

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

M.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Edison, NJ, Employer**

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**Docket No. 15-607
Issued: May 15, 2015**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 27, 2015 appellant, through his attorney, filed a timely appeal from August 5 and November 7, 2014 merit decisions 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.²

ISSUE

The issue is whether appellant met her burden of proof to establish that her cervical, lumbar, and bilateral shoulder conditions were causally related to factors of her employment.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence following the November 7, 2014 decision. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. See 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005). Appellant may submit that evidence to OWCP along with a request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

FACTUAL HISTORY

On August 28, 2013 appellant, then a 37-year-old parcel post machine operator, filed an occupational disease claim alleging that she sustained “other disorders due to repeated trauma.” She first became aware of her condition and realized it resulted from her employment on July 29, 2013. Appellant began to work modified duty with restrictions of sitting for half an hour, keying zip codes, and stretching for 10 minutes in between. The employing establishment reported that she claimed that her pain began in June 2013 but she did not notify her supervisor until August 27, 2013 when she submitted a light-duty form.

In a handwritten statement dated August 28, 2013, appellant related that she began to experience shoulder, neck, back, and chest pain about a month ago. She noted that she also experienced jaw pain and swollen gums. Appellant stated that she underwent a magnetic resonance imaging (MRI) scan examination which revealed positive results. She believed that she sustained a work-related injury due to heavy lifting, processing mail, lifting over her shoulders, taking out trays from the containers, and putting mail in the trays.

In a July 29, 2013 MRI scan of the lumbar spine, Dr. Mohammad I. Jilani, a Board-certified diagnostic radiologist, who specializes in neuroradiology, did observe central L5-S1 disc herniation and L4-5 disc bulge as appellant had noted. He also noted a history of lumbar radiculopathy.

In an August 19, 2013 MRI scan of the cervical spine, Dr. Noam S. Eshkar, a Board-certified diagnostic radiologist who specializes in neuroradiology, related appellant’s complaints of neck pain. He reported no vertebral body compression fracture and no cervical spinal cord lesion. Dr. Eshkar observed a straightening of the cervical lordosis. He opined that appellant had focal central disc herniation at C3-4 and C4-5, broad-based left paracentral disc herniation at C6-7, and disc bulging at C5-6.

In an August 30, 2013 letter, the employing establishment controverted appellant’s claim alleging that her claim was too vague to establish fact of injury and that the medical documentation was insufficient to support her claim.

In a September 13, 2013 report, Dr. Rosa Matos Neno, a Board-certified internist, noted that appellant was under her care for cervical radiculopathy, intractable neck and mid-back pain, and herniated discs of the cervical and lumbar spine. She reported that appellant’s medical condition occurred due to working at the employing establishment lifting heavy boxes, bags, and parcels and “keying” every day for the past 15 years. Dr. Neno excused appellant from work for the period September 12 to 13, 2013 and advised her not to return to work until October 2, 2013.

In a letter dated September 27, 2013, OWCP advised appellant that the evidence submitted was insufficient to establish her claim and requested additional evidence.

In September 27 and October 8, 2013 reports, Dr. Mark A.P. Filippone, Board-certified in physical medicine and rehabilitation, related that appellant was a clerk who was injured while working at the employing establishment. Appellant stated that, since 2003, she experienced low back, neck, and left shoulder pain as well as numbness and tingling into the right upper extremity

when she attempted to do repetitive activities with the arm. Dr. Filippone noted that she had worked as a clerk for the employing establishment since 1994 working as a keyer on the small parcel and bundle sorter or letter sorting machine (LSM). He reviewed some of appellant's medical records and noted the abnormal MRI scans of the cervical and lumbar spine. Dr. Filippone related that she denied any history of trauma or injury other than that, which occurred at work, but noted that she may have had a fall a year ago.

Upon examination of appellant's back, Dr. Filippone observed that she could forward flex at the waist with the fingertips to five inches from the floor with right low back pain and could extend the low back to 20 degrees with increasing low back pain. He also noted pain, guarding, and spasm in the cervical paraspinals and suboccipital musculature and pain, guarding, and spasm in the lumbar paraspinals, more over the right than the left sciatic notch. Dr. Filippone provided range of motion findings for the neck. Examination of the upper extremities revealed pain on palpation over the anterior aspect of both shoulders and limitation of terminal glenohumeral abductions bilaterally with pain and impingement in the shoulders. Tinel's and Phalen's signs were positive to the wrists and tarsal tunnels bilaterally. Dr. Filippone diagnosed cervical radiculitis, internal derangement of both shoulders, and lumbosacral radiculitis. He recommended that appellant continue physical therapy three times weekly for the next five weeks. Dr. Filippone included various attending physician's reports dated September 27, 2013 to May 7, 2014 which indicated that she was totally disabled.

In reports dated October 8 to November 8, 2013, Dr. Filippone noted that appellant's medical history and review of systems were unchanged. Upon examination, he observed pain, guarding, and spasm in the cervical paraspinals right more than left and right more so than left in the lumbar paraspinals. Dr. Filippone reported that central and peripheral neurologic examinations were unchanged. He stated that appellant remained totally disabled and recommended physical therapy.

In a decision dated November 20, 2013, OWCP denied appellant's occupational disease claim finding that she had not established fact of injury. It determined that she had failed to describe the factors of employment that she believed caused her medical conditions and had failed to submit medical evidence to demonstrate a diagnosed condition causally related to her federal employment.

In a letter dated December 3, 2013, counsel requested a hearing, which was held on May 22, 2014. Appellant stated that she first began working for the employing establishment in 1994 as a casual clerk. She described her duties as lifting up to 70 pounds, lifting trays weighing up to 15 pounds, and processing and sorting mail on machines. After two years appellant began to work as a keyer on the LSM machine. Appellant's duties required sitting down at a computer, typing zip codes with both hands, pitching mail case, and netting trays to be sorted. In 1998, she became a regular clerk position working on the parcel sorter machine. Her duties involved keying with her right hand while pushing with the left hand in order to sort mail and put it in the bag. In 2000, appellant transferred to another processing center and worked in the wrapper stand where she had to key and push mail. She estimated that the center moved 1,000 pieces of mail an hour. In 2008, appellant transferred to work with military international mail which involved bagging the mail, strapping, and lifting mail to the postcon or roller. She noted that the bags weighed 15 to 20 pounds, but could weigh up to 70 pounds. Appellant reported that sorting mail

also involved repetitive lifting and twisting with her back. She noted that all her duties were repetitive and used her arms.

Appellant stated that in 2000 she began to experience pain in her lower back and was eventually diagnosed with a bulging disc and minimal herniation. She related that the pain worsened and she began to experience neck, shoulder, and left jaw pain. Appellant also began to experience headaches and vertigo. She described the medical treatment and various diagnostic examinations she underwent. Appellant continued to work and do the same repetitive duties. In September 2013, she noted that the pain became so severe that she told her supervisor she was not feeling well and made a doctor's appointment with Dr. Neno. Appellant was placed on light duty, but the employing establishment was unable to accommodate her restrictions. She noted that she was advised to file for workers' compensation benefits. Appellant stated that she did not have any other injuries or accidents to her neck, back, or shoulder. Counsel noted that it was clear that she underwent a lot of repetitive work, including sorting mail, processing mail, and working on sorting machinery from 1994 to 2013 and that her low back, neck, and right arm conditions worsened over time. He contended that the various medical reports supported causal relationship.

In November 8 and December 6, 2013 reports, Dr. Filippone noted that he reexamined appellant for injuries that she sustained while at work for the employing establishment. He related that she continued to complain of numbness and tingling in the upper and lower extremities. Upon examination, Dr. Filippone observed pain, guarding, and spasm in the cervical and lumbar paraspinals. Central and peripheral neurologic examinations were unchanged. Dr. Filippone related that appellant's symptoms had continued over the last 10 years since about 2003, especially when she attempted to do any repetitive activities, which were an essential part of her job. He reviewed a report from her regarding her employment duties as a parcel post distribution clerk and noted that her position required repetitive movements of the neck, shoulders, upper extremities, and mid and low back. Dr. Filippone opined that "in the absence of any prior problems with these areas they were deemed as over-use phenomenon from the postal examiners and solely the result of appellant's present complaints." He stated that there was "no medical reason other than her job for these symptoms and no other history of trauma or injury to account for these symptoms." Dr. Filippone concluded that appellant's condition was "occupational in nature." He noted his disagreement with the November 20, 2013 denial decision and stated that he has provided a comprehensive medical report and medical opinion with medical reasons as to the cause of her condition.

In a December 17, 2013 report, Dr. Neno stated that appellant had been her patient since 2000 for complaints of neck, shoulder, and back pain which had worsened over time. She related that appellant's studies revealed herniated discs in both the cervical and lumbar spine. Dr. Neno stated that appellant suffered from radiculopathy due to her herniated disc disease. She opined that appellant's current medical condition had developed and was a direct cause of her working at the employing establishment lifting heavy boxes and bags, parcels, and being hunched over a computer keyboard "keying" in data daily over the past 15 to 16 years. Dr. Neno recommended that appellant work light duty until further notice.

In office notes dated July 19, 2013 and January 8, 2014, Dr. Neno related appellant's complaints of hematuria, neck pain, right hip, gum and jaw pain, and back pain for the past two weeks. She diagnosed cervical radiculopathy, neck pain, and backache.

In January 20 and February 24, 2014 reports, Dr. Filippone reexamined appellant and noted that she continued to complain of neck, shoulder, and back pain. He observed pain, guarding and spasm in the cervical, thoracic, and lumbar paraspinals. Central and peripheral neurologic examinations were unchanged. Dr. Filippone noted that, as a clerk, appellant had to push 1200-pound post coms and that she was in no condition to do that. He stated that she remained totally disabled.

In a March 13, 2014 letter, counsel stated that Dr. Neno's March 3, 2014 report supported causal relationship between appellant's neck, upper extremity, and low back conditions and her work with the employing establishment.

In a March 3, 2014 report, Dr. Neno stated that on September 17, 2012 she examined appellant for complaints of persistent right upper extremity pain radiating to her back, especially after lying down. Appellant returned in July, August, September, October, and December 2013 again complaining of neck, low back, and shoulder pain which had worsened over time. Dr. Neno noted that appellant had abnormal MRI scans of the cervical and lumbar spine. She opined that appellant's current and ongoing medical condition had developed and was a direct cause of her working at the employing establishment lifting heavy boxes, bags, parcels, and being hunched over a computer keyboard daily for the past 15 to 16 years.

In a March 28, 2014 report, Dr. Filippone noted that he first examined appellant on September 27, 2013. He related that since 2003 she began to notice low back, bilateral neck, and shoulder pain as well as numbness and tingling into the right upper extremity. Dr. Filippone noted that appellant's symptoms had gone on for the last 10 years and reviewed her diagnostic reports. He stated that except for the elevated cholesterol, she had no ongoing medical illnesses and denied any history of trauma or other workers' compensation injuries. Upon examination, Dr. Filippone observed pain, guarding, and spasm in the cervical paraspinals and shoulders, right more so than left, and in the lower right lumbar paraspinals. He diagnosed disc herniations at C3-4, C4-5, and C6-7, bulging disc at C5-6, central L5-S1 disc herniation, L4-5 disc bulge, and internal derangement of both shoulders. Dr. Filippone stated that appellant worked as a clerk and that this position required repetitive movements of the neck, shoulders, and upper extremities, and mid and low back. He noted that she also had to push 1200-pound post coms. Dr. Filippone reported that it was "well within reasonable probability that the patient's present complaints were solely the result of the strenuous repetitive moments required by her job at the employing establishment, which she had been doing since 1994." He explained that there was no medical reason, other than her job, for these symptoms and no other history of trauma or injury to account for these symptoms. Dr. Filippone recommended that appellant continue on total disability.

In a May 7, 2014 report, Dr. Filippone noted that appellant's medical history remained unchanged. Upon examination, he observed that she could actively laterally flex the neck to 40 degrees to the right and left and to 30 degrees with pain in the contralateral cervical paraspinals. Appellant could forward flex the neck to 25 degrees and extend to 15 degrees before

experiencing pain in the cervical paraspinals. Examination of the back revealed that she could not extend beyond neutral or five degrees past neutral without experiencing increasing low back pain, right more than left. Dr. Filippone also noted pain, guarding, and spasm in the cervical paraspinals but more so in the lumbar paraspinals, sciatic notches, and retrochanteric areas. He reported that appellant remained totally disabled.

In a May 27, 2014 letter, counsel stated that he was enclosing some old medical records that were referred to at the hearing. Appellant submitted various reports from 2000 to 2005 regarding treatment for her cervical spine, lumbosacral spine, and bilateral shoulders. On May 1, 2000 Dr. Qwie T. Chew, a Board-certified diagnostic radiologist, reported a normal lumbosacral spine upon x-ray. In a July 25, 2005 MRI scan of the cervical spine, Dr. Marina Perlov, a Board-certified diagnostic radiologist, observed straightened lordotic curvature and stated that it was an otherwise normal examination.

In duty status and attending physician reports dated June 13, 2014, Dr. Filippone indicated that appellant remained totally disabled from work.

In a decision dated August 5, 2014, an OWCP hearing representative affirmed the November 20, 2013 denial decision with modification. She found that appellant performed the duties of a distribution clerk as described, but denied the claim finding insufficient medical evidence to establish a diagnosed condition causally related to her employment duties.

On November 3, 2014 OWCP received appellant's request for reconsideration. Counsel stated that Dr. Filippone provided an amendment of his initial report with additional medical reasons for his conclusion that appellant developed shoulder, neck, and back conditions as a result of her duties as a clerk for the employing establishment.

In an August 15, 2014 report, Dr. Filippone stated that appellant's medical history was unchanged and that there was no interval or intercurrent history of trauma or injury. He clarified his September 27, 2013 report that she did not have a fall a year ago. Dr. Filippone related that appellant continued to complain of neck, shoulder, and low back pain despite not working and modifying her activities of daily living. Upon examination, he observed pain, guarding, and spasm in the cervical paraspinals bilaterally, right more than left, as well as in the lumbar paraspinals and right sciatic notch. Dr. Filippone requested authorization to perform electromyography and nerve conduction studies of appellant's upper extremities to ascertain the nature, extent, and level of any cervical spine nerve entrapment and cervical radiculopathy. He opined that "all of the above is workers' compensation caused solely." Dr. Filippone provided attending physician and duty status reports which indicated that appellant remained totally disabled.

By decision dated November 7, 2014, OWCP denied modification of the August 5, 2014 decision finding that the medical evidence was insufficient to establish that appellant sustained an injury causally related to factors of her employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence³ including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.⁴ 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.⁵

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁶ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.⁷

ANALYSIS

Appellant alleges that she sustained cervical, lumbar, and upper extremity conditions as a result of her employment duties as a parcel post machine operator. OWCP accepted that she worked for the employing establishment but denied appellant's claim finding insufficient medical evidence to establish that she sustained any diagnosed conditions causally related to factors of her employment. The Board finds that the medical evidence demonstrates that appellant sustained diagnosed cervical, lumbar, and bilateral shoulder conditions, but it fails to establish that these conditions resulted from her employment.

Appellant submitted various reports by Dr. Filippone dated September 27, 2013 to August 15, 2014. Dr. Filippone reviewed her history and noted that she denied any history of trauma or injury. He related that an August 2013 MRI scan of the cervical spine revealed disc herniation at C3-4, C4-5, and C6-7 as well as disc bulging at C5-6. A July 2013 MRI scan of the lumbar spine demonstrated central L5-S1 disc herniation and L4-5 disc bulge. Dr. Filippone provided findings on examination and diagnosed cervical radiculitis, internal derangement of both shoulders, and lumbosacral radiculitis. He recommended physical therapy and stated that appellant was totally disabled.

³ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁴ *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁶ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

⁷ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

In a December 6, 2013 report, Dr. Filippone reviewed appellant's employment duties as a parcel post distribution clerk and noted that her position required repetitive movements of the neck, shoulders, upper extremities, and mid and low back. He opined that there was "no medical reason other than her job for these symptoms and no other history of trauma of injury or injury to account for these symptoms." In a March 28, 2014 report, Dr. Filippone reiterated that it was "well within reasonable probability that the patient's present complaints were solely the result of the strenuous repetitive moments required by appellant's job at the employing establishment, which she had been doing since 1994." He explained that there was no medical reason, other than her job, for these symptoms and no other history of trauma or injury to account for these symptoms.

The Board finds that Dr. Filippone's opinion on causal relationship lacks probative value because it is vague and equivocal, and does not adequately explain the causal relationship between appellant's cervical, lumbar, and upper extremity conditions and her employment duties.⁸ Dr. Filippone's opinion that it was "well within reasonable probability" that appellant's condition resulted from her repetitive job duties is speculative in nature and of diminished probative value.⁹ The Board further finds that, although his reports contain an accurate description of appellant's employment duties and affirmative statements of causation, they do not contain a sufficient explanation, based on medical rationale, of how any of her duties would have physiologically caused or contributed to her various medical conditions.¹⁰ Instead, Dr. Filippone attributes appellant's medical conditions to her employment based merely on the fact that she has no other history of injury or trauma. He fails to explain how her particular employment duties caused or contributed to her diagnosed conditions. The Board has found that rationalized medical opinion evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician.¹¹ For these reasons, Dr. Filippone's reports are insufficient to establish appellant's claim.

Similarly, Dr. Neno's opinions also lack medical rationale to support her opinion of causal relationship. In reports dated September 13, 2013 to March 3, 2014, she reviewed appellant's history and provided findings on examination. Dr. Neno noted that appellant suffered from cervical radiculopathy due to her herniated disc disease, neck pain, and back ache. She opined that appellant's current and ongoing medical condition had developed and was a direct cause of her working at the employing establishment lifting heavy boxes, bags, parcels, and being hunched over a computer keyboard daily for the past 15 to 16 years. Dr. Neno, however, did not provide any medical explanation or rationale to support her opinion. Medical evidence that states a conclusion but does not offer any rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of

⁸ *Roy L. Humphrey*, 57 ECAB 238, 242 (2005); *Michael E. Smith*, 50 ECAB 313 (1999).

⁹ *D.D.*, 57 ECAB 734, 738 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004).

¹⁰ *See M.W.*, Docket No. 14-1664 (issued December 5, 2014); *D.B.*, Docket No. 14-295 (issued April 25, 2014).

¹¹ *L.F.*, Docket No. 10-2287 (issued July 6, 2011); *Solomon Polen*, 51 ECAB 341 (2000).

causal relationship.¹² Accordingly, Dr. Neno's reports are insufficient to establish appellant's claim.

The additional July 29 and August 19, 2013 diagnostic reports are likewise insufficient to establish causal relationship. While they contain diagnoses of cervical and lumbar conditions, they do not have any opinion on the cause of these conditions. The Board has found that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹³

On appeal, counsel alleged that Dr. Filippone and Dr. Neno's reports constituted *prima facie* factual and medical evidence to establish appellant's occupational disease claim. As explained above, however, the Board has found that Dr. Filippone and Dr. Neno's reports are of diminished probative value and fail to establish causal relationship.

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.¹⁴ Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated, or aggravated by her employment is sufficient to establish causal relationship.¹⁵ Causal relationship must be established by rationalized medical opinion evidence.¹⁶ As appellant has not submitted such rationalized medical evidence in this case, she did not meet her burden of proof to establish her occupational disease 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish cervical, lumbar, and bilateral shoulder conditions causally related to factors of her employment.

¹² *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

¹³ *R.E.*, Docket No. 10-679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

¹⁴ *Joe T. Williams*, 44 ECAB 518, 521 (1993).

¹⁵ *Jennifer Atkerson*, 55 ECAB 317 (2004).

¹⁶ *Supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the November 7 and August 5, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 15, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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