

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

_____)	
Y.M., Appellant)	
)	
and)	Docket No. 22-0385
)	Issued: September 26, 2022
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, Employer)	
_____)	

Appearances: *Case Submitted on the Record*
*Russell Uliase, Esq., for the appellant*¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On January 19, 2022 appellant, through counsel, filed a timely appeal from an August 19, 2021 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.³

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.*

³ The Board notes that, following the August 19, 2021 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

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 December 7, 2020 appellant, then a 50-year-old city carrier assistant, filed an occupational disease claim (Form CA-2) alleging that she developed right shoulder pain radiating up the neck, which caused headaches and numbness, due to factors of her federal employment. She specifically noted “over worked and constant repetition.” Appellant advised that she first became aware of her condition on August 1, 2020 and realized its relation to her employment on August 10, 2020. She stopped work on December 3, 2020.

On the reverse side of the claim form, the employing establishment controverted appellant’s claim alleging that appellant never reported the injury and that she had preexisting arthritis.

Appellant submitted an attending physician’s report (Form CA-20) dated November 19, 2020 by Dr. Eric Zabat, a Board-certified family practitioner, who indicated that appellant worked as a mail carrier and had experienced bilateral arm pain for the past three to four months. Dr. Zabat reported that a cervical x-ray demonstrated loss of normal lordosis at C1-7, C6-7, endplate osteophytes, and joint space narrowing. He further noted that a magnetic resonance imaging (MRI) scan confirmed mild narrowing of the right C6-7. Dr. Zabat diagnosed cervical radiculopathy. He checked a box marked “Yes” indicating that the condition was aggravated by carrying mail. In a letter of even date, Dr. Zabat requested that appellant be excused from work until November 30, 2020.

In a duty status report (Form CA-17) dated November 19, 2020, Dr. Zabat noted diagnosis of cervical radiculopathy and advised that appellant was totally disabled from work.

In a December 4, 2020 note, Dr. Zabat indicated that appellant was seen for a neck injury and requested that she be excused from work for the next two weeks.

In a development letter dated December 10, 2020, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of evidence needed and provided a questionnaire for her completion. In a separate development letter of even date, OWCP also requested additional information from the employing establishment. It afforded both parties 30 days to submit the necessary evidence.

OWCP received a report dated November 19, 2020 by Dr. Zabat who indicated that appellant was seen for complaints of neck pain, stiffness, and muscle spasms for the past four months. Dr. Zabat noted that appellant worked up to 15 hours per day as a mail carrier and that she felt that her condition was exacerbated by her work duties. On examination of appellant’s cervical spine, he observed generalized tenderness and pain with range of motion testing. Spurling’s test was positive. Dr. Zabat diagnosed work-related injury, cervical spondylosis, and bulge of cervical disc without myelopathy.

In a December 3, 2020 examination report and note, Dr. Zabat indicated that appellant was seen for follow-up examination for neck pain and noted that she worked as a mail carrier. He recounted that appellant's pain and bilateral hand numbness was aggravated from carrying mail. Dr. Zabat conducted an examination and diagnosed work-related injury, cervical spondylosis, and bulge of cervical disc without myelopathy.

In a December 17, 2020 note, Dr. Zabat indicated that appellant was evaluated in his office that day and advised that she should remain out of work.

On December 21, 2020 OWCP received appellant's response. Appellant recounted that she worked the entire month of July 2022 without a day off and that she performed her mail carrier duties for 10 to 14 hours per day. She reported that she experienced sharp pain in her upper shoulders to the back of her head, which caused headaches, and pain radiating to her elbows.

OWCP received a position description for a city carrier and an undated and unsigned statement indicating that the employing establishment was controverting appellant's claim.

In a letter dated January 6, 2021, Dr. Zabat indicated that appellant was treated in his office and advised that she would be out of work for two weeks due to a medical condition.

By decision dated January 14, 2021, OWCP denied appellant's occupational disease claim, finding that she had not established that her diagnosed cervical conditions were causally related to the accepted factors of her federal employment.

On February 19, 2021 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review, which was held *via* teleconference on June 10, 2021. Appellant's attorney argued that Dr. Zabat, her treating physician, provided a well-rationalized opinion on causation.

In an undated statement, appellant asserted that she was currently unable to work due to a work-related injury. She described how her mail carrier duties required daily walking up and down stairs and carrying 35 pounds on her shoulders for 3 to 3.5 hours. Appellant explained that her difficulties began when she was forced from 10-hour to 12-hour days. She indicated that she began to experience uncontrollable headaches, numbness, and neck pain. Appellant reported that she sought medical advice when she suddenly became dizzy while unloading her postal vehicle one day and almost fell backwards off the dock. She noted that she had undergone physical therapy since November 2020 to improve her condition and requested to work a different position.

In reports dated December 17, 2020 through February 25, 2021, Dr. Zabat noted that appellant was evaluated for follow up of neck pain that started at work in July 2020. He indicated that appellant worked as a mail carrier, up to 15 hours per day, and that she felt like the symptoms were exacerbated by work. Dr. Zabat provided examination findings and diagnosed work-related injury, cervical spondylosis, and bulge of cervical disc without myelopathy.

In notes dated November 11, 2020 through February 25, 2021, Dr. Zabat indicated that appellant was evaluated that day and would be out of work due to a medical condition.

In a January 20, 2021 note, Dr. Zabat reported that appellant had been under his care for a work-related injury, cervical spondylosis, and bulge of cervical disc without myelopathy. He noted that she would be out of work for the next two to three weeks.

In a work restriction form dated February 19, 2021, Dr. Zabat indicated that appellant could work full time with restrictions of lifting and carrying up to 20 pounds, standing, walking, climbing, kneeling, bending, stooping, twisting, and reaching up to four hours per day.

In a March 25, 2021 note, Dr. Zabat recommended that appellant begin a gradual progression into working full-duty status, starting four hours per day and progressing into full time as tolerated by pain.

By decision dated August 19, 2021, OWCP's hearing representative affirmed the January 14, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including 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 of FECA,⁵ 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.⁶ 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.⁷

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant 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 claimant.⁸

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁹ The opinion of the physician must be based on a complete factual

⁴ *Id.*

⁵ *D.D.*, Docket No. 19-1715 (issued December 3, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *Y.G.*, Docket No. 20-0688 (issued November 13, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *C.H.*, Docket No. 19-1781 (issued November 13, 2020); *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).

⁸ *T.M.*, Docket No. 20-0712 (issued November 10, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

⁹ *J.F.*, Docket No. 18-0492 (issued January 16, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

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 specific employment factors identified by the claimant.¹⁰ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors, is sufficient to establish causal relationship.¹¹

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.

Appellant submitted reports and CA-17 forms dated November 19, 2020 through March 25, 2021 by Dr. Zabat. Dr. Zabat provided examination findings and diagnosed work-related injury, cervical spondylosis, and bulge of cervical disc without myelopathy. He indicated that appellant worked 15 hours a day as a mail carrier and reported that she felt like her neck symptoms were exacerbated by her work duties. Dr. Zabat did not, however, express his own opinion addressing the cause of appellant's cervical conditions, but merely repeated what appellant had told him. 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 on the issue of causal relationship.¹² Accordingly, these reports are insufficient to meet appellant's burden of proof.

In a Form CA-20 dated November 19, 2020, Dr. Zabat diagnosed cervical radiculopathy and checked a box marked "Yes" indicating that the condition was employment related. The Board has held, however, that when a physician's opinion on causal relationship consists only of a checkmark on a form, without further explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.¹³

As the medical evidence of record is insufficient to establish causal relationship between a medical condition and the accepted factors of federal employment, the Board finds that appellant has not met her burden of proof to establish her claim.

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.

¹⁰ *A.M.*, Docket No. 18-0562 (issued January 23, 2020); *I.J.*, 59 ECAB 408 (2008); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹¹ *E.W.*, Docket No. 19-1393 (issued January 29, 2020); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹² *J.H.*, Docket No. 20-1645 (issued August 11, 2021); *P.C.*, Docket No. 20-0855 (issued November 23, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ *C.G.*, Docket No. 20-1092 (issued September 22, 2021); *O.M.*, Docket No. 18-1055 (issued April 15, 2020); *Gary J. Watling*, 52 ECAB 278 (2001).

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 August 19, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 26, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board