

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

C.M., Appellant)	
)	
and)	Docket No. 19-0360
)	Issued: February 25, 2020
U.S. POSTAL SERVICE, MAIN POST OFFICE,)	
Niles, MI, Employer)	
)	

Appearances:
Appellant, pro se
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 December 10, 2018 appellant filed a timely appeal from a June 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 a cervical condition causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On September 25, 2017 appellant, then a 55-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained carpal tunnel syndrome and nerve pain in her left arm causally related to casing and delivering mail while in the performance of duty. She

¹ 5 U.S.C. § 8101 *et seq.*

first became aware of her condition on August 1, 2017 and attributed it to factors of her federal employment on August 10, 2017.

In an undated statement, appellant related that she had sought medical treatment on August 10, 2017 due to increasing arm pain after picking up a package. She advised that she had a history of carpal tunnel syndrome in 2009 that had been treated with surgery.

On August 10, 2017 Dr. Tracy Tacket, an osteopath specializing in family medicine, diagnosed chronic left shoulder pain, left upper extremity pain, and weakness of an extremity.

An August 10, 2017 x-ray of the cervical spine revealed advanced arthritic changes at C4-5.

In an August 28, 2017 out of work note, Dr. Tacket diagnosed neck and shoulder pain. She advised that appellant should be excused from work for the week of August 28, 2017, noting that she could not carry more than five pounds or raise her arms above her chest level.

In a development letter dated September 27, 2017, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. It advised her of the type of medical and factual evidence needed, including a detailed description of the employment factors alleged to have caused her condition and a narrative report from a physician explaining how and why the identified employment activities resulted in a diagnosed condition. OWCP attached a questionnaire for completion. It afforded appellant 30 days to submit the necessary evidence.

On September 11, 2017 Dr. Tacket indicated that appellant should remain off work until September 25, 2017.

A September 25, 2017 cervical spine magnetic resonance imaging (MRI) scan revealed moderate-to-severe spinal stenosis at the C3-4 through C5-6 with nerve root impingement.

On September 25, 2017 a certified medical assistant, Angela Harkins, reviewed the results of the MRI scan and advised that lifting and repetitive motion had worsened appellant's condition. She indicated that appellant was unable to work pending further evaluation. On September 28, 2017 Ms. Harkins completed a duty status report (Form CA-17) listing appellant's work restrictions.

In an October 2, 2017 report, Dr. Rafeek O. Woods, a Board-certified neurosurgeon, noted that appellant was scheduled for surgery on October 6, 2017. He diagnosed hand muscle weakness, cervical myelopathy, cervical stenosis of the spinal canal, cervical cord compression with myelopathy, cervical cord myelomalacia, and cervical radiculopathy at C5 and C6.

By decision dated October 31, 2017, OWCP denied appellant's occupational disease claim, finding that she had failed to sufficiently describe the condition claimed or factually establish that the alleged employment factors occurred as described. It noted that she had not responded to its request for a detailed explanation of the employment factors that allegedly contributed to the claimed condition. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On December 8, 2017 appellant requested reconsideration of the October 31, 2017 decision. With her request, she submitted an October 6, 2017 statement responding to OWCP's September 27, 2017 development letter. Appellant attributed her condition to casing and handling mail. She advised that she initially had experienced hand pain in August 2017 and subsequently had developed pain in her arms and shoulders. Appellant described her employment duties and contended that performing these duties over time had caused an injury to her cervical spine.

A computerized tomography (CT) scan of appellant's cervical spine dated October 3, 2017 revealed moderately-severe bilateral C4-5 and right C5-6 degenerative foraminal stenosis secondary to uncovertebral osteophyte, and mild degenerative cord compression at C4-5.

In a work restriction form dated October 9, 2017, Dr. Tacket opined that appellant could not lift or move her arm or sit or stand for extensive periods of time.² She noted that appellant had severe spinal stenosis at C4-5 and extrinsic pressure on the spinal cord and had undergone an October 12, 2017 anterior C4-5 and C5-6 discectomy and arthrodesis, anterior C4-6 instrumentation, and a C4-5 and C5-6 interbody implant. Dr. Tacket advised that she should remain off of work for approximately eight weeks to recover from the operation.

By decision dated March 6, 2018, OWCP modified the October 31, 2017 decision, finding that appellant had factually established that she performed repetitive work duties. It determined, however, that the medical evidence was insufficient to establish that she sustained a diagnosed condition causally related to the accepted employment factors.

On March 19, 2018 appellant requested reconsideration of the March 6, 2018 decision.

On March 12, 2018 Dr. Tacket advised that appellant had cervical foraminal stenosis. She related, "This may not have been caused by her job[,] but was definitely exacerbated by forward bending of the neck and constant turning of [her] head for her job."

By decision dated June 15, 2018, OWCP denied modification of its March 6, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 period of FECA,⁴ 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

² The form contains another signature, but the name of the medical provider is illegible.

³ *Supra* note 1.

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

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 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 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. 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.⁸

ANALYSIS

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

In a report dated March 12, 2018, Dr. Tacket diagnosed cervical foraminal stenosis. She opined that appellant's employment duties of bending her neck forward and repetitively turning her head had exacerbated her cervical foraminal stenosis. Dr. Tacket, however, did not provide medical rationale for her opinion. The Board has held that a medical opinion is of limited value if it is conclusory in nature.⁹ A medical opinion must explain how the implicated employment factors physiologically caused, contributed to, or aggravated the specific diagnosed conditions.¹⁰ Without this explanation, Dr. Tacket's March 12, 2018 report is insufficient to meet appellant's burden of proof to establish her claim.¹¹

On August 10, 2017 Dr. Tacket diagnosed chronic left shoulder and upper extremity pain and weakness of an extremity. On October 2, 2017 Dr. Woods diagnosed hand muscle weakness, cervical myelopathy, cervical stenosis of the spinal canal, cervical cord compression with

⁵ *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 *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).

⁷ *R.M.*, Docket No. 18-0976 (issued January 3, 2019); *P.D.*, Docket No. 17-1885 (issued September 17, 2018).

⁸ *H.B.*, Docket No. 18-0781 (issued September 5, 2018).

⁹ *B.H.*, Docket No. 18-1219 (issued January 25, 2019).

¹⁰ *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *A.B.*, Docket No. 16-1163 (issued September 8, 2017).

¹¹ *Id.*

myelopathy, cervical cord myelomalacia, and cervical radiculopathy at C5 and C6. However, neither physician offered an opinion as to the cause of these diagnosed conditions. Medical evidence which does not offer an opinion regarding the cause of an employee's conditions are of no probative value on the issue of causal relationship.¹²

In an August 28, 2017 note, Dr. Tacket diagnosed neck and shoulder pain and found that appellant was unable to work for the week of August 28, 2017. On September 11, 2017 she found that appellant should not work until September 25, 2017. In an October 24, 2017 work restriction form, Dr. Tacket noted that on October 12, 2017 she had undergone an anterior discectomy, arthrodesis, and interbody implant at C4-5 and C5-6. She opined that appellant should remain off work for eight weeks. The work restriction notes do not specifically address whether the diagnosed conditions are causally related to the accepted factors of employment and, thus, are insufficient to meet appellant's burden of proof.¹³

Appellant further submitted x-rays of her cervical spine and a cervical MRI and CT scans. The Board has held that reports of diagnostic tests lack probative value on the issue of causal relationship as they do not address whether the employment factors caused the diagnosed conditions.¹⁴

Ms. Harkins, a certified medical assistant, completed reports dated September 25 and 28, 2017. As certified medical assistants are not considered "physician[s]" as defined under FECA, her reports are insufficient for purposes of establishing entitlement to FECA benefits.¹⁵

The Board finds that appellant has not submitted sufficiently rationalized medical evidence in support of her claim and thus 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.

¹² *T.K.*, 19-0055 (issued May 2, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ *See D.J.*, Docket No. 17-0364 (issued April 13, 2018).

¹⁴ *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *Y.G.*, Docket No. 19-1188 (issued November 6, 2019).

¹⁵ 5 U.S.C. § 8101(2) provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *See* 5 U.S.C. § 8102(2); *T.G.*, Docket No. 19-0904 (issued November 25, 2019) (medical assistants are not considered physicians under FECA); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants, and physical therapists are not competent to render a medical opinion under FECA). *See also Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

CONCLUSION

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

ORDER

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

Issued: February 25, 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