United States Department of Labor
Employees' Compensation Appeals Board

M.N., Appellant	)	
and	)	**Docket No. 19-1421**
	)	**Issued: March 5, 2020**
U.S. POSTAL SERVICE, POST OFFICE, Caro, MI, Employer	)	

Appearances:
Shelley K. Coe, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 21, 2019 appellant, through counsel, filed a timely appeal from a January 23, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 cervical, thoracic, and lumbar spine conditions causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On March 25, 2013 appellant, then a 37-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she developed a T8-9 disc protrusion, L5-S1 disc herniation, and hemangiomas at T1, T9-10, and L2 due to repetitive trauma while in the performance of duty on or before March 25, 2013. L.M., appellant's supervisor, noted that appellant had last been exposed to work factors on December 7, 2012, when she stopped work and did not return. In support of her claim, appellant provided reports from Desaree Litwiller, a physician assistant, dated from December 7, 2012 through February 25, 2013.[3]

In development letters dated March 28 and April 3, 2013, OWCP advised appellant of the deficiencies of her claim and instructed her as to the factual and medical evidence necessary to establish her claim. It afforded her 30 days to submit additional evidence and respond to its inquiries.

In response, appellant submitted an unsigned November 19, 2012 diagnosis tracking sheet and additional reports from Ms. Litwiller dated from November 21, 2012 through May 21, 2013.[4]

By decision dated June 12, 2013, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that the alleged employment events occurred as she described. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On July 30, 2013 appellant requested reconsideration. She submitted a second occupational disease claim (Form CA-2) dated March 25, 2013, attributing her spinal conditions to the physical stresses of driving a long life vehicle (LLV) over poorly maintained rural roads, with the onset of severe cervical spine pain upon awakening on November 19, 2012.

In a report dated April 15, 2013, Dr. Naveed Mahfooz, a Board-certified internist, diagnosed intramedullary hemangiomas of the spine, degenerative disc disease, two herniated discs, radiculopathy of both upper extremities, neuropathy, muscle spasms, and migraine

[3] A December 13, 2012 magnetic resonance imaging (MRI) scan study of the thoracic and lumbar spine demonstrated a left-sided paracentral disc protrusion at T8-9 with mild flattening of the ventral spinal cord, right-sided degenerative facet changes at T9-10 with effacement of the thecal sac, mild-to-moderate foraminal narrowing at T1-2 due to osteophytic spurring and hemangiomas at T7 and T10.

[4] A November 30, 2012 MRI scan of the cervical spine which demonstrated mild spondylosis from C5 through T1 without central canal stenosis, mild narrowing of the neural foramina bilaterally at C7-T1 secondary to facet arthropathy and uncovertebral joint arthropathy, and a T1 hemangioma.

headaches. He noted that appellant had not had similar symptoms in the past. Dr. Mahfooz held her off from work.[5]

By decision dated October 28, 2013, OWCP denied modification of its June 12, 2013 decision finding that appellant's description of the alleged employment events was insufficiently detailed.

On June 3, 2014 appellant, through counsel, requested reconsideration.

In support of her request for reconsideration, appellant provided a May 6, 2014 statement noting prior claims for back and right shoulder injuries.[6] She asserted that her job duties required repetitive bending, overhead reaching, lifting up to 70 pounds, and driving an LLV over uneven roads while seated on a metal driver's seat with little suspension or cushioning. Appellant noted that her spinal and bilateral upper extremity symptoms had progressed slowly over time, culminating with severe pain and immobility when she awoke at home on November 19, 2012. She submitted additional medical evidence.[7]

OWCP received April 19 and September 10, 2013 reports from Dr. Paul La Clair, a Board-certified physiatrist, noting a history of chronic right-sided sciatica, with the onset of acute cervical spine symptoms on November 19, 2012. Dr. LaClair described appellant's work duties and reviewed her treatment history. He diagnosed mechanical neck pain, diffuse myofascial pain, right L5 radiculitis, and right sacroiliac joint dysfunction.

In an April 2, 2014 report, Dr. Mahfooz acknowledged that appellant's job duties as a rural carrier required repetitive heavy lifting, repetitive overhead reaching, and bending, repetitive turning and twisting of the cervical spine, and driving an LLV. He noted that on November 21, 2012 she presented with an acute exacerbation of cervical, thoracic, and lumbar spine pain with paraspinal spasm and right hip pain. Dr. Mahfooz diagnosed torticollis, degenerative cervical disc disease with cervicalgia, spondylosis from C6 through T1, a thoracic intermedullary hemangioma, thoracic degenerative disc disease with a left paracentral protrusion at T9-10, thoracic pain with radiation, bulging intervertebral discs with underlying degenerative disc disease, right L5 radiculitis, right sacroiliac joint dysfunction, sacroiliitis, and sciatica. He opined that repetitive lifting, bending, twisting, and driving the LLV resulted in degenerative disc disease which progressed to acute disc protrusions, disc bulging, and paraspinal spasms. Dr. Mahfooz explained that appellant's cervical spine pathology, cervical disc bulges, and lumbar disc bulges were

[5] Appellant also submitted additional reports from Ms. Litwiller.

[6] Under OWCP File No. xxxxxx408, OWCP accepted that appellant sustained a thoracic spine strain when loading her delivery vehicle on October 26, 2000. Under OWCP File No. xxxxxx982, it accepted that she sustained adhesive capsulitis of the right shoulder on or before March 3, 2006.

[7] March 26, 2013 computerized tomography scans of the cervical and lumbar spine demonstrated straightening of the normal cervical lordotic curvature, minimal degenerative changes of the mid-lower cervical spine, and minimal annular bulges from L4 through S1.

consistent with repetitive strain injuries and excessive forces caused by heavy lifting with repetitive twisting and turning.[8]

On August 21, 2014 OWCP modified the date of injury from March 25, 2013 to November 19, 2012.

On October 9, 2014 OWCP referred appellant for a second opinion to Dr. Emmanuel Obianwu, a Board-certified orthopedic surgeon. It provided the medical record, a statement of accepted facts (SOAF), and a list of questions for his review. In a report dated November 12, 2014, Dr. Obianwu reviewed the medical record and SOAF. On examination, he found significantly restricted motion throughout the spine and slightly diminished sensation over the median nerve distribution of the right hand. Dr. Obianwu diagnosed: a resolved soft tissue injury of the cervical, thoracic, and lumbar spine; cervical spondylosis; degenerative disc disease; arthritic changes throughout the cervical spine; thoracic spondylosis; mild lumbar spondylosis; and a right foraminal disc protrusion at L5-S1. He opined that appellant's duties as a rural carrier had not caused or contributed to any of the diagnosed conditions. Dr. Obianwu attributed her degenerative disc disease solely to aging with possible contribution from obesity. He returned appellant to full duty.

By decision dated December 22, 2014, OWCP modified its October 23, 2013 decision to accept the alleged employment factors, but denied appellant's occupational disease claim as causal relationship was not established. It accorded the weight of the medical evidence to Dr. Obianwu.

On December 21, 2015 appellant, through counsel, requested reconsideration. Appellant submitted additional evidence.[9]

In a January 6, 2014 report, Dr. Muhammad K. Ahsan, an internist specializing in pain management, noted the onset of back pain and cervicalgia in 2012. He diagnosed cervical and lumbar spondylosis with left-sided T5 radiculopathy, bilateral L5-S1 radiculopathy, and bilateral hand numbness.

In chart notes dated from April 16, 2014 through April 11, 2016, Dr. Mahfooz held appellant off from work due to severe fibromyalgia, neck, back, and right hip pain.

OWCP also received reports dated from December 18, 2014 through January 13, 2015 by Dr. Joseph G. Adel, a Board-certified neurosurgeon, who diagnosed degenerative disc disease. Additionally, it received pain management reports dated from February 6 to April 17, 2015 by Dr. Tarek Ezzeddine, Board-certified in family practice, and Dr. Syed Sami, a family practitioner and orthopedic surgeon.

[8] Appellant also submitted additional chart notes signed by Ms. Litwiller dated from April 1, 2013 to April 10, 2014.

[9] Appellant also submitted chart notes signed by a physician assistant dated from May 8, 2014 to March 16, 2018.

By decision dated October 24, 2017, OWCP denied modification, finding that the additional evidence submitted was insufficient to outweigh Dr. Obianwu's opinion.[10]

On October 23, 2018 appellant, through counsel, requested reconsideration and contended that new medical evidence would be sufficient to establish causal relationship. Appellant asserted that Dr. Obianwu's opinion was vague and poorly rationalized.

In chart notes dated from November 16, 2017 to August 2, 2018, Dr. Mahfooz renewed medications. In a report dated December 21, 2017, he noted that appellant had sustained an occupational injury a few years previously. Dr. Mahfooz diagnosed low back pain, right leg numbness, lumbar arthritis, degenerative disc disease, radiculopathy, and right hip pain. He found appellant totally and permanently disabled from work.

In a report dated October 17, 2018, Dr. Todd K. Best, a Board-certified physiatrist, noted an occupational right shoulder injury in 2000 when appellant lifted a heavy bag of mail, and the onset of severe cervical spine symptoms on November 19, 2012. He related her account of falling many times on icy ground while delivering mail, pounding open frozen mailboxes with a rubber mallet, and using her right arm to brace herself when driving the LLV over uneven roads to avoid jarring her back. On examination, Dr. Best noted weakness in the left lower extremity, bilateral cervical paraspinal spasm, and limited range of motion of the cervical spine, lumbar spine, right hip, and right shoulder. He also reviewed medical records and imaging studies. Dr. Best diagnosed cervical disc derangement at C5-6, C6-7, and C7-T1 with subsequent spondylosis and bilateral C7-T1 foraminal stenosis, multilevel thoracic disc derangement with a T8-9 disc protrusion flattening the ventral spinal cord, multilevel lumbar disc derangement with L5-S1 disc protrusion causing right foraminal narrowing, and right rotator cuff impingement with adhesive capsulitis. He explained that repetitive heavy lifting while at work caused adhesive capsulitis of the right shoulder. Driving over potholes caused "constant jarring pressure on the cervical, thoracic, and lumbar spinal discs," compounded by repetitive rotational forces from sorting and delivering mail. These forces caused T8-9 and L5-S1 disc herniations, microscopic tears in the C5-6, C6-7, and C7-T1 discs resulting in disc bulges, culminating in spondylosis and bilateral neural foraminal narrowing. Dr. Best opined that appellant was totally and permanently disabled from work.[11]

By decision dated January 23, 2019, OWCP denied modification.

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

[10] In its October 24, 2017 decision, OWCP noted that an April 2014 chart note referenced a motor vehicle accident. Appellant submitted an October 25, 2018 statement contending that she had not been in a motor vehicle accident. In its January 23, 2019 decision, OWCP accepted that she had not been in a motor vehicle accident.

[11] Appellant also provided chart notes dated from February 8 through October 4, 2018 which do not bear a legible signature, February 16, 2018 lumbar x-rays demonstrating mild degenerative changes from L2 through L4, and physical therapy notes dated from February 20 to August 27, 2018.

time limitation period of FECA,[12] 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.[13] 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.[14]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee 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 employment factors identified by the employee.[15]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[16] 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.[17] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).[18]

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.[19]

Section 8123(a) of FECA provides that if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall

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

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

[14] *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).

[15] *M.L.*, Docket No. 19-0813 (issued November 26, 2019); *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).

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

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

[18] *M.L.*, *supra* note 15*; M.V.*, *id*.; *Victor J. Woodhams*, *supra* note 15.

[19] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *N.C.*, Docket No. 19-1191 (issued December 19, 2019); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.[20] This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[21] When there exists opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[22]

ANALYSIS

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

Appellant claimed that she sustained cervical, thoracic, and lumbar spine conditions due to repetitive motion and driving an LLV while in the performance of duty on or before November 19, 2012. OWCP accepted that these work events occurred as alleged.

Dr. Mahfooz, appellant's treating physician, diagnosed intramedullary hemangiomas of the spine, degenerative disc disease, herniated discs, radiculopathy of both upper extremities, right L5 radiculitis, right hip pain, neuropathy, muscle spasms, and migraine headaches. He opined in an April 2, 2014 report that the accepted work factors of repetitive lifting, bending, twisting, and driving the LLV caused excessive forces to the spine, resulting in repetitive strain injuries, degenerative disc disease, and disc protrusions.

In a report dated October 17, 2018, Dr. Best reviewed medical records and provided a detailed description of the accepted work factors. He opined that driving an LLV over uneven road surfaces caused jarring pressure on cervical, thoracic, and lumbar spinal discs, in addition to strain from repetitive rotational forces while sorting and delivering mail. Dr. Best explained that this combination of forces caused C5-6, C6-7, and C7-T1 disc bulges, T8-9 and L5-S1 disc herniations, spondylosis, and bilateral neural foraminal narrowing.

By contrast, Dr. Obianwu, a second opinion physician, opined in his November 12, 2014 report that the accepted work factors had not caused or contributed to diagnosed degenerative disc disease with multilevel bulges and protrusions, but provided little in the way of rationale in support of this opinion. He attributed these conditions to aging with possible influence from obesity.

Dr. Mahfooz and Dr. Best provided a rationalized description of how the accepted work factors caused or contributed to the diagnosed conditions. Dr. Obianwu, however, opined that there was no causal relationship between the identified employment factors and appellant's spinal conditions. The Board, therefore, finds that a conflict in medical opinion exists regarding whether

[20] 5 U.S.C. § 8123(a); *M.W.*, Docket No. 19-1347 (issued December 5, 2019); *C.T.*, Docket No. 19-0508 (issued September 5, 2019); *R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

[21] 20 C.F.R. § 10.321.

[22] *M.W., supra* note 20; *C.T., supra* note 20; *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

her sustained cervical, thoracic, and lumbar spine conditions causally related to repetitive lifting, bending, reaching, and driving an LLV while in the performance of duty.

OWCP's regulations provide that, if a conflict exists between the medical opinion of the employee's physicians and the medical opinion of a second-opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination.[23] The Board will thus remand the case to OWCP for referral to an impartial medical examiner regarding whether appellant has met her burden of proof to establish that she sustained cervical, thoracic, and lumbar spine conditions due to the accepted employment factors.[24] Following this and any such further development as may be deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the January 23, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: March 5, 2020
Washington, DC

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

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

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

[23] 5 U.S.C. § 8123(a); *M.W.*, *supra* note 20.

[24] *Id*.