

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

K.K., Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
TRANSPORTATION SECURITY
ADMINISTRATION, Orlando, FL, Employer**

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**Docket No. 12-1032
Issued: March 4, 2013**

Appearances:
Lenin V. Perez, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 16, 2012 appellant, through her representative, filed a timely appeal from a February 29, 2012 Office of Workers' Compensation Programs' (OWCP) decision denying her claim for an employment-related injury. 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 met her burden of proof to establish that she sustained back and lower body conditions in the performance of duty on June 28, 2011, as alleged.

On appeal, appellant's representative contends that appellant's injuries were not merely caused by walking from one end of a terminal to another, but other job duties, such as screening checkpoints and assisting passengers, which required lifting her hands above her head, lifting

¹ 5 U.S.C. § 8101 *et seq.*

5 to 20 pounds in violation of her 10-pound restriction and standing for long periods of time. He further contends that her June 28, 2011 injuries are an aggravation of her previous injuries from 2007 and 2010.

FACTUAL HISTORY

On July 16, 2011 appellant, then a 45-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that she sustained injuries to her low back, buttocks, hips and both legs and feet while walking in the performance of duty on June 28, 2011.

By letter dated July 22, 2011, OWCP requested additional factual and medical evidence. It allotted appellant 30 days to submit additional evidence and respond to its inquiries.

In a July 6, 2011 statement, appellant related that her injury occurred while she was walking from one duty station to another. Her supervisor asked her to walk faster in order to relieve her coworkers. Appellant explained that she could not walk any faster and experienced pain in her back, buttocks, hips, upper and lower legs and feet. She was assigned to sit at an exit lane where she remained until it was time for her to go home at 6:00 p.m. Appellant was asked to stay late but excused herself as she needed to seek relief from the pain.

In a July 18, 2011 attending physician's report, Dr. William Neese, an osteopath Board-certified in family medicine, diagnosed herniated nucleus pulposus (HNP) at L4-5 and L5-S1, a cyst at S3 and neuralgia in both lower extremities. He reported that appellant had acute back and leg pain while walking fast from one section to another at the employing establishment on June 28, 2011. Dr. Neese opined that she was totally disabled commencing June 29, 2011.

On July 27, 2011 appellant submitted a second narrative statement indicating that her light-duty restrictions included alternate sitting and standing every 20 minutes and no lifting, pushing or pulling over 10 pounds, no lifting over the shoulder and no repetitive lifting. Her job required an extensive amount of walking, standing and pushing items weighing 5 to 40 pounds through an x-ray machine, which violated her medical restrictions. Appellant also submitted chiropractic notes dated July 28 to August 16, 2011.

By decision dated August 29, 2011, OWCP denied appellant's claim finding that the evidence submitted was insufficient to establish a causal relationship between the diagnosed conditions and the June 28, 2011 employment incident. It noted that she had two previous claims which were accepted for lumbar disc displacement² and lumbar neuritis.³ Appellant's current diagnoses of herniated lumbar discs at L4-S1 were basically the same as those currently accepted in her two open and active cases.

On September 1, 2011 appellant, through her representative, requested an oral hearing before an OWCP hearing representative. She submitted reports by Dr. Neese dated July 18, August 8 and 22, 2011. Dr. Neese reviewed a nerve conduction study on the lower extremities

² OWCP File No. xxxxxx512.

³ OWCP File No. xxxxxx269.

and found radiculopathy of the left L5 nerve root. He diagnosed lumbar disc syndrome, lumbar sprain and strain, radiculopathy of the left and right lower extremities, nerve root impingement at S1 in the left lower extremity and reiterated his diagnoses of right S3 cyst and HNP at L4-5 and L5-S1. Dr. Neese opined that appellant's condition was a result of her injury while working at the employing establishment.

A hearing was held before an OWCP hearing representative on December 15, 2011. Appellant provided testimony and the hearing representative held the case open for 30 days for the submission of additional evidence. She submitted reports dated December 16, 2010 to February 2, 2012 by Dr. Robert L. Murrah, Jr., a Board-certified orthopedic surgeon, for treatment of her February 17, 2010 employment injury.

In a December 5, 2011 report, Dr. James R. Shelburne, an osteopath Board-certified in family medicine, diagnosed disc protrusions at L4-5 and L5-S1, lumbar disc syndrome, chronic lumbosacral sprain/strain, bilateral lower extremity radiculopathy and cyst on the right S3 nerve root. He opined that appellant's condition was due to the June 28, 2011 aggravation of her preexisting employment injury of 2010.

On October 13, 2011 Dr. Samy F. Bishai, an orthopedic surgeon, diagnosed lumbar disc syndrome, radiculopathy both legs, more so on the right side, chronic lumbosacral strain, disc protrusions at L4-5 and L5-S1 and perineural cyst involving the right S3 nerve root. He opined that the June 28, 2011 injury seemed to have been an aggravation of the preexisting condition of 2010 where there was an established case of herniated disc and radiculopathy. Dr. Bishai indicated that the type of work appellant did made it very easy for these exacerbations or aggravations to occur constantly and frequently and resulted in worsening of her conditions. On December 20, 2011 he reiterated his diagnoses and his medical opinions. Dr. Bishai indicated that the work duties that aggravated appellant's 2010 injury were walking for long distances or for long periods of time and lifting bags weighing anywhere from 5 to 20 pounds, while she had a restriction of lifting up to only 10 pounds.

By decision dated February 29, 2012, an OWCP hearing representative affirmed the August 29, 2011 decision finding that the evidence submitted failed to establish causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 injury⁵ was sustained in the performance of duty, as alleged

⁴ 5 U.S.C. §§ 8101-8193.

⁵ OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish 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 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 employee.⁸

ANALYSIS

The Board finds this case is not in posture for decision.

In its August 29, 2011 decision, OWCP denied appellant’s claim on the basis that the evidence submitted was insufficient to establish causal relationship between the diagnosed conditions and the June 28, 2011 employment incident. It noted that she had two previous claims which were accepted for lumbar disc displacement and lumbar neuritis. OWCP found that appellant’s current diagnoses of herniated lumbar discs at L4-S1 were essentially identical to those already accepted under OWCP File Nos. xxxxxx512 and xxxxxx269. By decision dated February 29, 2012, an OWCP hearing representative affirmed the August 29, 2011 decision finding that the evidence submitted failed to establish causal relationship.

Decisions of OWCP shall contain findings of fact and a statement of reasons.⁹ The Board finds that the basis on which OWCP denied appellant’s claim is unclear. The Board is unable to render an informed decision in this case. The record is not complete on whether OWCP adjudicated the claim as a new traumatic injury or occupational disease, or as a recurrence of an accepted condition. Consequently, the case will be remanded for OWCP to combine the current case record with OWCP File Nos. xxxxxx512 and xxxxxx269. Therefore, it should adjudicate the issue of whether appellant met her burden of proof to establish that she sustained a back or

⁶ See *T.H.*, 59 ECAB 388 (2008). See also *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *Id.* See *Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *Id.* See *Gary J. Watling*, 52 ECAB 278 (2001).

⁹ See 20 C.F.R. § 10.126.

lower body condition in the performance of duty on June 28, 2011; or whether she sustained an occupational disease or a recurrence of a previously accepted condition(s).¹⁰ Following this and such other development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the February 29, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: March 4, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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

¹⁰ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8 (February 2000). Under 2.400.8(c), cases should be doubled when correct adjudication of the issues depends on frequent cross-reference between files, including: (1) a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body. For instance, a claimant with an existing case for a back strain submits a new claim for a herniated lumbar disc; (2) two or more separate injuries (not recurrences) have occurred on the same date; and (3) adjudication or other processing will require frequent reference to a case which does not involve a similar condition or the same part of the body. For instance, an employee with an existing claim for carpal tunnel syndrome files a new claim for a mental condition which has overlapping periods of disability.