

² Appellant submitted new evidence on appeal. The Board may not consider such evidence on appeal as its review is limited to evidence that was before OWCP at the time of its decision. *See* 20 C.F.R. § 501.2(c).

FACTUAL HISTORY

On November 29, 2011 appellant, then a 56-year-old manual flat processing clerk, filed an occupational disease claim alleging that on November 19, 2010 she hurt her back while picking up mail tubs. She indicated that she had a herniated disc which she was aware of since January 2010 and that she realized that her back condition was caused or aggravated by her employment on November 19, 2010. Appellant stopped work on November 22, 2010 and returned to work on September 6, 2011.

With her claim, appellant submitted a November 7, 2011 narrative statement in which she described her work duties and how she began feeling back pain beginning November 19, 2010. Also provided was administrative information from a hospital and a December 6, 2010 magnetic resonance imaging (MRI) scan of the lumbar spine, which indicated a small- to medium-sized herniated disc at L4-5 and L5-S1.

In a December 8, 2011 letter, OWCP notified appellant that the information received was insufficient to establish her claim. It asked her to have her physician submit a medical opinion supported by a medical explanation as to how work activities caused or aggravated a medical condition. Appellant was provided 30 days to submit the requested information. No further evidence was received.

By decision dated February 8, 2012, OWCP denied appellant's claim on the grounds that fact of injury was not established. It found that the medical evidence failed to establish that the herniated disc condition was caused by her work duties.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing 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, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions 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

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁵ To establish fact of injury in an occupational disease claim, an employee 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

³ *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

⁵ *See S.P.*, 59 ECAB 184, 188 (2007).

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.⁶

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's 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, 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.⁷

ANALYSIS

Appellant's work duties are not in dispute and the record indicates that she picked up mail tubs as part of her duties. However, she has not submitted medical evidence to establish that picking up tubs of mail and other associated work duties caused a back injury or disability.

Appellant provided a December 6, 2010 MRI scan report which indicated disc herniations but did not contain a physician's opinion regarding the cause of the reported condition. Thus, this diagnostic report is insufficient to establish her claim.⁸

As noted, part of appellant's burden of proof includes the submission of medical evidence addressing how her work duties caused or aggravated her claimed condition.⁹ On December 8, 2011 OWCP advised her of the type of medical evidence needed to establish her claim. Appellant has not submitted a medical report in which a physician explains how particular work duties caused or aggravated her disc herniations or other diagnosed back conditions. Accordingly, OWCP properly denied 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty.

⁶ See *R.R.*, Docket No. 08-2010 (issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

⁷ *I.J.*, 59 ECAB 408 (2008); *Woodhams*, *supra* note 4.

⁸ See *J.F.*, Docket No. 09-1061 (issued November 17, 2009) (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).

⁹ See *supra* notes 5, 6.

ORDER

IT IS HEREBY ORDERED THAT the February 8, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 7, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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