

File Number:
HR10-D-H

RECEIVED FEB 03 2010

U S. DEPARTMENT OF LABOR

OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 50
LONDON, KY 40742-8300
Phone: (202) 693-0045

JAN 27 2010

Date of Injury:
Employee:

Dear Ms. _____:

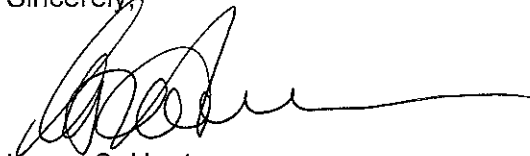
This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of Hearings and Review.

A hearing was held on 11/19/2009. As a result of such hearing, it has been determined that the decision issued by the district office should be vacated and the case remanded to the district office for further action as explained in the enclosed copy of the Hearing Representative's Decision.

Your case file has been returned to the Jacksonville District Office. You may contact that office by writing to our Central Mail Room at the following address:

US DEPARTMENT OF LABOR
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 6 JAC
LONDON, KY 40742-8300

Sincerely,



Karen S. Hunt
Hearing Representative

PAUL H FELSER
ATTORNEY AT LAW
7 EAST CONGRESS ST
SUITE 400
SAVANNAH, GA 31401

U. S. Department of Labor
Office of Workers' Compensation Programs

DECISION OF THE HEARING REPRESENTATIVE

*In the matter of the claim for compensation under Title 5, U. S. Code 8101 et seq. of
claimant, employed by the
, claim number The hearing was held on November 19,
2009, in Atlanta, Georgia*

The issue is whether or not the evidence establishes that the claimant has right upper extremity or cervical spine conditions caused or contributed to by factors of her federal employment.

The _____ employed the claimant, _____ born _____, as a rural letter carrier in _____. On _____, the claimant filed a Form CA-2, Notice of Occupational Disease, claiming that reaching and stretching using her arm to deliver mail to boxes caused or contributed to a torn rotator cuff, tendonitis, arthritis, and herniated cervical spine discs. The claimant indicated she first became aware of the condition on January 5, 2009, and did not know when she first realized it was caused or aggravated by her employment. The claimant stopped work on or about May 28, 2009, and returned to duty on or about August 28, 2009. The employer indicated the claimant underwent surgery on May 28, 2009.

The medical evidence submitted with the claim included reports of cervical spine and right shoulder MRIs of January 15, 2009. The cervical spine MRI showed a C5-6 central to paracentral disc protrusion which appeared to efface the cord resulting in minimal cord flattening. The right shoulder MRI showed supraspinatus and infraspinatus tendinopathy and a possible small focal tear of the anterior distal-most aspect of the supraspinatus tendon.

Reports of office visits with _____, M.D., on April 20 and 23, 2009, provided current complaints and examination findings, but did not provide opinion that the diagnosed right upper extremity or neck conditions were causally related to the identified employment exposure.

A May 21, 2009, note from Dr. _____ stated the claimant's right shoulder and arm pain and left arm and elbow pain were worsened by repetitive arm movements when she was at work delivering mail. Dr. _____ noted the MRI findings. The doctor stated the claimant's pain could be worsened by repetitive arm movements but did not provide opinion in support of a causal relationship between a diagnosed medical condition and the identified employment exposure.

A May 22, 2009, disability slip, physician's signature illegible, noted that unspecified job duties contributed to the claimant's symptoms. The doctor did not indicate a causal relationship between a diagnosed medical condition (as opposed to symptoms) and the identified employment exposure.

By letter dated June 5, 2009, the Office advised the claimant that additional factual and medical evidence was necessary to determine whether or not she was eligible for benefits. The Office requested that the claimant provide a factual statement detailing the nature, duration, and frequency of the employment activities to which she attributed her condition, the development of the claimed condition, and when she experienced pain. The Office also requested that the claimant submit a comprehensive medical report which described: symptoms; results of examinations and tests; diagnosis; the treatment provided; the effect of the treatment; and, the doctor's opinion, with medical reasons, on the cause of the claimant's condition. The Office noted that if the physician felt that exposure or incidents in the claimant's federal employment contributed to the condition, and explanation of how such exposure contributed should be provided.

The claimant provided the requested factual information. She indicated she had surgery on May 28, 2009, although she did specify the procedure.

Reports of office visits with Dr. _____ on January 5, 2009, did not provide a history of the identified employment exposure or opinion that the claimant had a medical condition or conditions causally related thereto.

A May 21, 2009, follow-up report of _____, M.D., did not provide a history of the identified employment exposure or opinion that the claimant had a medical condition or conditions causally related thereto.

A June 29, 2009, note from Dr. _____ stated that the claimant stated her right shoulder and arm pain were worsened by repetitive arm movements when she was delivering mail. Dr. _____ noted the MRI findings. Dr. _____ stated the abnormal MRI findings were likely contributing to the claimant's symptoms and that her pain could continue to be worsened by repetitive arm movements. Dr. _____ did not provide opinion in support of a causal relationship between a diagnosed medical condition and the identified employment exposure.

By decision dated July 10, 2009, the Office denied the claim for the reason that the evidence was insufficient to establish that the claimed condition was causally related to the accepted factors of employment.

The claimant disagreed with that decision, and by letter postmarked July 22, 2009, her attorney, Paul Felser, requested an oral hearing.

A June 18, 2009, follow-up report by Dr. _____ did not include a history of the accepted employment exposure or opinion that a diagnosed condition was caused or contributed to by such exposure.

The hearing was held on November 19, 2009, in Atlanta, Georgia. Mr. Felser appeared on behalf of the claimant.

Mr. Felser contended that the claimant had met her burden of proof to establish that her work duties caused or at least temporarily aggravated a torn rotator cuff, tendonitis, arthritis, and cervical disc herniations.

Subsequent to the hearing Mr. Felser submitted a letter detailing his arguments along with additional documentation, much of which was previously of record or which did not specifically address the issue of causal relationship.

A December 15, 2009, letter from Dr. _____ responded to a November 16, 2009, letter from Mr. Felser which is not of record. Dr. _____ stated the claimant's diagnoses were cervical radiculitis, pain in shoulder joint, and right rotator cuff tear. There were no electrodiagnostic tests supporting the diagnosed radiculitis. Pain is considered to be a symptom and not a diagnosis of a medical condition per se. Dr. _____ stated the job duties that "aggravated, exacerbated and or [sic] accelerated" the conditions were use of affected extremities for mail sorting, posting and delivering, and above shoulder reaching. Dr. _____ opined the claimant suffered a work-related aggravation of her pre-existing condition and a permanent worsening of same. Dr. _____ did not specify the nature of the causal relationship between each condition and the accepted employment exposure, or provide an explanation of the medical connection between the diagnosed conditions and the accepted employment exposure.

The Office did not receive a copy of the operative report.

I have reviewed the evidence and testimony of record and find that the Office decision of July 10, 2009, although correct at the time, must now be set aside as the new medical evidence requires further development.

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 a causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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.¹

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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.²

A rationalized medical opinion must include a discussion of the nature of the underlying conditions; their natural or traditional course; how the underlying conditions may have been affected by appellant's employment as determined by medical records covering the period of employment; whether such affects, if any, caused material changes in the underlying conditions; or, if no material changes occurred, would the symptoms or changes indicative of a temporary aggravation have subsided or resolved immediately upon appellant's removal from the employment environment and, if not, at what point would such symptoms or changes have resolved; and whether any aggravation of appellant's underlying conditions caused by factors of his or her employment caused disability during or subsequent to appellant's employment.³

The Office's Procedure Manual discusses development of medical evidence in occupational disease claims. For the OWCP to undertake development of the medical evidence, the claimant should submit some medical evidence which states a diagnosis and supports causal relationship. However, the opinion need not be rationalized.⁴

In any case where a pre-existing condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation or precipitation, the attending physician must provide rationalized medical opinion which differentiates between the effects of the employment-related injury or disease and the pre-existing condition. Such evidence will permit the proper kind of acceptance (temporary vs. permanent aggravation, for instance).⁵

Although the new report of Dr. _____ (an internal medicine specialist) dated December 15, 2009, does not provide sufficient medical rationale to establish causal relationship, it is sufficient to establish an uncontroverted inference that requires further development by the Office. On remand, the Office should prepare a statement of accepted facts and refer same, along with appropriate questions, to Dr. _____, who is an orthopaedic specialist. The Office should provide Dr. _____ with the accepted definitions of the

¹ *Victor J Woodhams*, 41 ECAB _____ (Docket No 89-1717 issued December 20, 1989).

² *Id.*

³ *Newton Ky Chung*, 39 ECAB _____ (1988).

⁴ FECA Procedure Manual, 2-0806-5(a).

⁵ *Id.*, at 2-0805-3(d)(5)

types of causal relationship. Dr. _____ should be asked to provide the operative report and a full medical explanation regarding the medical connection between the claimant's right shoulder, arm, and cervical spine conditions and the accepted exposure in her federal employment. Dr. _____ should provide reasoned explanation as to whether any employment-related aggravation is temporary or permanent. After any additional development deemed necessary, the Office should issue a new decision regarding the claimant's entitlement to benefits.

Accordingly, the decision of the Office dated July 10, 2009, is hereby set aside and the case returned to the district office for actions as outlined above.

DATED: JAN 27 2010

WASHINGTON, D C.



KAREN S. HUNT
Hearing Representative
For
Director, Office of Workers'
Compensation Programs