

<sup>1</sup> 5 U.S.C. §§ 8101-8193.

### **FACTUAL HISTORY**

On March 25, 2013 appellant then a 62-year-old rural carrier, filed a Form CA-2, notice of occupational disease, alleging that she developed a back sprain when delivering mail. She became aware of her condition and realized that it was causally related to her employment on February 14, 2013. Appellant stopped work on February 14, 2013.

In a statement dated March 1, 2013, appellant advised that she was delivering a package on February 13, 2013. While walking up an uneven driveway, her right side gave out but she did not fall. Appellant delivered the package and continued her route. She noted that the next day she experienced back pain and sought medical attention.

In a March 5, 2013 Florida Workers' Compensation status report, Dr. Stanley Haimen, Board-certified in occupational medicine, noted that appellant sustained an injury on February 13, 2013. He noted findings of slowed dysfunctional range of motion of the lumbar spine and diagnosed a lumbar sprain and strain. Dr. Haimen noted with a checkmark that appellant's injury was work related. He stated that appellant did not have a preexisting condition and recommended physical therapy. In work status reports dated March 14 and 21, 2013, Dr. Haimen diagnosed lumbar sprain/strain and noted that she could return to work full time at modified duty. In a report dated March 21, 2013, he noted that appellant presented with decreased low back pain. He noted a slow gait but upright, intact station, no back spasms and good range of motion with an intact neurovascular, sensory and motor function in both lower extremities. A magnetic resonance imaging (MRI) scan of the low back revealed significant chronic and degenerative changes with no acute herniated disc or nerve impingement. Dr. Haimen diagnosed lumbar sprain/strain. He stated that the objective findings were consistent with mechanical low back pain and with spasm; there were no objective findings of a herniated disc or nerve impingement. Dr. Haimen opined that the MRI scan revealed chronic degenerative changes that were not attributable to the injury but might be affecting the resolution. On April 2, 2013 he noted that appellant presented with continued low back pain. Dr. Haimen noted positive findings upon examination and diagnosed sprain/strain of the lumbar spine and referred appellant for physical therapy.

Appellant was also treated by Dr. Miguel Burgos, a Board-certified family practitioner. On February 15, 2013 he noted severe right-sided pain in the lumbar and sacral region, from her neck to the right leg, with right leg weakness, saddle numbness and constant gait disturbance for three weeks. Dr. Burgos noted appellant's history was significant for type II diabetes mellitus, hypertension, osteoarthritis, depression (resolved), carpal tunnel decompression and a prior knee arthroscopy. Lumbar spine examination revealed moderate tenderness, crepitus, pain at L4-5 with diminished range of motion, and normal sensory and motor function and deep tendon reflexes. Dr. Burgos diagnosed low back pain, lumbar herniated disc with myelopathy, type II diabetes mellitus, hypertension, obesity, osteoarthritis and polyneuropathy in diabetes. In February 15 and 25, 2013 prescription notes, he noted that appellant was under his care from February 14 to March 18, 2013 and could return to work on March 19, 2013.

On April 11, 2013 OWCP advised appellant of the evidence needed to establish her claim. It requested that she submit a physician's reasoned opinion addressing the causal relationship of her claimed back condition to her specific work factors.

The employing establishment submitted an April 8, 2013 statement from appellant's supervisor, Denise Lee, who noted that appellant spoke to Beverly Reveron and requested a workers' compensation claim form for an injury which occurred 10 years prior. Appellant also informed Ms. Reveron that she could have injured herself on February 13, 2013. Ms. Lee stated that this was about two weeks after the alleged injury. She realized that appellant was getting ready to retire and was out of paid leave until her retirement was granted.

Appellant submitted a February 20, 2013 lumbar spine MRI scan which revealed severe central canal stenosis at L4-5 secondary to grade 1 anterolisthesis of L4-5 on a degenerative basis with additional multilevel degenerative changes. In a March 4, 2013 form report, Dr. Burgos noted that appellant's disability began on February 13, 2013 and it was unknown when she would be able to return to work. In work status reports dated March 5 and 7, 2013, he diagnosed sprain/strain of the lumbar spine and noted that appellant could work modified duty from March 5 to 14, 2013. An April 24, 2013 report from Dr. Burgos noted first treating appellant for a low back injury on February 15, 2013 and noted that she remained symptomatic. Appellant reported almost falling at work on February 13, 2013 and felt a sharp, shooting pain in her back. He noted that an MRI scan revealed lumbar sacral sprain and lumbar sacral issues.

In a March 5, 2013 attending physician's report, Dr. Haimes noted that appellant was injured on February 13, 2013. He listed findings of chronic degenerative changes based on MRI scan and diagnosed lumbosacral sprain. Dr. Haimes checked a box "yes" that appellant's condition was caused or aggravated by an employment activity noting that she was status post fall. In reports dated April 9 to 23, 2013, he noted treating appellant for continued low back pain and diagnosed lumbar sprain and strain. He noted that appellant was slowly progressing and would benefit from physical therapy and an orthopedic evaluation. Dr. Haimes returned appellant to work full-time modified duty. On April 16, 2013 he noted that on February 13, 2013 appellant sustained an injury and diagnosed sprain and strain of the lumbar spine.

In an April 29, 2013 statement, appellant described her job duties. She indicated that the day after her injury she could not stand up on her right side and had unbearable pain. Appellant sought medical attention the next day. She noted returning to work with restrictions.

In a May 14, 2013 decision, OWCP denied appellant's claim on the grounds that the medical evidence was insufficient to establish that her back condition was causally related to work activities.

In an appeal request form dated June 3, 2013, appellant requested reconsideration.

In a June 11, 2013 decision, OWCP denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant a merit review.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the

manner alleged. Appellant must also establish that such event, incident or exposure caused an injury.<sup>2</sup>

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) 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 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 generally rationalized medical opinion 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.<sup>3</sup>

### **ANALYSIS -- ISSUE 1**

It is not disputed that appellant's duties as rural carrier included walking, standing, lifting, pushing, pulling, driving and carrying packages while delivering mail. She was diagnosed with lumbar sprain/strain and central canal stenosis at L4-5 secondary to grade 1 anterolisthesis of L4-5. The Board finds that appellant has not submitted sufficient medical evidence to establish that her back condition is causally related to her employment activities.

Dr. Haimes noted on February 13, 2013 that appellant sustained an injury. He diagnosed a lumbar sprain and strain and checked a box to indicate that the injury was work related. On March 5, 2013 Dr. Haimes listed that appellant was injured on February 13, 2013. He diagnosed lumbosacral sprain and checked a box "yes" that appellant's condition was caused or aggravated by an employment activity noting that she was status post fall. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a form medical report question on whether the claimant's condition was related to the history given is of diminished probative value. Without any explanation or rationale for the conclusion reached, these reports are insufficient to establish causal relationship.<sup>4</sup> In March 21 and April 2, 2013 reports, Dr. Haimes diagnosed lumbar sprain/strain and noted that an MRI scan revealed chronic degenerative changes that were not attributable to the injury but may be affecting the resolution.

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<sup>2</sup> See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>4</sup> *D.D.*, 57 ECAB 734 (2006); *Sedi L. Graham*, 57 ECAB 494 (2006); *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

He failed to provide a history of injury<sup>5</sup> or offer a rationalized opinion addressing how specific work activities caused or contributed to the diagnosed back condition.<sup>6</sup> Consequently, the opinion of Dr. Haimes is insufficient to establish appellant's occupational illness claim.

In an April 24, 2013 report, Dr. Burgos treated appellant for a low back injury on February 15, 2013 and noted that she remained symptomatic. Appellant reported almost falling at work on February 13, 2013 and felt a sharp, shooting pain in her back. Dr. Burgos repeated the history of injury as reported by appellant without providing his own opinion regarding whether appellant's condition was work related. He did not provide a rationalized opinion addressing the causal relationship between appellant's lumbar condition and the factors of employment believed to have caused or contributed to her condition.<sup>7</sup> Therefore, Dr. Burgos' report is insufficient to meet appellant's burden of proof. The other reports of record from him are similarly insufficient as they do not specifically address whether work factors caused or contributed to appellant's low back condition.<sup>8</sup>

On appeal, appellant contends that she submitted sufficient medical evidence to establish her claim. The Board finds that the medical evidence of record does not adequately address the issue of causal relationship.

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.

### **LEGAL PRECEDENT -- ISSUE 2**

Under section 8128(a) of FECA,<sup>9</sup> OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provide that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(i) Shows that [OWCP] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by [OWCP];  
or

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<sup>5</sup> *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history have little probative value).

<sup>6</sup> *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

<sup>7</sup> *See supra* note 6.

<sup>8</sup> *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

<sup>9</sup> 5 U.S.C. § 8128(a).

“(iii) Constitutes relevant and pertinent new evidence not previously considered by [OWCP].”<sup>10</sup>

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.<sup>11</sup>

### **ANALYSIS -- ISSUE 2**

OWCP’s most recent merit decision dated May 14, 2013 denied appellant’s claim for compensation on the grounds that she failed to provide sufficient medical evidence to establish that the diagnosed condition was causally related to established work duties. It denied her reconsideration request, without a merit review.

In her request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She did not identify a specific point of law or show that it was erroneously applied or interpreted. Appellant did not advance a new and relevant legal argument.

The Board notes that the underlying issue in this case is whether appellant’s diagnosed condition is causally related to her work duties. That is a medical issue which must be addressed by relevant medical evidence.<sup>12</sup> A claimant may also be entitled to a merit review by submitting new and relevant evidence, but appellant did not submit any new and relevant medical evidence in support of her claim.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

### **CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that her claimed conditions were causally related to her employment.<sup>13</sup> The Board further finds that OWCP properly denied her request for reconsideration dated June 3, 2013.

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<sup>10</sup> 20 C.F.R. § 10.606(b)(2).

<sup>11</sup> *Id.* at § 10.608(b).

<sup>12</sup> *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

<sup>13</sup> With her request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 11 and May 14, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 18, 2014  
Washington, DC

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

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

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