

FACTUAL HISTORY

This case was previously before the Board.² Appellant, a 58-year-old mail clerk, claimed to have injured her lower back in the performance of duty on or about January 21, 2008.³ She attributed her injury to working a hand case which consisted of lifting mail trays weighing 25 pounds or more. Additional duties included loading mail trays into hampers and all-purpose containers (APC) during dispatch. Appellant also attributed her injury to sitting on a rest bar chair for more than two hours at a time. She stopped work on February 6, 2008.

A February 1, 2008 lumbar magnetic resonance imaging (MRI) scan revealed mild-to-moderate spondylosis with central canal and neural foraminal stenosis at L2-3 through L5-S1.

Dr. Pankaj Shukla, a Board-certified internist, examined appellant on February 21, 2008. He noted a history of lumbar degenerative joint disease dating back to 1982. Dr. Shukla previously treated appellant for chronic low back pain beginning in June 2003. He referenced appellant's recent MRI scan findings and her current complaint of back pain radiating to her legs. Dr. Shukla diagnosed lumbar disc disease. He identified January 21, 2008 as the date of injury and noted that work-related lifting and pulling over 25 pounds caused or aggravated appellant's current condition. Dr. Shukla initially excused her from all work during the period February 11 through April 11, 2008. In subsequent reports dated March 27 and June 10, 2008, he advised that appellant's pain and leg weakness affected her ability to walk properly. Conservative treatment consisting of analgesics and physical therapy had provided no relief. Dr. Shukla also noted that appellant had consulted with a neurosurgeon and she planned on undergoing epidural injections.

When the case was last on appeal, the Board affirmed OWCP's May 19 and December 4, 2008 decisions denying appellant's occupational disease claim. The Board reviewed the relevant medical evidence, including Dr. Shukla's various reports, and found the record insufficient to establish a causal relationship between appellant's employment and her diagnosed lumbar condition. The Board's January 14, 2010 decision is incorporated herein by reference.

Appellant requested reconsideration before OWCP on three separate occasions and submitted additional medical evidence regarding her lumbar condition. The relevant evidence included a January 4, 2011 report from Dr. Shukla and two recent reports from Dr. Jan R. Mensink, a Board-certified family practitioner.

On January 4, 2011 Dr. Shukla noted that appellant had been a patient of his since June 2003 and she had a history of chronic low back pain along with other health issues. He also noted that appellant had been seen by a neurosurgeon in October 2004 and November 2007 and had a normal musculoskeletal examination. Dr. Shukla explained that in January 2008 appellant reported experiencing severe back pain radiating to her legs with weakness, left side greater than right. On examination, appellant's motor strength was 4/5 and she had a positive straight leg

² Docket No. 09-1392 (issued January 14, 2010).

³ On her Form CA-2 appellant identified her injury as herniated disc disease with low back pain, bilateral hip pain and left lower extremity pain, numbness and weakness.

raising test. Dr. Shukla noted that these symptoms were not present prior to January 2008. Appellant reportedly advised Dr. Shukla that her work involved lifting heavy objects and also required her to bend down. He stated that it was probable that appellant's symptoms were work related. Dr. Shukla also referenced the previously reported results of appellant's February 1, 2008 lumbar MRI scan. Additionally, he noted that appellant had been referred to a neurosurgeon in February 2008 who prescribed analgesic muscle relaxants and physical therapy. Dr. Shukla further noted that appellant had also received epidural injections. He reiterated that appellant did not have the above-noted symptoms prior to January 2008.

In an August 30, 2011 report, Dr. Mensink noted that appellant was first seen in his office by a Dr. Rashidi on February 18, 2008 for back pain. While there was no mention of a work history at the time, the treatment records indicated no history of recent trauma. Dr. Mensink stated that he saw appellant on October 1, 2008, at which point the treatment notes indicated that she had been feeling better following lumbar epidural injections. The October 1, 2008 chart notes included the first reference to appellant's work. The notes reflected that appellant had been on limited duty and wanted to resume her full duties. However, subsequent treatment notes from October 22, 2008 revealed that she did not return to work with the employing establishment. Dr. Mensink next examined appellant on December 3, 2008, at which time there was some question regarding her not returning to work and whether she was able to resume work. Appellant was seen again on February 25, 2009 and she was noted to have continuing pain and paresthesia. She had reportedly returned to work and her symptomatology had worsened. Dr. Mensink stated that there was no question that appellant's work activities had "aggravated her spine condition." He further noted that she had neural foraminal narrowing at L4-5 and a right lateral recess disc at L5-S1 that required surgical intervention. Dr. Mensink explained that lifting heavy objects and bending at work would continue to aggravate appellant's condition until surgically corrected. He also stated that there was no question that she had degenerative spondylitic changes due to degenerative disc disease. Appellant also had disc herniation, which Dr. Mensink stated was secondary to her work duties at the employing establishment.

In a supplemental report dated March 20, 2012, Dr. Mensink sought to clarify his earlier opinion regarding causal relationship. He described appellant's job duties as involving repeated lifting of heavy objects and bending with those objects. Dr. Mensink noted that she was required to lift and carry trays of mail weighing approximately 25 pounds and load the trays into hampers. He further noted that appellant described having to stand while leaning on a metal bar for two hours at a time. Dr. Mensink also indicated that her position required pushing, pulling, walking and standing. With respect to whether appellant's job duties aggravated her back condition, Dr. Mensink stated that lifting and carrying trays of mail weighing 25 pounds and bending with those trays contributed to the current state of appellant's spine. He further stated that the above-noted work activities were sufficient to cause the pathology evidenced at L4-5 and L5-S1. Regarding the specific mechanism of injury, Dr. Mensink explained how lifting and bending while holding heavy objects impacts the spine. He noted that when a person bends forward, reaches or twists the spine is flexed and the intervertebral disc is compressed. When lifting from this position, there is added strain on the disc and it can rupture through the outer capsule resulting in a disc herniation. Dr. Mensink further explained that, when a person already has a compromised intervertebral disc, continuing to put strain on the disc through lifting and bending will cause a damaged portion of the spine to become worse.

As noted, appellant filed three requests for reconsideration. In response to each request, OWCP reviewed the merits of appellant's claim and denied modification based on her failure to establish a causal relationship between her lumbar condition and her accepted employment exposure. Its latest merit decision denying modification was dated June 19, 2012.⁴

LEGAL PRECEDENT

A claimant seeking benefits under FECA has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.⁵

To establish that an injury was sustained in the performance of duty, a claimant must submit: (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 diagnosed condition is causally related to the identified employment factors.⁶

ANALYSIS

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. The claimant has the burden to establish entitlement to compensation; however, OWCP shares responsibility in the development of the evidence to see that justice is done.⁷ Dr. Mensink provided a history of appellant's job duties and he acknowledged the presence of both lumbar degenerative disc disease as well as disc herniations. He stated that the activities she performed at work aggravated her degenerative condition. As appellant had a preexisting compromised disc condition, lifting and bending while carrying heavy objects on repeated occasions contributed to her lumbar pathology. While Dr. Mensink's reports are insufficient to discharge appellant's burden of proof that her claimed lumbar condition was caused or aggravated by her employment, his opinion is sufficient to require further development of the case record by OWCP.⁸

⁴ OWCP previously denied modification by decisions dated February 22, 2011 and January 11, 2012.

⁵ 20 C.F.R. § 10.115(e), (f) (2012); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

⁶ *Victor J. Woodhams*, *supra* note 5.

⁷ *William J. Cantrell*, 34 ECAB 1223 (1983).

⁸ See *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

On remand, OWCP should refer appellant to an appropriate specialist, together with the case record and a statement of accepted facts, for evaluation and a rationalized medical opinion on whether appellant's lumbar condition was caused or aggravated by her accepted employment activities. After such further development of the case record as OWCP deems necessary, a *de novo* decision shall be issued.

CONCLUSION

The case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the June 19, 2012 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further action consistent with this decision.

Issued: June 18, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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