

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

G.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Hayes, VA, Employer**

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**Docket No. 12-1643
Issued: December 28, 2012**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 30, 2012 appellant, through her attorney, filed a timely appeal from a decision of the Office of Workers' Compensation Programs (OWCP) dated May 30, 2012. 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 sustained right-sided carpal tunnel and right shoulder conditions in the performance of duty.

FACTUAL HISTORY

On May 22, 2011 appellant, a 60-year-old rural mail carrier, filed a Form CA-2 claim for benefits, alleging that she developed right carpal tunnel and right shoulder conditions causally related to employment factors.

¹ 5 U.S.C. § 8101 *et seq.*

In a May 31, 2012 report, Dr. Barbaro J. Perez, a Board-certified orthopedic surgeon, stated that appellant had complaints related to right-sided carpal tunnel syndrome. He advised that she wanted to have her carpal tunnel condition addressed during her right shoulder arthroscopy procedure, which she was scheduled to undergo on June 1, 2011. Dr. Perez stated that appellant had pain in her right wrist and hand in addition to numbness and tingling in her median nerve distribution and pinky. He advised that she had a positive carpal tunnel compression test, as well as positive Tinel's test at the carpal tunnel.

Dr. Perez stated that appellant's shoulder examination was very similar to her previous examination, in which she related chronic right shoulder pain. He diagnosed right rotator cuff tear, right-sided acromioclavicular (AC) arthritis and right shoulder impingement syndrome.

By decision dated September 16, 2011, OWCP denied the claim, finding that appellant failed to submit medical evidence sufficient to establish that her claimed conditions were related to factors of employment.

On October 4, 2010 appellant requested a review of the written record.

By decision dated December 2, 2011, an OWCP hearing representative set aside and remanded the September 16, 2011 decision, finding that Dr. Perez's May 31, 2011 report was sufficient to warrant further development of the medical evidence. The hearing representative directed OWCP to prepare a statement of accepted facts and refer appellant, along with appropriate questions addressing the issues of causal relationship and medical necessity of related surgeries, to Dr. Perez for response within 30 days. Dr. Perez did not submit a response to an OWCP request letter dated December 14, 2011.

By decision dated February 24, 2012, OWCP denied modification of the September 16, 2011 decision.

In a February 13, 2012 report, received by OWCP on March 2, 2012, Dr. Perez responded to OWCP's questionnaire. He stated that he had been treating appellant since February 11, 2011 for right shoulder rotator cuff tear, impingement syndrome and AC joint arthritis as well as a history of right carpal tunnel syndrome. Appellant had experienced pain in the shoulder for a significant period of time; the pain had worsened since August 2010. Dr. Perez noted that she was a postal worker who performed a lot of repetitive tasks, including using her arm for overhead activities and pulling, pushing and lifting on a regular basis. He indicated that appellant had undergone magnetic resonance imaging (MRI) scans of the cervical spine and right shoulder, in addition to a positive electromyogram (EMG) for right-sided carpal tunnel. Dr. Perez stated that she initially attempted conservative management, which was not successful. Appellant eventually underwent right shoulder rotator cuff repair, acromioplasty distal clavicle resection, in addition to right carpal tunnel release on June 6, 2011. Dr. Perez stated that he most recently treated her on December 5, 2011, at which time she was still experiencing some pain in her right shoulder and hand with some decreased motion.

In response to OWCP's December 14, 2011 questionnaire, Dr. Perez reviewed her history of injury and reiterated his previously stated diagnoses. With regard to causal relationship, he opined that, although appellant did not recall having a specific injury at work, it was probable

that her partial right rotator cuff tendon tear, right shoulder impingement syndrome and right carpal tunnel syndrome could be related back to her repetitive work duties including overhead activities, pushing, pulling and lifting. Regarding her arthritic condition in the AC joint, Dr. Perez advised that her work environment accelerated the problem but this condition was probably preexisting. He asserted that the aggravation of her AC joint arthritis was currently a nonissue since the distal clavicle was resected and the arthritic changes in the AC joint had been removed.

On March 6, 2012 appellant requested a review of the written record.

By decision dated May 30, 2012, an OWCP hearing representative affirmed the February 24, 2012 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing that 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, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ 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.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed, or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is usually rationalized medical 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.⁵

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed bilateral carpal tunnel and hand

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Id.*

tendinitis conditions and her federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁶

ANALYSIS

In the instant case, appellant has failed to submit any medical opinion containing a rationalized, probative report which relates her claimed right-sided carpal tunnel and right shoulder conditions to factors of her employment. For this reason, she has not discharged her burden of proof to establish her claim that these conditions were sustained in the performance of duty.

Appellant submitted reports from Dr. Perez, who related findings of pain on examination and diagnosed right-sided carpal tunnel, right rotator cuff tear, right-sided acromioclavicular arthritis and right shoulder impingement conditions. Dr. Perez did not, however, provide a probative, rationalized medical opinion that the claimed conditions or disability were causally related to employment factors. He opined that appellant had bilateral carpal tunnel syndrome and bilateral tendinitis in his May 31, 2011 and February 13, 2012 reports and indicated that it was probable that these conditions were caused or aggravated by her employment duties such as repetitive motions, handling, sorting and lifting mail. The reports from Dr. Perez are of limited probative value as they do not contain any medical rationale of how or why appellant's claimed right-sided carpal tunnel, right rotator cuff tear, right-sided acromioclavicular arthritis and right shoulder impingement conditions were currently affected by or related to factors of employment.⁷ The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁸ Dr. Perez's opinion is of limited probative value for the further reason that it is generalized in nature and equivocal in that he only noted summarily that appellant's conditions were causally related to her employment duties. He did not sufficiently describe these job duties or explain how such duties physiologically caused the diagnosed conditions of right-sided carpal tunnel syndrome, right rotator cuff tear, right-sided acromioclavicular arthritis and right shoulder impingement syndrome. Dr. Perez's reports thus did not constitute adequate medical evidence to establish that appellant's claimed conditions were causally related to her employment.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her conditions were caused, precipitated or aggravated by her employment is

⁶ See *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

⁷ *William C. Thomas*, 45 ECAB 591 (1994).

⁸ See *Anna C. Leanza*, 48 ECAB 115 (1996).

sufficient to establish causal relationship.⁹ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

OWCP advised appellant of the evidence required to establish her claim; however, she failed to submit such evidence. Consequently, appellant has not met her burden of proof in establishing that her claimed right-sided carpal tunnel syndrome, right rotator cuff tear, right-sided acromioclavicular arthritis and right shoulder impingement syndrome conditions were causally related to her employment.

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.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof in establish that her claimed right-sided carpal tunnel and right shoulder conditions were sustained in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the May 30, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 28, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁹ *Id.*