

that relevant and pertinent new evidence was submitted, which warranted further merit review. The Board directed OWCP to conduct a merit review and issue an appropriate decision.² The facts of the case as set forth in the Board's prior decision are hereby incorporated by reference. Facts germane to the present appeal are set forth.

On September 30, 2008 appellant, then a 56-year-old nurse, filed a recurrence of disability claim for severe low back pain on July 31, 2008 which OWCP developed as a new occupational disease claim. In an August 4, 2008 note, Dr. Luis R. Pagan, a Board-certified neurosurgeon, related that appellant had "a recent exacerbation of back pain that started a week ago." Dr. Pagan noted that neurological examination findings were normal. In an August 6, 2008 attending physician's report, Dr. Pagan diagnosed disc dislocation and listed April 26, 2006 as the date of injury. He advised that she be placed on light duty in an August 11, 2008 work capacity evaluation.

By decision dated February 3, 2009, OWCP denied appellant's claim, finding the medical evidence insufficient to demonstrate that a back condition resulted from the described employment factors.

Appellant requested reconsideration and submitted a January 25, 2010 report from Dr. Pagan who stated that he initially saw appellant on July 24, 2006. She complained of back, left hip and left leg pain commencing April 26, 2006 while lifting a patient at work. She denied any preexisting back and leg pain before this incident. A magnetic resonance imaging (MRI) scan at the time revealed L4-5 facet hypertrophy and L5-S1 left disc herniation. Appellant continued to present back discomfort and recently underwent left knee arthroscopy. Dr. Pagan concluded:

"The patient denies prior history of back pain and leg pain before her April 26, 2006 injury. I therefore conclude that there is causal relationship between her work injury and her symptomatology and need for treatment. This opinion is within reasonable medical certainty and/or probability. As a consequence of her injury, she is left with a permanent disability, for which she may only work in a light[-]duty capacity. These opinions are only for her lumbar spine."

By decision dated June 9, 2010, OWCP denied appellant's request on the grounds that it did not receive new and relevant evidence warranting a merit review. Following the Board's May 10, 2011 decision remanding the case, appellant did not submit any additional medical evidence.

By decision dated June 20, 2011, OWCP denied modification of the February 3, 2009 merit decision finding that there was insufficient medical evidence relating appellant's condition to employment factors.

² Docket No. 10-1844 (issued May 10, 2011).

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 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

While the case record supports that appellant inserted intravenous catheters, took vital signs, managed patient charts and pushed wheelchairs in July 2008, the Board finds that appellant did not establish her occupational disease claim because the medical evidence did not sufficiently demonstrate that these accepted employment factors aggravated a preexisting back condition.

In an August 4, 2008 note, Dr. Pagan related that appellant exacerbated her back pain approximately a week earlier. He later specified that she originally injured her back on

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

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

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

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); *supra* note 4.

August 26, 2006⁸ and diagnosed disc dislocation in an August 6, 2008 attending physician's report. In a January 25, 2010 report indicating that appellant sustained L4-5 facet hypertrophy and L5-S1 left disc herniation, Dr. Pagan concluded that the April 26, 2006 employment incident was causally related to her disabling condition. He stated that he concluded that there was a causal relationship between appellant's work injury and her symptoms because appellant denied a prior history of back and leg pain before the April 26, 2006 injury. This opinion, however, offered limited probative value on the issue of causal relationship in the present case because it did not address whether the accepted July 2008 employment factors aggravated appellant's injury.⁹ Moreover, Dr. Pagan did not fortify his opinion with medical rationale.¹⁰ Dr. Pagan did not explain the reasons why appellant's work factors beginning around July 2008 caused or aggravated a diagnosed condition. In the absence of rationalized medical opinion evidence, appellant did not meet her burden of proof.

Appellant's counsel argues on appeal that the June 20, 2011 decision was contrary to fact and law. As noted, the medical evidence did not sufficiently establish that appellant's employment activities in July 2008 aggravated her back condition.

Appellant may submit new evidence or argument as part of a formal 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.

⁸ Appellant filed a prior claim with regard to this injury, which was accepted. OWCP File No. xxxxxx201. This claim is not presently before the Board.

⁹ *John W. Montoya*, 54 ECAB 306, 309 (2003); *R.P.*, Docket No. 10-1948 (issued June 3, 2011).

¹⁰ *George Randolph Taylor*, 6 ECAB 986, 988 (1954).

ORDER

IT IS HEREBY ORDERED THAT the June 20, 2011 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: March 13, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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