

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

K.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Calverton, VA, Employer**

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**Docket No. 12-1305
Issued: January 18, 2013**

Appearances:

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 14, 2012 appellant, through her attorney, filed a timely appeal from an April 26, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 developed an occupational disease due to factors of her federal employment.

FACTUAL HISTORY

On January 10, 2011 appellant, a 38-year-old rural carrier, filed a Form CA-2 claim for benefits based on occupational disease, alleging that she developed degenerative disc disease, bilateral carpal tunnel syndrome and vertebral subluxation complex causally related to

¹ 5 U.S.C. § 8101 *et seq.*

employment factors. She stated that she was required to perform repetitive lifting and standing duties.

OWCP informed appellant on February 11, 2011 that it required additional factual and medical evidence to determine whether appellant was eligible for compensation benefits. It asked her to submit: (a) sufficient factual evidence to establish that she experienced the employment factors alleged to have caused her claimed conditions; (b) a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition; (c) an opinion as to whether her claimed condition was causally related to her federal employment and (d) a diagnosis of her claimed condition. OWCP requested that appellant submit the additional evidence within 30 days. Appellant did not respond to this request.

By decision dated March 17, 2011, OWCP denied the claim, finding that appellant failed to establish the factual component for fact of injury. It stated that it had requested that she submit factual evidence sufficient to establish that the claimed events occurred as she described but failed to respond to this request.

By letter dated March 23, 2011, appellant's attorney requested an oral hearing, which was held on June 10, 2011. At the hearing, appellant testified regarding her employment duties. She also testified that she had fallen at work on February 12, 2010 for which she had filed a separate claim.

Appellant submitted form reports dated February 11 and July 23, 2011, received by OWCP on August 8, 2011 from Dr. Lincoln A. German, a chiropractor, which indicated that she had been treated for back pain radiating down both legs since December 2010. Dr. German also submitted several disability and treatment slips from 2010 and 2011. These reports did not contain diagnoses of subluxation by x-ray or an opinion regarding causal relationship.

In an October 27, 2010 report, received by OWCP on August 8, 2011, Dr. Ignacio J. Badiola, a specialist in anesthesiology, stated that appellant had complaints of lower back, left hand and left feet pain and a history of fibromyalgia. He advised that her main complaint was chronic, severe lower back pain radiating into her right lower extremity, specifically numbness and pain in both feet, and left hand pain; she had an exacerbation four days ago when she was getting out of a car. Appellant described her pain as constant, stabbing and burning, with numbness and tingling. She also had some neck pain associated with her lower back pain. Dr. Badiola advised that lying flat, sitting too long or standing too long worsened her symptoms. He concluded that appellant had fibromyalgia, lower back pain possibly secondary to facet disease versus herniated disc and radiculitis down the right lower extremity.

Dr. Badiola advised that he would schedule appellant for x-rays of her left hand and a magnetic resonance imaging (MRI) scan of the lumbar spine to determine possible causes of her radiculitis. He also prescribed a regimen of medication.

In a November 1, 2010 report, received by OWCP on August 8, 2011, Dr. Badiola stated that appellant did not have x-rays of her left hand because the pain had almost completely resolved. He advised that she continued to experience lower back pain with radiation into her bilateral lower extremities and had no changes with regard to her symptoms down her legs.

Dr. Badiola advised that results of appellant's lumbar MRI scan showed central disc protrusion at L3-4 and L4-5. He diagnosed lumbar disc herniation, lumbar radiculitis/radiculopathy and fibromyalgia. Dr. Badiola explained that the disc herniations at the L3-5 nerve roots could lead to bilateral lower extremity pain; he asserted that he would administer epidural steroid injections at the L4-5 level. He placed her off work for two weeks, noting that her job required her to handle heavy materials.

By decision dated September 13, 2011, an OWCP hearing representative modified the January 7, 2011 decision in part, finding that appellant established fact of injury. She found, however, that appellant had failed to submit medical evidence sufficient to establish that the claimed conditions were causally related to employment factors.

On April 3, 2012 appellant's attorney requested reconsideration.

In a February 20, 2012 report, received by OWCP on April 9, 2012, Dr. Mudit Sharma, Board-certified in neurosurgery, stated that appellant had sustained a work injury in which she slipped and fell on ice, causing her to have knee and back pain. He related that her back pain increased to a level where it was treated with pain management and lumbar fusion surgery. Dr. Sharma advised that appellant had been unable to return to work in "significant fashion" and continued to have excruciating back and leg pain which prevented her from doing her usual work activities. He stated that she was unable to lift more than 10 pounds or bend, stand, or twist for more than 20 minutes. Dr. Sharma restricted her to sedentary/light duty; *i.e.*, no lifting greater than 10 pounds with occasional lifting, walking and standing, and carrying ledgers and small tools. He opined that her disability developed as a direct consequence of her falling down at work, noting that she did not have any symptoms prior to her fall.

By decision dated April 26, 2012, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing that 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 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 upon 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

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

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 causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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 of the claimant, 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.⁵

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed conditions and her federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁶

ANALYSIS

In the instant case, appellant has failed to submit any medical opinion containing a rationalized, probative report which relates her claimed degenerative disc disease, bilateral carpal tunnel syndrome and vertebral subluxation complex conditions to factors of her employment. For this reason, she has not discharged her burden of proof to establish her claim.

Appellant submitted reports from Drs. Badiola and Sharma, who related findings of lower back pain radiating into the lower extremities diagnosed fibromyalgia, herniated disc at L3-4 and L4-5 and lumbar radiculitis. Neither of these physicians, however, provided a probative, rationalized medical opinion that the claimed conditions or disability were causally related to employment factors. Dr. Badiola stated in his October 27, 2010 report that appellant had chronic, constant severe lower back pain radiating into her right lower extremity, which resulted in numbness and pain in both feet, in addition to neck pain and left hand pain. He concluded that she had fibromyalgia, lower back pain possibly secondary to facet disease versus herniated disc, and radiculitis down the right lower extremity. In his November 1, 2010 report, Dr. Badiola noted that appellant continued to experience lower back pain with radiation into her bilateral lower extremities. He advised that a lumbar MRI scan indicated lumbar disc herniation, lumbar radiculitis/radiculopathy and fibromyalgia. Dr. Badiola asserted that the disc herniations at the L3-5 nerve roots could lead to bilateral lower extremity pain; he scheduled appellant for epidural steroid injections at the L4-5 level. He placed her off work for two weeks, in light of the fact that her job required her to handle heavy materials. Dr. Badiola's opinion, however, is limited probative value as it does not contain any medical rationale on how or why appellant's claimed

⁵ *Id.*

⁶ *See Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

conditions were currently affected by or related to factors of employment.⁷ The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁸ Dr. Badiola did not sufficiently describe appellant's job duties or explain the medical process through which such duties would have been competent to cause the claimed conditions.

Dr. Sharma stated in his February 20, 2012 report that appellant's back pain had increased to the point where she had been treated with pain management and lumbar fusion surgery. He advised that she had sustained a slip and fall injury at work which caused her knee and back pain. Dr. Sharma placed restrictions on appellant's work activities due to her severe back and leg pain and limited her to sedentary light duty. He asserted that her disability developed as a direct consequence of her falling down on ice and snow. The Board notes that appellant has testified that she has filed a separate claim for this traumatic injury.

Dr. Sharma's opinion is of limited probative value as it does not contain any medical rationale explaining how appellant's alleged repetitive job duties physiologically caused her claimed conditions. He did not describe her employment duties in any detail or explain how these duties would have been competent to cause the claimed back and knee conditions. In addition, Dr. Sharma did not explain why appellant's back condition was due to long-term employment factors as opposed to an alleged slip and fall accident. His report thus did not constitute adequate medical evidence to establish that her claimed conditions were causally related to her employment. Appellant also submitted the chiropractic report and periodic treatment slips from Dr. German. These reports, however, did not constitute medical evidence under section 8101(2), as they did not contain a diagnosis of subluxation as demonstrated by x-ray.⁹

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.¹⁰ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

OWCP advised appellant of the evidence required to establish her claim; however, appellant failed to submit such evidence. Consequently, appellant has not met her burden of proof in establishing that her claimed conditions were causally related to her employment.

OWCP advised appellant of the evidence required to establish her claim; however, she failed to submit such evidence. It properly denied her claim for compensation.

⁷ *William C. Thomas*, 45 ECAB 591 (1994).

⁸ *See Anna C. Leanza*, 48 ECAB 115 (1996).

⁹ *See* 5 U.S.C. § 8101(2).

¹⁰ *Id.*

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 has not met her burden of proof in establishing that she developed or sustained degenerative disc disease, bilateral carpal tunnel syndrome and vertebral subluxation complex conditions in the performance of her federal job duties.

ORDER

IT IS HEREBY ORDERED THAT the April 26, 2012 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: January 18, 2013
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