

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

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**S.F., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Jackson, NJ, Employer**

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**Docket No. 14-792  
Issued: August 11, 2014**

*Appearances:*  
*Thomas R. Uliase, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 25, 2014 appellant, through her attorney, filed a timely appeal from an October 24, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her traumatic injury claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 sustained a traumatic left shoulder, right hand or back injuries in the performance of duty.

On appeal, counsel notes that OWCP accepted a prior lumbar injury under File No. xxxxxx056. He contends that, because appellant claimed a new traumatic injury under the present claim, OWCP should have developed the medical evidence.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On September 9, 2011 appellant, then a 31-year-old clerk, filed a claim alleging that she sustained a back injury on October 4, 2010 due to standing, walking, lifting, bending and twisting while casing her route, loading her postal vehicle and delivering mail.<sup>2</sup> She stopped work on December 30, 2010.

Appellant was treated by Dr. Bruce R. Rosenblum, an attending Board-certified neurosurgeon. In reports dated from January 18 to August 29, 2011, Dr. Rosenblum held appellant off work due to recurrent lumbar pain with bilateral radiculopathy superimposed on a prior lumbar discectomy.<sup>3</sup>

In an October 21, 2011 letter, OWCP advised appellant of the evidence needed to establish her traumatic injury claim. It requested a report from her attending physician explaining how and why her work duties would cause the claimed lumbar injury. Appellant was afforded 30 days to submit such evidence.

Appellant submitted an October 31, 2011 report from Dr. Rosenblum, who related her account of the onset of lumbar pain while at work on October 4, 2010. Dr. Rosenblum recommended surgery. He opined that “due to the stenotic nature of her canal [appellant was] unable to recover from the post-traumatic lumbar radiculopathy, which she incurred as the result of her work injury on October 4, 2010.”

By decision dated November 25, 2011, OWCP denied appellant’s claim on the grounds that causal relationship was not established. It accepted that she cased, loaded and delivered mail on October 4, 2010 as alleged. However, Dr. Rosenblum’s reports did not adequately explain how and why those work factors caused a lumbar injury.

In a December 7, 2011 letter, counsel requested a hearing, held on April 23, 2012. At the hearing, appellant stated that, although she experienced increased lumbar pain on October 4, 2010, she continued to work until December 30, 2010. Following the hearing, she submitted December 8, 2011 and May 12, 2012 statements explaining her work duties.

In October 4 and December 30, 2010 chart notes, Dr. Martin Riss, an attending osteopathic physician Board-certified in osteopathic manipulative therapy, diagnosed back and left calf pain, with a history of a 2006 occupational lumbar injury and 2008 surgery.

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<sup>2</sup> OWCP accepted a prior claim under File No. xxxxxx056 for a lumbar disc herniation sustained on December 28, 2006, requiring a lumbar laminectomy performed on February 25, 2008. Appellant returned to full duty following the injury. On February 8, 2011 while on full duty, she filed a claim for recurrence of disability (Form CA-2a) asserting that the accepted injury worsened on October 4, 2010 due to exposure to new work factors. As appellant attributed the October 4, 2010 injury to new work factors, OWCP processed the claim as one for a new traumatic injury.

<sup>3</sup> A February 11, 2011 lumbar magnetic resonance imaging scan showed increasing disc height loss at L5-S1 with foraminal stenosis when compared to prior postoperative studies and a moderate right L5-S1 disc protrusion. A May 17, 2011 lumbar myelogram and computed tomography scan showed a disc protrusion at T12-L1 with disc space narrowing, vacuum disc phenomenon and intervertebral disc space loss at L4-5, a laminectomy defect on the left at L4 and a disc bulge at L4-5.

Dr. Rosenblum provided an April 1, 2012 report reviewing appellant's office visits. He stated that, within a reasonable degree of medical certainty, her, "as a result of an October 4, 2010 injury while at work during which [appellant] began to experience recurrence low back pain with radiation down the right leg has experienced recurrent post[-]traumatic lumbar radiculopathy and this has caused her to be out of work since December 30, 2010." Dr. Rosenblum added that appellant's treatment commencing January 18, 2011 including a planned lumbar decompressive laminectomy, was "secondary to the same October 4, 2010 work[-]related injury."

By decision dated and finalized July 3, 2012, an OWCP hearing representative affirmed the November 25, 2011 decision denying appellant's claim on the grounds that causal relationship was not established. She found that the medical evidence did not contain sufficient explanation of how casing and delivering mail on October 4, 2010 would cause a lumbar injury.

In an October 31, 2012 letter, counsel requested reconsideration. An October 18, 2012 narrative report from Dr. Rosenblum related appellant's description of her job duties, including bending, lifting and twisting while casing and sorting mail and loading her delivery vehicle. He noted her account that on October 4, 2010 she "pulled down her route, loaded it in her truck and headed out to her route." While walking delivering mail, appellant felt a "strong sharp pain in her lower back." Dr. Rosenblum opined that "this rigorous workload culminating in the injury of October 4, 2010 resulted in [appellant's] lumbar-sacral spine syndrome," disabling her for work.<sup>4</sup>

By decision dated June 20, 2013, OWCP denied modification of its July 3, 2012 decision, as the additional evidence did not establish causal relationship. It found that Dr. Rosenbaum did not explain how and why the described duties of bending, twisting lifting and walking would cause or aggravate the claimed lumbar injury.

In a July 29, 2013 letter, counsel requested reconsideration. He provided a July 16, 2013 statement and August 13, 2013 amendment from Dr. Rosenblum, stating that appellant's "work-related injury dated October 4, 2010, which occurred while [appellant] was casing her route consisting of pushing, pulling, twisting and bending at the waist while lifting trays of mail aggravated her lumbar-sacral spine disorder." Counsel opined that "[t]herefore within a reasonable degree of medical certainty the lumbar-sacral radiculopathy for which [Dr. Rosenblum] evaluated [appellant] and the need for further treatment [was] causally related to the injury of October 4, 2010."

By decision dated October 24, 2013, OWCP denied modification on the grounds that the additional evidence submitted was insufficient to establish causal relationship. It found that Dr. Rosenbaum did not explain how and why the job duties he described would cause or aggravate a lumbar injury.

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<sup>4</sup> Dr. Rosenblum related that appellant had delivered a hand-written message stating that if I did not write this addendum letter within 10 days she would pursue legal action against me.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>5</sup> 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 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.<sup>6</sup> 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.<sup>7</sup>

In order to determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether “fact of injury” has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.<sup>8</sup> 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.<sup>9</sup>

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.<sup>10</sup>

## ANALYSIS

Appellant claimed that she sustained a lumbar injury on October 4, 2010 due to casing mail, loading her delivery vehicle and walking her delivery route that day. OWCP accepted that the identified work factors occurred at the time, place and in the manner alleged. However, it denied the claim by decision dated November 25, 2011, affirmed on July 3, 2012 and June 20 and October 24, 2013, on the grounds that the medical evidence did not establish that the accepted work factors caused a lumbar injury.

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<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

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

<sup>8</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>9</sup> *Deborah L. Beatty*, 54 ECAB 340 (2003).

<sup>10</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

Appellant was first treated by Dr. Riss, an attending osteopathic physician Board-certified in osteopathic manipulative therapy. On October 4, 2010 Dr. Riss diagnosed low back and left calf pain, but did not explain its cause. His opinion is therefore insufficient to meet appellant's burden of proof in establishing causal relationship.<sup>11</sup>

Appellant then sought treatment from Dr. Rosenblum, an attending Board-certified neurosurgeon. On October 31, 2011 Dr. Rosenblum noted only her complaints of low back pain on October 4, 2010 while at work. He opined that the October 4, 2010 "injury while at work" caused "recurrent post[-]traumatic lumbar radiculopathy," disabling appellant from work since December 30, 2010. Dr. Rosenblum later explained that the "rigorous workload" of casing, loading and delivering mail culminated "in the injury of October 4, 2010" causing "lumbar-sacral spine syndrome." On August 13, 2013 he added that "pushing, pulling, twisting and bending at the waist while lifting trays of mail aggravated [appellant's] lumbar-sacral spine disorder" and lumbosacral radiculopathy.

Dr. Rosenblum reported appellant's account of the onset of back pain while at work on October 4, 2010; but a temporal relationship alone is insufficient to establish causal relationship.<sup>12</sup> He did not explain his medical reasoning supporting the conclusion that the described work activities caused or aggravated a lumbar injury. Dr. Rosenblum's reports are of diminished probative value.<sup>13</sup> Further, the October 18, 2012 addendum report of his was provided under the threat by appellant of legal action. They are insufficient to meet appellant's burden of proof in establishing causal relationship. The Board notes that OWCP advised her by October 21, 2011 letter of the type of evidence needed to establish her claim, including a report from her attending physician explaining how and why the identified factors of her federal employment would cause the claimed injury. As appellant did not submit such evidence, OWCP's October 24, 2013 decision denying her claim is proper under the law and facts of this case.

On appeal, counsel notes that OWCP accepted a prior lumbar injury under File No. xxxxxx056. He contends that, because appellant claimed a new traumatic injury under the present claim, OWCP should have developed the medical evidence. As noted, the medical evidence of record was of insufficient probative value to warrant additional development by OWCP.

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.

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<sup>11</sup> *Deborah L. Beatty, supra* note 9.

<sup>12</sup> *Louis R. Blair, Jr.*, 54 ECAB 348 (2003).

<sup>13</sup> *Deborah L. Beatty, supra* note 9.

**CONCLUSION**

The Board finds that appellant has not established that she sustained a lumbar injury in the performance of duty as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 24, 2013 is affirmed.

Issued: August 11, 2014  
Washington, DC

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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

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