

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

B.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bakersfield, CA, Employer**

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**Docket No. 13-54
Issued: May 24, 2013**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 6, 2012 appellant filed a timely appeal from a September 6, 2012 decision of the Office of Workers' Compensation Programs (OWCP) denying her claim. 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 the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an aggravation of a preexisting back condition in the performance of duty.

On appeal, appellant contends that OWCP misinterpreted the medical evidence.

FACTUAL HISTORY

On July 16, 2012 appellant, then a 38-year-old city mail carrier, filed an occupational disease claim alleging an aggravation of a lumbar condition due to repetitive work duties. She

¹ 5 U.S.C. § 8101 *et seq.*

noted a preexisting injury to her spine in a motor vehicle accident in September 2002. Appellant described her employment duties, including casing mail which required standing, twisting, bending and lifting tubs of flats that weighed more than 20 pounds. She also lifted parcels and trays full of letters and placed trays full of mail in and out of hampers. Appellant also carried walking swings and a satchel on her shoulder and jumped in and out of her postal vehicle when delivering mail.

Appellant submitted a July 20, 2012 report from Dr. Bradley G. Davis, a Board-certified family practitioner, who stated that she was placed on modified activity at work and at home from July 16 through 30, 2012. Dr. Davis noted that appellant could start work on July 16, 2012 at four hours a day.

By letter dated July 23, 2012, OWCP asked that appellant submit further information.

In an August 22, 2012 Visit Summary, Dr. Davis noted that appellant had chronic low back pain and was to continue limited duty for four hours a day. He stated that bending, lifting and twisting for prolonged time periods aggravated her back muscles and that this should improve with time and therapy.

In a September 4, 2012 report, Dr. Kathryn Mason, a Board-certified family practitioner, diagnosed chronic low back pain, lumbar spondylosis and a fracture vertebra compression. Under discussion, she stated that appellant's back condition was not work related; but in response to a question asking whether her condition was related to work, Dr. Mason responded, "[M]ost likely any activity that she does will aggravate her pain during this acute flare whether it is work or non work activities." Dr. Mason described the activities that aggravated appellant's back condition as repetitive bending, twisting and heavy lifting. She stated, "If she engages in these activities at work then her condition can be considered aggravated by work."

By decision dated September 6, 2012, OWCP denied appellant's claim finding that she did not establish that her back condition was causally related to her work duties.

LEGAL PRECEDENT

An employee seeking compensation under FECA² has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence,³ including that he or she is an "employee" within the meaning of FECA⁴ and that he or she filed his or her claim within the applicable time limitation.⁵ The employee must also establish that he or she sustained an injury in the performance of duty as alleged and that his or her disability for work, if any, was causally related to the employment injury.⁶ These are the

² 5 U.S.C. §§ 8101-8193.

³ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

⁴ *See M.H.*, 59 ECAB 461 (2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951). *See also* 5 U.S.C. § 8101(1).

⁵ *R.C.*, 59 ECAB 427 (2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

⁶ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁷

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, 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.⁸

Causal relationship is a medical issue⁹ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,¹⁰ must be one of reasonable medical certainty,¹¹ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.¹²

Under FECA, when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.¹³ When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation ceased.¹⁴

ANALYSIS

Appellant alleged that she sustained an aggravation of an underlying lumbar condition as a result of her federal employment. OWCP denied her claim finding that the medical evidence was not sufficient to establish causal relation.

The medical reports from Dr. Davis dated July 20 and August 22, 2012 do not address the issue of causal relation. He simply addressed appellant's work restrictions, and noted that continued bending, lifting and twisting for prolonged periods could aggravate her back muscles. Dr. Davis' reports are not sufficient to establish her claim.

⁷ See *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁸ See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁹ *Mary J. Briggs*, 37 ECAB 578 (1986).

¹⁰ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹¹ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

¹² See *William E. Enright*, 31 ECAB 426, 430 (1980).

¹³ *Raymond W. Behrens*, 50 ECAB 221, 222 (1999); *James L. Hearn*, 29 ECAB 278, 287 (1978).

¹⁴ *W.R.*, Docket No. 11-1953 (issued July 18, 2012).

Dr. Mason diagnosed chronic low back pain, lumbar spondylosis and a fracture vertebra compression. However, her opinion on causal relationship is contradictory. Dr. Mason noted that appellant's condition was not work related; but she also indicated that activities that would aggravate appellant's condition were repetitive bending, twisting and heavy lifting. She stated that, if appellant engaged in these activities at work, then her condition could be considered aggravated by work. The Board finds that Dr. Mason's opinion is internally inconsistent and insufficient to establish the causal relationship between the accepted work duties and any aggravation of appellant's back condition.

For this reason, the Board finds that OWCP properly denied appellant's claim as she failed to establish a medical diagnosis that was causally related to appellant's employment.

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. §§ 10.05 through 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an aggravation to a preexisting back injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 6, 2012 is affirmed.

Issued: May 24, 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