

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 6, 2012 appellant, then a 49-year-old mail processor, filed a traumatic injury claim (Form CA-1) alleging that earlier that day she had sustained lumbar pain into the left lower extremity while sweeping mail and moving racks with stiff braces. She did not stop work at the time of the injury.² Appellant later claimed wage loss for work absences from June 2 to 15, 2012.³

Appellant sought emergency room treatment on February 6, 2012. Dr. Mark Caputo, an attending physician Board-certified in emergency medicine, noted her account of lumbar pain and left-sided radiculopathy after pushing mail racks at work. He diagnosed back pain and a lumbar strain. Dr. Caputo prescribed medication.

In a February 17, 2012 report, Dr. Charles Lascano, an attending physician Board-certified in sports medicine, related that on February 6, 2012 appellant experienced severe lumbar pain with radiation into the left lower extremity after “moving some boxes” at work. He diagnosed a lower back injury with radicular symptoms. Dr. Lascano noted work restrictions.

In a June 20, 2012 letter, OWCP advised appellant of the additional evidence needed to establish her claim, including a statement from her attending physician explaining how and why sweeping mail and moving racks at work on February 6, 2012 would cause the claimed lumbar injury. Appellant was afforded 30 days to submit such evidence.

In July 5, 2012 reports, Dr. Eric Schertzer, an attending Board-certified family practitioner, stated that appellant “suffered a workman’s compensation injury on February 6, 2012 which has ended with her persistent back pain with radiculopathy down her left leg.” He related her account of the onset of lumbar pain with left-sided radiculopathy after sweeping mail and moving equipment at work that day. Dr. Schertzer diagnosed lumbar pain with radiculopathy. He prescribed medication.

By decision dated July 30, 2012, OWCP denied appellant’s claim on the grounds that causal relationship was not established. It accepted as factual that on February 6, 2012 she swept mail and moved mail racks; however, the medical evidence did not support a causal connection between the work factors and the claimed lumbar injury.

In an August 8, 2012 letter, appellant requested a telephonic hearing, held November 7, 2012. At the hearing, she reiterated her account of the accepted work factors and the onset of lumbar symptoms on February 6, 2012. Appellant noted that she had returned to work and her physicians did not recommend surgery. OWCP’s hearing representative held the record open for 30 days to allow counsel to submit additional medical evidence.

² Appellant had a claim approved under File No. xxxxxx182 for a January 1, 2001 back and neck injury with nerve root compression. She also filed a claim under File No. xxxxxx276 for a May 30, 2006 back and neck injury. These claims are not before the Board on the present appeal.

³ In a June 8, 2012 email message, appellant asserted that on May 24, 2012, a supervisor sent her home. The employing establishment later instructed her to complete forms for requesting leave under the Family and Medical Leave Act.

Dr. Schertzer provided reports and chart notes dated July 19 to August 2, 2012, noting continued left-sided lumbar radicular symptoms. He noted that a May 23, 2012 lumbar magnetic resonance imaging scan showed lumbar disc desiccation and an L5-S1 annular disc bulge without central spinal canal stenosis or neural foraminal narrowing. Dr. Schertzer diagnosed “severe lower back pain.” He referred appellant for a physical therapy evaluation.

Dr. Jacob Weinberg, an attending Board-certified orthopedic surgeon, prescribed work restrictions in September 2012 and released appellant to full duty as of October 1, 2012.

By decision dated January 23, 2013, OWCP’s hearing representative affirmed the July 30, 2012 decision, finding that the additional medical evidence was insufficient to establish causal relationship. The hearing representative found that appellant’s physicians did not explain how or why the accepted work factors of sweeping mail and moving racks on February 6, 2012 would cause or aggravate the claimed lumbar injury.

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 filed within the 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 or an occupational disease.⁵

In order to determine whether an employee sustained a traumatic 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 that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.⁶ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷

ANALYSIS

Appellant claimed that on February 6, 2012, she sustained a lumbar injury with left-sided radiculopathy when sweeping mail and moving mail cages at work. OWCP accepted these activities occurred at the time, place and in the manner alleged. Appellant established compensable work factors. In order to prevail, she must also submit sufficient medical evidence

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁶ *Gary J. Watling*, 52 ECAB 278 (2001).

⁷ *Deborah L. Beatty*, 54 ECAB 340 (2003).

to establish that those incidents caused or aggravated a lumbar injury with radiculopathy. The Board finds that appellant did not submit such evidence.

Appellant submitted a February 5, 2012 report from Dr. Caputo, an attending physician Board-certified in emergency medicine, who diagnosed back pain and a lumbar strain. Regarding the diagnosis of lumbar pain, the Board has held that pain is generally a symptom rather than a firm medical diagnosis.⁸ Dr. Caputo noted appellant's account of pushing mail racks at work, but did not address how doing so caused or aggravated the lumbar strain. His opinion is therefore insufficient to meet her burden of proof.⁹

Dr. Lascano, an attending physician Board-certified in sports medicine, submitted a February 17, 2012 report relating that appellant experienced lumbar pain after moving boxes at work. As his opinion is based on an inaccurate history of injury, it is insufficient to establish causal relationship in this case.¹⁰ Dr. Weinberg, an attending Board-certified orthopedic surgeon, noted work restrictions in September 2012 but did not address causal relationship.

Dr. Schertzer, an attending Board-certified family practitioner, opined that on June 5, 2012 appellant sustained lumbar pain with radiculopathy on February 6, 2012 after sweeping mail and moving equipment. In reports through August 2, 2012, he diagnosed lumbar disc desiccation and an L5-S1 annular bulge, but did not address the etiology of these findings. Although Dr. Schertzer stated that the accepted work factor of sweeping mail and moving equipment resulted in lumbar radiculopathy, he did not explain how such activities would cause or aggravate the diagnosed condition. Without supporting medical rationale, his opinion is insufficient to establish causal relationship.¹¹

OWCP advised appellant by June 20, 2012 letter that to meet her burden of proof, she must submit a medical report from her attending physician explaining how and why work factors would cause the claimed lumbar injury. However, appellant did not submit such evidence. Therefore, she failed to meet her burden of proof.¹²

On appeal, counsel asserts that OWCP's January 23, 2013 decision is "contrary to fact and law." As stated, appellant submitted insufficient medical evidence to establish that the accepted incident caused or aggravated any medical condition. She 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.

⁸ K.W., Docket No. 12-1590 (issued December 18, 2012).

⁹ *Supra* note 7.

¹⁰ *Douglas M. McQuaid*, 52 ECAB 382 (2001).

¹¹ *Supra* note 7.

¹² *Id.*

CONCLUSION

The Board finds that appellant has not established that she sustained a lumbar injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 23, 2013 is affirmed.

Issued: July 17, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board