

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 18, 2011 appellant, then a 51-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging that on March 30, 2010 she first became aware of her lumbar conditions which included grade 1 spondylolisthesis, stenosis, radiculopathy, spondylosis, facet disease, synovial cyst and disc herniation. She further alleged that on April 6, 2011 she first realized that the deterioration of her back was caused by years of bending, twisting and lifting. Appellant stopped work on November 30, 2010 and returned to work on July 18, 2011.

In an undated narrative statement, appellant described her work duties as a city letter carrier. She also described the development of her back condition and medical treatment.

Medical reports dated January 5 through June 9, 2011 which contained the typed name of Dr. Henry E. Aryan, an attending Board-certified neurosurgeon, obtained a history that appellant had been suffering from bilateral back pain for many years. Appellant was born with a partial tethered spinal cord that was not surgically treated. She underwent surgery on January 12, 2011 to treat the same diagnosed lumbar conditions listed in her Form CA-2.

A November 2, 2010 report which contained the typed name of Dr. Frank R. Tamura, a Board-certified radiologist, stated that a magnetic resonance imaging scan of the lumbar spine revealed low lying conus with thickened filum that was most worrisome for the tethered cord and mild grade 1 anterior spondylolisthesis at L5-S1 that was attributed to degenerative facet disease. There was no syrinx, cord edema, disc herniation or central canal or neural foramen-stenosis.

In a January 12, 2011 report, Kelly Speir, a physical therapist, stated that appellant was given a home exercise program to treat her lumbar pain.

By letter dated August 19, 2011, OWCP referred appellant, together with the case record and a statement of accepted facts, to Dr. Alice M. Martinson, a Board-certified orthopedic surgeon, for a second opinion. In a September 26, 2011 report, Dr. Martinson advised that she could not perform an appropriate evaluation because appellant was nonweight-bearing. Appellant was wearing a short leg cast following surgery to repair a left ankle fracture sustained on August 9, 2011. Dr. Martinson stated that a transfixion screw needed to be removed prior to any weight-bearing or rehabilitative efforts. She recommended that appellant be rescheduled for an examination in approximately three months.

In a September 29, 2011 letter, OWCP requested that the employing establishment submit factual evidence regarding appellant's claim. Also, on September 29, 2011 it advised her that the evidence submitted was insufficient to establish her claim. OWCP requested that appellant submit medical evidence, including a rationalized medical opinion from an attending physician which described her symptoms and provided dates of examination and treatment, findings, test results, a diagnosis together with medical reasons on how the claimed work activities caused or contributed to the diagnosed condition. Appellant was afforded 30 days to submit the requested evidence. She did not respond.

In a November 1, 2011 decision, OWCP denied appellant's claim, finding that the medical evidence was insufficient to establish that she sustained a back condition causally related to the accepted employment duties.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing the essential elements of 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.³ 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.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable certainty, and must be supported by medial rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁵ Neither the fact that appellant's condition became apparent during a period of employment nor, her belief that the condition was caused by her employment is sufficient to establish a causal relationship.⁶

ANALYSIS

In a November 1, 2011 decision, OWCP accepted as factual that appellant performed repetitive duties while working as a city letter carrier, but found that the medical evidence was insufficient to establish that she sustained a back injury causally related to the accepted factors of her employment. The Board finds that this case is not in posture for a decision.

² 5 U.S.C. §§ 8101-8193.

³ C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 4 at 351-52 (1989).

⁶ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

OWCP referred appellant to Dr. Martinson, an OWCP referral physician, for a second opinion. In a September 26, 2011 report, Dr. Martinson stated that she did not examine appellant because she was wearing a short leg cast following repair of a left ankle fracture. She related that a transfixion screw needed to be removed before any weight-bearing or rehabilitative efforts could be made. Dr. Martinson recommended that appellant be rescheduled for examination in approximately three months. As she failed to provide current examination findings, OWCP was obliged to further develop the medical evidence.

Proceedings under FECA are not adversarial in nature and OWCP a disinterested arbiter.⁷ While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.⁸ Accordingly, once it undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.⁹ As OWCP undertook development of the medical evidence by referring appellant to Dr. Martinson, it had an obligation to secure a report adequately addressing the relevant issue.¹⁰ The case will be remanded to OWCP to refer appellant to an appropriate medical specialist, together with the case record and a statement of accepted facts, for an evaluation and rationalized medical opinion on whether she sustained a back injury causally related to the accepted factors of her employment. Following this and any other development deemed necessary, OWCP shall issue an appropriate merit decision on appellant's claim.

On appeal, appellant contended that she should undergo another second opinion examination because she was in a cast during the first examination. As stated, the case will be remanded to OWCP for further development of the medical evidence and issuance of a *de novo* decision on appellant's claim for compensation.

CONCLUSION

The Board finds that this case is not in posture for decision as to whether appellant sustained a back injury causally related to the accepted factors of her employment.

⁷ *R.B.*, Docket No. 08-1662 (issued December 18, 2008); *A.A.*, 59 ECAB 726 (2008); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Vanessa Young*, 55 ECAB 575 (2004).

⁸ *D.N.*, 59 ECAB 576 (2008); *Richard E. Simpson*, 55 ECAB 490 (2004).

⁹ See *A.A.*, *supra* note 7; *Melvin James*, 55 ECAB 406 (2004).

¹⁰ *Id.*; see also *Peter C. Belkind*, 56 ECAB 580 (2005).

ORDER

IT IS HEREBY ORDERED THAT the November 1, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Issued: November 28, 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