United States Department of Labor
Employees' Compensation Appeals Board

M.P., Appellant	)	
	)	**Docket No. 21-0861**
and	)	**Issued: February 16, 2023**
	)	
U.S. POSTAL SERVICE, CAROL STREAM PROCESSING & DISTRIBUTION CENTER, Carol Stream, IL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 12, 2021 appellant filed a timely appeal from an April 29, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the April 29, 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 diagnosed medical condition in connection with the accepted factors of her federal employment.

FACTUAL HISTORY

On May 14, 2019 appellant, then a 62-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that on February 14, 2019 she experienced an aggravation of bilateral tarsal tunnel syndrome accepted under OWCP File No. xxxxxx696 due to factors of her federal employment.[3] OWCP assigned the present claim OWCP File No. xxxxxx944. On May 14, 2019 appellant filed a second Form CA-2 under OWCP File No. xxxxxx944 for an aggravation of bilateral carpal tunnel syndrome accepted under OWCP File No. xxxxxx541.[4] On May 15, 2019 she filed a third Form CA-2 under OWCP File No. xxxxxx944 for neck, bilateral shoulder, and bilateral elbow conditions alleging that she first became aware of her condition March 14, 2019 and related it to factors of her federal employment on March 28, 2019. Appellant attributed these conditions to Manager K.P. changing her bid from working as a general clerk in a carpeted office to a manual distribution clerk, which required her to case mail into a 105-slot case and stand and walk on a concrete workroom floor.

In a May 22, 2019 letter, the employing establishment controverted the claim, contending that appellant had filed her claims to avoid performing duties assigned to her on November 8, 2018 as part of a settlement agreement.

In a development letter dated May 31, 2019, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In response, appellant provided a May 27, 2019 report by Dr. Thomas MacRoy, a licensed clinical psychologist. Dr. MacRoy related appellant's contentions that employing establishment managers disregarded her medical restrictions, changed her shift, and arbitrarily assigned her job duties outside of her medical restrictions. He noted that appellant "performs tasks which aggravate both her physical problems and increase her emotional stresses." Dr. MacRoy diagnosed

[3] Under OWCP File No. xxxxxx696, OWCP accepted that on September 30, 2010 appellant sustained bilateral tarsal tunnel syndrome causally related to factors of her federal employment. He also has several additional previously-accepted claims before OWCP including: right wrist tendinitis and bilateral carpal tunnel syndrome under OWCP File No. xxxxxx541; right shoulder, right hand, and cervical spine sprains sustained on February 2, 2002 under OWCP File No. xxxxxx155; left de Quervain's tenosynovitis and left radial styloid tenosynovitis due to factors of her federal employment under OWCP File No. xxxxxx949; bilateral lower leg contusions sustained on January 11, 2008 under OWCP File No. xxxxxx926; right forearm and facial contusions sustained on August 1, 2008 under OWCP File No. xxxxxx256; and lumbar sprain and L2-3, L3-4, and L5-S1 disc herniations sustained on August 7, 2009 under OWCP File No. xxxxxx298.

[4] *Id.*

depression and concluded that, "the impact of her situation [at work] is cumulative and without change is only likely to worsen."

OWCP received the first page of a report dated June 10, 2019, wherein Dr. J. Michael Morganstern, an orthopedic surgeon, indicated that appellant had sustained bilateral tarsal tunnel syndrome, a lower extremity contusion, plantar fascial fibromatosis, and lumbosacral radiculopathy caused by factors of her federal employment.

In a June 27, 2019 report, Dr. Ankur M. Chhadia, a Board-certified orthopedic surgeon, noted treating appellant commencing on October 27, 2017. He noted findings of tenderness to palpation and limited motion throughout the upper extremities, neck and back, positive Phalen's and Tinel's tests, a positive compression test at the carpal tunnel, June 19, 2019 electrodiagnostic findings consistent with cervical radiculopathy and mild right carpal tunnel syndrome, possible mild left cubital tunnel syndrome lumbar disc bulges, right rotator cuff tendinosis, and left glenohumeral arthrosis, mild-to-moderate left rotator cuff tendinosis. Dr. Chhadia diagnosed herniated and bulging cervical discs, bilateral shoulder tendinosis, bilateral carpal and cubital tunnel syndrome, bilateral de Quervain's tenosynovitis, and a herniated lumbar disc. He opined that appellant's job duties precipitated and accelerated underlying conditions, resulting in a permanent aggravation. Dr. Chhadia indicated that appellant could require additional injections and surgery.

On July 9, 2019 OWCP received a January 6, 2016 report by Dr. Malcolm D. Herzog, a podiatrist, who opined that appellant had sustained bilateral tarsal tunnel syndrome and bilateral plantar fasciitis due to repetitive walking, turning, twisting, reaching, pulling, lifting, squatting, and ascending and descending stairs while at work.

By decision dated August 2, 2019, OWCP denied appellant's occupational disease claims under File No. xxxxxx944, finding that the factual evidence of record was insufficient to establish that the identified employment factors occurred, as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On August 24, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. Following the hearing, which was held on January 15, 2020, appellant submitted additional evidence.

In a January 22, 2020 statement, appellant described aching, numbness, and paresthesias throughout her neck, back and all extremities, which she attributed to her duties as a general clerk, including casing mail and standing and walking on a concrete workroom floor.

Appellant also submitted additional medical evidence. In a February 10, 2020 report, Dr. Morganstern reviewed the January 15, 2020 hearing transcript and medical records. He asserted that as a manual distribution clerk, appellant had been required to stand, walk, lift/carry up to 40 pounds, sort letters into a 105-slot mail case, and perform other repetitive tasks for 8 to 10 hours a day, 5 to 6 days a week. Dr. Morganstern opined that the general clerk position was within appellant's medical restrictions, but that the manual distribution clerk position had aggravated cervical disc herniation, bilateral shoulder tendinitis, cubital tunnel syndrome, carpal tunnel syndrome, de Quervain's tenosynovitis, low back pain, and lumbar radiculopathy. He

explained that moving and sorting mail required strenuous weight bearing on the cervical spine and upper extremities, exacerbating cervical weakness, cervical neuropathies, degenerative joint deterioration, rotator cuff tearing, tendinitis, rotator cuff impingement, carpal tunnel syndrome, cubital tunnel syndrome, shoulder tendinopathies, and disc bulges. Reaching to lift or handle materials over her head added to cervical spine strain, causing further deterioration of the joint spaces and increasing her risk for disc disease and impingement.

On February 14, 2020 OWCP received appellant's November 23, 2018 acceptance of a full-time, modified position as a general clerk, working from 10:00 a.m. to 6:50 p.m. Tuesday through Saturday.

On February 14, 2020 OWCP received a March 30, 2017 duty status report (Form CA-17) by Dr. Morganstern, returning appellant to sedentary work. Dr. Morganstern limited simple grasping to four hours a day, with no kneeling, no reaching above the shoulder, no operating motor vehicles, and a 10- to 15-minute break every two hours.[5] Appellant also provided a February 15, 2019 work status report by Dr. Chhadia, restricting her to light duty, with lifting limited to 10 pounds. In a February 25, 2019 report, Dr. Manjari Ranganathan, a Board-certified family practitioner, recommended that appellant work from 7:00 a.m. to 15:50 p.m. to accommodate attendance at medical appointments.

By decision dated March 31, 2020, OWCP's hearing representative set aside the August 2, 2019 decision, finding that appellant had established the physical duties of her mail processing clerk position as factual and remanded the case for OWCP to further develop the medical evidence and administratively combine appellant's claims under OWCP File Nos. xxxxxx541, xxxxxx949, xxxxxx696, xxxxxx926, xxxxxx298, and xxxxxx944 as they concerned the same parts of the body. OWCP subsequently administratively combined the claims under OWCP File No. xxxxxx155 effective April 9, 2020.[6]

On October 5, 2020 OWCP received a July 18, 2019 report by Dr. Morganstern, diagnosing bilateral tarsal tunnel syndrome, lower limb contusion, plantar fascial fibromatosis, and lumbosacral radiculopathy. He attributed these conditions to repetitive lifting, carrying, reaching, walking, and prolonged standing while sorting mail in the performance of duty.

On December 7, 2020 OWCP obtained a second opinion regarding the nature and extent of appellant's continuing conditions from Dr. John C. Barry, a Board-certified orthopedic surgeon.

[5] A December 3, 2018 magnetic resonance imaging (MRI) scan of the cervical spine demonstrated progressive multilevel disc degeneration from C3 through C7. A February 23, 2019 MRI scan of the right shoulder demonstrated mild-to-moderate rotator cuff tendinosis, mild reactive fluid within the subacromial/subdeltoid bursa, mild glenohumeral joint arthritis, and moderate acromioclavicular joint arthritis with morphology predisposing appellant to impingement. A February 23, 2019 MRI scan of the left shoulder demonstrated severe glenohumeral and moderate acromioclavicular joint arthritis. A March 25, 2019 lumbar MRI scan demonstrated mild lumbar spondylosis. A June 19, 2019 electromyogram/nerve conduction velocity (EMG/NCV) study demonstrated mild left C5-6 radiculopathy, possible left ulnar neuropathy, and post right median release latencies of no clinical significance.

[6] Under OWCP File No. xxxxxx633, the Board issued an order on November 30, 2020 to administratively combine appellant's musculoskeletal condition claims in OWCP File Nos. xxxxxx256, xxxxxx496, xxxxxx633, and xxxxxx926 with the latter serving as the master file. *Order Remanding Case*, *M.P.*, Docket No. 20-0829 (issued November 30, 2020).

Dr. Barry reviewed a statement of accepted facts (SOAF) and the medical record. On examination, he found mild tenderness over the tendo-Achilles insertion into the calcaneus indicative of bilateral Achilles tendinitis, negative Tinel's sign at the left tarsal tunnel, no sign of a leg contusion, full range of lumbar spine motion, negative straight leg raising tests bilaterally, and a normal neurologic examination of the lower extremities. Dr. Barry found no objective sign of the accepted conditions. He opined that the minimal findings on examination, and MRI scan evidence of cervical disc herniation, were "all degenerative in nature and not injury related." Dr. Barry noted no objective evidence of cubital or carpal tunnel syndrome, de Quervain's tenosynovitis, or lumbar radiculopathy. He explained that appellant's symptoms of mild lower back pain with weather changes were consistent with degenerative disease.

In January 2021, OWCP found a conflict of medical opinion between Dr. Barry, for the government, and Dr. Morganstern, for appellant, regarding whether appellant's employment duties as a manual distribution clerk as set forth in OWCP File No. xxxxxx944 had caused or aggravated bilateral lower extremity contusions accepted under OWCP File No. xxxxxx926, bilateral tarsal tunnel syndrome accepted under OWCP File No. xxxxxx696, and a low back sprain and lumbar disc herniation accepted under OWCP File No. xxxxxx498. To resolve the conflict, it selected Dr. Richard Conant, a Board-certified orthopedic surgeon, as an impartial medical specialist. On January 13, 2021 OWCP referred appellant, together with a SOAF, the medical record, and a series of questions, for an impartial medical evaluation with Dr. Conant.

In a February 25, 2021 report, Dr. Conant reviewed the medical record and a SOAF. On examination he found no tenderness or paraspinal spasm of the cervical spine, no tenderness of either shoulder, slightly reduced range of left shoulder abduction, bilaterally negative Phalen's tests, negative Tinel's tests at the cubital and carpal tunnel bilaterally, negative Finkelstein's test, no tenderness of the first dorsal compartment of either wrist, slight sensitivity of the Achilles tendon in both ankles with no swelling, no symptoms with compression or percussion of the tarsal tunnels, diffuse lumbar tenderness, restricted lumbar motion, and negative straight raising tests bilaterally. Dr. Conant noted that neurologic examination of the upper and lower extremities demonstrated no sensory, motor, or reflex deficits. He opined that based on his review of the medical record and his physical examination findings, that "regardless of her working conditions," appellant's neck and back symptoms were "manifestations of unrelated preexisting cervical and lumbar spine degeneration," and were disproportionate to clinical findings. Dr. Conant noted that there was "no evidence of lumbar radiculopathy, bilateral cubital, tarsal, and carpal tunnel syndromes or de Quervain's tenosynovitis." He concluded that appellant's duties as a manual distribution clerk had "neither caused nor aggravated the above referenced conditions."

By *de novo* decision issued April 29, 2021, OWCP denied appellant's occupational disease claim finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the identified employment factors. It accorded Dr. Conant's opinion the special weight of the medical evidence.

LEGAL PRECEDENT

An employee seeking benefits under FECA[7] 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 filed within the applicable time limitation period of FECA,[8] 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.[9] 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.[10]

In an occupational disease claim, appellant's burden of proof 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.[11]

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.[12] 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.[13]

ANALYSIS

The Board finds that appellant has met her burden of proof to establish a diagnosed medical condition in connection with the accepted factors of her federal employment.

On May 27, 2019 Dr. MacRoy diagnosed depression as resulting from the emotional and physical aspects of her job.

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[7] *Supra* note 1.

[8] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB153 (1989).

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

[10] *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).

[11] *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

[12] *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388 (2008).

[13] *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008).

In June 10 and July 18, 2019 reports, Dr. Morganstern diagnosed bilateral tarsal tunnel syndrome, a lower extremity contusion, plantar fascial fibromatosis, and lumbosacral radiculopathy. He concluded that these diagnosed medical conditions were caused by factors of appellant's federal employment. On February 10, 2020 Dr. Morganstern opined that appellant's manual distribution clerk position had aggravated cervical disc herniation, bilateral shoulder tendinitis, cubital tunnel syndrome, carpal tunnel syndrome, de Quervain's tenosynovitis, low back pain, and lumbar radiculopathy.

Dr. Chhadia reported on June 27, 2019 that he began treating appellant on October 27, 2017 diagnosed herniated and bulging cervical discs, bilateral shoulder tendinosis, bilateral carpal and cubital tunnel syndrome, bilateral de Quervain's tenosynovitis, and a herniated lumbar disc. He opined that appellant's job duties precipitated and accelerated underlying conditions, resulting in a permanent aggravation.

In light of the foregoing diagnoses by several of appellant's attending physicians, the Board thus finds that the evidence of record establishes diagnoses in connection with the accepted factors of her federal employment. The Board further finds, however, that the case is not in posture for decision with regard to whether any or all of the diagnosed medical conditions are causally related to the accepted employment factors.

As the medical evidence of record establishes diagnosed medical conditions, the case must be remanded for consideration of the medical evidence with regard to the issue of causal relationship.[14] Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met her burden of proof to establish an injury causally related to the accepted factors of her federal employment.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish a diagnosed medical condition in connection with the accepted factors of her federal employment. The Board further finds, however, that the case is not in posture for decision with regard to whether a diagnosed medical condition is causally related to the accepted factors of her federal employment.

[14] *See R.C.*, Docket No. 22-1099 (issued December 28, 2022); *F.D.*, Docket No. 21-1045 (issued December 22, 2021).

ORDER

IT IS HEREBY ORDERED THAT the April 29, 2021 decision of the Office of Workers' Compensation Programs is reversed in part and set aside in part; the case is remanded for further proceedings consistent with this decision of the Board.

Issued: February 16, 2023
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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