

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

L.W., Appellant

and

**U.S. POSTAL SERVICE, PORT MURRAY
POST OFFICE, Port Murray, NJ, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 12-1141
Issued: November 13, 2012**

Appearances:

*Thomas R. Uliase, 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 April 30, 2012 appellant, through her attorney, filed a timely appeal of the January 9, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her traumatic injury claim. 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 established that she sustained a back injury on September 5, 2010, as alleged.

On appeal, counsel contends that the medical evidence appellant submitted in support of her claim is sufficient to establish that her current back condition is causally related to her employment. He further contends that at a minimum OWCP erred in failing to further develop the medical evidence.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted under OWCP File No. xxxxxx694 that on January 3, 2011 appellant, then a 31-year-old rural carrier, sustained a lumbosacral strain while in the performance of duty.

On September 15, 2010 appellant filed a claim alleging that she sustained a recurrence of disability on September 5, 2010 causally related to the January 3, 2011 employment injury while performing light work. On the claim form, the employing establishment stated that she had been performing her regular duties. Until recently it was not aware of appellant's prior employment injury. The employing establishment was advised by her husband on September 7, 2010 that she was in an emergency room and she could not work. It noted that appellant worked in her landscaping business during off hours.

By letter dated October 7, 2010, OWCP determined that appellant's claim should be treated as a new traumatic injury claim rather than as a recurrence of disability because it arose from the new September 5, 2010 incident. The claim was assigned File No. xxxxxx013. By letter dated October 12, 2010, OWCP advised appellant that the factual evidence submitted was insufficient to establish her claim. It requested that she submit factual and medical evidence, including a rationalized medical opinion from an attending physician describing a history of injury and providing dates of examination and treatment, findings, test results, a diagnosis together with an explanation as to how the September 5, 2010 incident caused or aggravated her medical condition.

In a November 9, 2010 narrative statement, appellant related that she sustained a work-related lumbar herniated disc in 2001 for which she had received medical treatment for several years. Initially, she was assigned light-duty work and eventually returned to her regular work duties. On September 2, 2010 appellant experienced severe pain in her back and legs. She went to work and sought medical treatment from a chiropractor. On September 5, 2010 appellant performed light work at home. She awakened in severe pain the following day. On September 7, 2010 appellant returned to the emergency room for treatment. She described her work duties which included sorting mail and packages weighing 25 to 40 pounds and loading them into her truck for delivery to 517 customers and businesses on her route.

Medical reports dated January 4, 2001 to November 18, 2009 addressed appellant's conditions, including back pain. Hospital records indicated that she was discharged on September 21, 2010 following back surgery.

In a September 30, 2010 report, Dr. Patrick M. Collalto, an attending Board-certified orthopedic surgeon, advised that appellant sustained a lumbar disc herniation caused or aggravated by her January 3, 2001 employment injury. In an October 28, 2010 report, he noted that she underwent a lower back microdiscectomy. Dr. Collalto advised that appellant was unable to work until further notice on December 2, 2010.

In a November 15, 2010 decision, OWCP denied appellant's claim, finding that the evidence did not establish that the described employment incident occurred as alleged. It also found that she did not establish that her medical condition worsened due to factors of her federal employment.

By letter dated December 1, 2010, appellant, through her attorney, requested an oral hearing before an OWCP hearing representative.

At an April 13, 2011 hearing, appellant described her work duties, which included casing, lifting, sorting and loading mail. Her route required 517 curbside and 3 dismount deliveries. Appellant contended that symptoms from her 2001 back injury never stopped. She missed days from work due to back pain. By the end of the week on September 2, 2010, she experienced back pain for which she sought medical treatment. Appellant testified that she had owned her landscaping business since 2006 and that her son, husband and a part-time employee did the landscaping. She managed the business by doing the paperwork and ordering materials. Appellant also supervised jobs and talked to customers. She performed light work which only involved weeding and raking. Appellant contended that she never injured her back while working in her landscaping business.

Appellant submitted reports and a prescription dated September 10 to December 2, 2010 from Dr. Collalto which stated that she had lumbosacral radiculopathy and left sciatica and reiterated his prior diagnosis of disc herniation for which she underwent a laminectomy and microdiscectomy on September 20, 2010. Dr. Collalto advised that she was temporarily totally disabled for work. In a March 25, 2011 report, he noted that appellant came under his care on September 10, 2010 for pain in the lower back and left leg. Appellant provided a history of being a mail carrier. Dr. Collalto related his history of her treatment. He reviewed medical records, appellant's job description and records concerning her January 2001 employment-related back injury. On physical examination, Dr. Collalto noted her complaint of severe pain in the lower back. He reported decreased range of motion. On neurological examination of the lower extremities, Dr. Collalto found weakness of the left leg and evidence of neurologic impingement of the nerves of the lower back. X-rays showed mild degenerative changes, but nothing specific. A magnetic resonance imaging (MRI) scan of the lumbar spine showed a large herniated disc at L5-S1 which was totally consistent with appellant's left leg pain.² Dr. Collalto advised that certainly her past injury and ongoing work which involved bending and lifting mail caused her disability, current herniation and subsequent need for surgery.

In a June 28, 2011 decision, an OWCP hearing representative affirmed the November 15, 2010 decision. He found that appellant failed to submit sufficiently rationalized medical evidence establishing that she sustained a back injury causally related to her employment.

By letter dated August 15, 2011, appellant, through her attorney, requested reconsideration before OWCP.

In notes and reports dated January 13, February 10 and March 15, 2011, Dr. Collalto advised that appellant had lumbar herniated nucleus pulposus without myelopathy, radiculitis, pain syndrome and sprain/strain. Appellant was temporarily totally disabled for work. In a July 29, 2011 report, Dr. Collalto reiterated his opinion that her continuing work would have aggravated and precipitated her increasing symptoms and need for a surgical procedure.

² In a September 13, 2010 report, Dr. Thomas H. Woo, a Board-certified radiologist, advised that a lumbar MRI scan demonstrated a large left posterolateral disc protrusion with effacement of adjacent nerves (descending left S1 nerve) with disc material identified in the left lateral recess. A lesser degree of degenerative changes were noted elsewhere. In a September 20, 2010 report, Dr. Woo stated that an x-ray of the lumbar spine showed a radiopaque probe posterior to the proximal sacrum near the L5-S1 level.

In a January 9, 2012 decision, OWCP denied modification of the June 28, 2011 decision. It found that appellant failed to provide any rationalized medical evidence explaining how her established work duties caused her claimed back condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 filed within applicable time limitation; that an injury was sustained while 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.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.⁵

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.⁶ In order to meet his or her burden of proof to establish the fact that he or she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he or she actually experienced the employment injury or exposure at the time, place and in the manner alleged.⁷

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁸ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁹ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.¹⁰

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 4.

⁶ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁷ *Linda S. Jackson*, 49 ECAB 486 (1998).

⁸ *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

⁹ *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

¹⁰ *Charles E. Evans*, 48 ECAB 692 (1997).

ANALYSIS

Appellant alleged that she developed a disabling back injury that required surgery due to casing, lifting, sorting and loading mail as a rural carrier. The evidence supports that she performed such duties as part of her job.

OWCP denied appellant's claim for compensation finding that the medical evidence was not sufficient to establish that her back condition was causally related to her employment. The Board notes that the medical evidence submitted by appellant generally supports that her claimed condition and resultant disability and surgery were caused or aggravated by the established work duties. Dr. Collalto provided two reports in which he attributed appellant's back condition to her rural carrier duties. On March 25, 2011 he noted her complaint of severe pain in the lower back. Dr. Collalto obtained a history that appellant sustained a 2001 employment-related back injury. He also obtained a history that she performed bending and lifting mail as a mail carrier and reviewed a description of her position. Dr. Collalto opined that certainly appellant's condition and resultant disability and surgery were related to such work activities. On July 29, 2011 he generally opined that her continuing work would aggravate and precipitate her increasing symptoms and need for surgery.

Although the reports are not sufficiently rationalized to meet appellant's burden of proof they provide an accurate history of the implicated work activities with medical opinion supporting causal relation and aggravation. The evidence is sufficient to require further medical development of the case.¹¹ The Board will remand the case to OWCP for referral of appellant, to an appropriate Board-certified medical specialist to determine whether her work activities caused or aggravated her claimed condition. Following any other medical development as deemed necessary, OWCP shall issue an appropriate merit decision on appellant's claim.

CONCLUSION

The Board finds that the case is not in posture for decision.

¹¹ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this decision.

Issued: November 13, 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