

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

F.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cleveland, OH, Employer**

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**Docket No. 10-2183
Issued: September 30, 2011**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 24, 2010 appellant filed a timely appeal from a July 22, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an occupational disease in the performance of duty.

FACTUAL HISTORY

On November 5, 2009 appellant, then a 45-year-old mail carrier, filed an occupational disease claim alleging that she sustained lower back and leg pain on the job. She added in a November 6, 2009 statement that she was previously treated for left leg and knee symptoms

¹ 5 U.S.C. § 8101 *et seq.*

related to a fall that occurred while she was chased by a dog on her postal route. Following this event, appellant experienced progressive back pain whenever she walked, stood, sat, lifted items or climbed stairs. Due to increased pain she was occasionally unable to walk. Appellant stopped work on November 17, 2009.²

In an October 23, 2009 report, Dr. Roseanna M. Lechner, a Board-certified neurosurgeon, noted that she treated appellant since September 15, 2009 for back and leg pain. Appellant specified that she was being chased by a dog on her postal route sometime in November 2008 when she fell and landed on her left knee. Thereafter, she had intermittent back pain that first radiated to her left leg and, in or around June 2009, extended to her right leg. This condition hindered her ability to complete her route, carry extra weight and climb steps. Dr. Lechner examined appellant and observed lumbar tenderness and spasms to palpation, a bilateral absence of ankle jerk and a positive bilateral straight leg raise test. She pointed out that magnetic resonance imaging (MRI) scans conducted on February 6 and September 18, 2009 exhibited L4-L5 disc bulging with degenerative facet disease and moderate foraminal narrowing. Lumbar films and a computerized tomography (CT) scan from October 10, 2009 showed L4-L5 bilateral hypertrophy, vacuum disc and grade 1 spondylolisthesis. Dr. Lechner diagnosed L4-L5 spondylolisthesis with diffuse disc bulging and incompetent facets, concluding:

“As [appellant] had no complaints of back pain prior to her fall in November 2008, it is with a reasonable degree of medical certainty that her current back and leg pain was caused by the fall. The bulging disc could certainly be caused by an injury such as this. In addition, the fall could aggravate underlying degenerative facet disease causing the spondylolisthesis.”

The employing establishment controverted the claim in a November 9, 2009 letter on the grounds that appellant did not seek prompt medical attention after her alleged November 2008 fall and failed to provide sufficient evidence to establish the elements of her claim.

In a December 8, 2009 letter, OWCP informed appellant that additional evidence was needed to establish her claim. It gave her 30 days to submit a factual statement describing the employment factors that contributed to her condition and medical reports offering a physician’s reasoned opinion explaining how these factors caused the injury.

Appellant responded in a December 26, 2009 letter that she lifted and carried a mailbag, mail buckets, packages and magazines for eight hours each workday. Her tasks also entailed continuous standing, walking, stair-climbing, bending and twisting. Appellant attributed her worsening back and leg pain to these activities.

In a December 18, 2009 report, Dr. Lechner acknowledged appellant’s November 2008 fall and stated that she continued to work despite pain and subsequently developed progressive right lower back and leg pain. She advised that the September 18, 2009 MRI scan showed

² The record reflects that appellant previously filed a claim for compensation related to the November 2008 incident, which was not formally adjudicated. OWCP File No. xxxxxx288. Appellant also filed claims for left and right shoulder sprains. None of these claims are before the Board on the present appeal.

significant progression of appellant facet disease while x-rays showed slipping of L4 on L5 with grade 1 spondylolisthesis. Dr. Lechner opined:

“During the time from February to September [appellant] continued to carry her mailbag, climb up and down steps, lift packages that might weigh up to 60 pounds, and do repeated bending and twisting. She already had disruption of the disc and facet joints at L4-5 due to her fall in November 2008. This continued daily stress on [appellant’s] back caused progressive disruption of the disc and facet joints leading to instability and spondylolisthesis and the chronic back pain she is experiencing.”

By decision dated February 4, 2010, OWCP denied appellant’s claim, finding the evidence insufficient to demonstrate that she experienced the employment factors as alleged.

Appellant requested a telephonic hearing, which was held on May 7, 2010. She testified that she started working for the employing establishment in 2007. After the November 2008 incident, appellant returned to her regular duties, which included carrying a mailbag weighing up to 60 pounds, buckets of mail and boxes of magazines. She asserted that her condition worsened to the point that she could barely walk. On January 11, 2010 appellant underwent back surgery for her condition, but still experienced symptoms postoperatively. She was consequently placed on leave without pay.

On July 22, 2010 an OWCP hearing representative modified the February 4, 2010 decision to find that appellant experienced the employment factors as alleged. He denied her claim on the grounds that the medical evidence did not sufficiently establish that these accepted factors led to lower back and leg injuries.

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 of FECA, 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

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

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

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

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.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

The evidence of record supports that appellant routinely carried mail, packages, and magazines in mailbags and buckets and performed other duties for the employing establishment that involved stair climbing, bending and twisting. Appellant was diagnosed with L4-L5 spondylolisthesis, diffuse disc bulging and degenerative facet disease. The Board finds the medical evidence is insufficient to establish that the accepted employment factors caused or contributed to her lower back and leg condition.

In a December 18, 2009 report, Dr. Lechner related that appellant originally fell in November 2008 and sustained L4-L5 disc and facet joint disruptions, but continued to carry her mailbag, climb stairs, lift heavy packages and perform routine bending and twisting. She opined that this continued stress on appellant's back "caused progressive disruption of the disc and facet joints leading to instability and spondylolisthesis and the chronic back pain she is experiencing." Dr. Lechner did not provide a fully detailed medical explanation addressing how heavy lifting, climbing, bending and twisting caused appellant's condition.⁸ She opined in an October 23, 2009 report that appellant's lower back and leg condition was due to her November 2008 fall, pointing out that she was asymptomatic prior to this event. Although the physician attributed appellant's condition to the latter's federal employment, she did not address any of the accepted work factors⁹ or explain why particular work factors caused or aggravated a diagnosed condition. Moreover, Dr. Lechner's observation that appellant was asymptomatic before November 2008 and symptomatic afterward, by itself, is not sufficient opinion on causal relationship.¹⁰ A

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

⁷ *I.J.*, 59 ECAB 408, 415 (2008); *Woodhams*, *supra* note 4 at 352.

⁸ *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994).

⁹ See *John W. Montoya*, 54 ECAB 306, 309 (2003). See also *M.W.*, 57 ECAB 710 (2006); *James A. Wyrick*, 31 ECAB 1805 (1980) (medical opinions based on an incomplete or inaccurate history are of diminished probative value).

¹⁰ See *D.I.*, 59 ECAB 158 (2007); *T.M.*, Docket No. 08-975 (issued February 6, 2009).

temporal relationship alone has been held of diminished probative value on causal relation.¹¹ In the absence of a well-reasoned medical opinion explaining causal relationship, appellant failed to meet her burden.

Appellant's counsel argues that the July 22, 2010 decision was contrary to fact and law. As noted, the medical evidence did not sufficiently establish that appellant's duties for the employing establishment were causally related to her lower back and leg condition.

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 did not establish that she sustained an occupational disease in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the July 22, 2010 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: September 30, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹¹ See *Louis T. Blair, Jr.*, 54 ECAB 348 (2003).