsened as the result of the physical demands of her occupation. He explained that an excessive amount of bending, lifting and twisting over a long period of time will cause wear and tear on the discs of the spine acting as shock absorbers. Lifting heavy objects causes an inordinate amount of sheer stress on these discs, and in combination with twisting, will aggravate already-injured or inflamed discs. Dr. Chang reasoned that, although appellant was involved in a 2014 motor vehicle accident, a

comparison of her 2014 and 2018 MRI scan studies show interval worsening of her cervical spine, most notably disc herniations at the C3-4 and C4-5 disc levels. He opined that, due to the demands of her occupation, appellant's cervical spine had likely been aggravated and worsened by the daily physical stress of her job.

By decision dated November 26, 2019, OWCP denied modification of its May 23, 2019 decision.

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,³ 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.⁴ 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.⁵

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit 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 identified employment factors.⁶

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁷ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.⁸ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical

³ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *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).

⁶ *R.G.*, Docket No. 19-0233 (issued July 16, 2019). See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).⁹

In a case in which 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 the case is not in posture for decision.

In support of her claim, appellant submitted Dr. Chang's June 27, 2019 narrative report, in which he opined that the physical demands of appellant's federal work duties aggravated her previous cervical spine conditions. Dr. Chang referenced appellant's employment duties, including sorting, loading, and delivering mail, and standing, lifting, twisting, reaching, and carrying up to 30 pounds, and opined that her cervical spine condition had significantly worsened as the result of the physical demands of her occupation. He explained that an excessive amount of bending, lifting, and twisting over a long period of time will cause wear and tear on the discs of the spine acting as shock absorbers. Lifting heavy objects causes an inordinate amount of sheer stress on these discs, and in combination with twisting, will aggravate already-injured or inflamed discs. Dr. Chang also reasoned that, although appellant was involved in a 2014 motor vehicle accident, a comparison of her 2014 and 2018 MRI scan studies reveal interval worsening of her cervical spine, most notably disc herniations at the C3-4 and C4-5 disc levels.

Accordingly, the Board finds that Dr. Chang provided an affirmative and rationalized opinion on causal relationship. Dr. Chang identified employment factors, which appellant consistently claimed had precipitated her cervical conditions, identified physical findings upon examination and treatment, and provided a rationalized opinion citing to the facts of the case. Thus, the Board finds that Dr. Chang's opinion is sufficient to require further development of the record.¹¹

It is well established that, proceedings under FECA are not adversarial in nature, and that while appellant has the burden of proof to establish entitlement to compensation, OWCP shares

⁹ *Id.*; *Victor J. Woodhams*, *supra* note 6.

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

¹¹ *D.H.*, Docket No. 19-0633 (issued January 8, 2020); *J.J.*, Docket No. 19-0789 (issued November 22, 2019); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *A.F.*, Docket No. 15-1687 (issued June 9, 2016). *See also John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

responsibility in the development of the evidence.¹² OWCP has an obligation to see that justice is done.¹³

On remand OWCP shall refer appellant, a statement of accepted facts, and the medical evidence of record to a physician in the appropriate field of medicine. The chosen physician shall provide a rationalized opinion addressing whether the diagnosed cervical conditions are causally related to the accepted factors of appellant's federal employment. If the physician opines that the diagnosed conditions are not causally related, he or she must provide rationale explaining how or why the opinion differs from that of Dr. Chang. Following this and any other further development as may be deemed necessary, OWCP shall issue a *de novo* decision on appellant's claim.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the November 26, 2019 merit decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 14, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹² *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

¹³ *R.B.*, Docket No. 18-0162 (issued July 24, 2019); *K.P.*, Docket No. 18-0041 (issued May 24, 2019).