

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

C.B., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
TRANSPORTATION SECURITY)
ADMINISTRATION, Seattle, WA, Employer)

**Docket No. 10-2321
Issued: August 8, 2011**

Appearances:

*Howard L. Graham, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 10, 2010 appellant, through her attorney, filed a timely appeal from the June 22, 2010 Office of Workers' Compensation Programs (OWCP) merit decision which denied her claim for an employment-related injury. Pursuant to the Federal Employees' Compensation Act (FECA)¹ 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 a thoracic back condition causally related to factors of her federal employment.

On appeal, appellant's attorney contends that: (1) the claim should have doubled with appellant's previously accepted thoracic claim; (2) the statement of accepted facts was inadequate; (3) the claim form used by appellant was not dispositive; (4) OWCP violated FECA

¹ 5 U.S.C. § 8101 *et seq.*

as it did not send a copy of the second opinion evaluation to appellant, her attorney or physician and thus her physician was not provided an opportunity to comment on the claim in a timely manner; (5) the second opinion evaluation was not well reasoned and of diminished probative value as he blamed appellant's thoracic condition on age; and (6) OWCP misrepresented the standard of causation by asking only whether appellant's work duties "caused" her condition, failing to ask whether they "contributed" to it in anyway.

FACTUAL HISTORY

On May 29, 2009 appellant, then a 52-year-old lead transportation security officer (screener), filed an occupational disease claim (Form CA-2) alleging progressive thoracic disc degeneration, disc bulges at T3-4, T6-7, T7-8, T8-9 and T9-10, as a result of repetitively lifting heavy luggage. As of March 21, 2009 she worked in a light-duty capacity as a security screener and her duties included filing documents, working on a computer with a keyboard and mouse, answering the telephone and lifting no more than 20 pounds.

On June 4, 2009 OWCP requested additional factual and medical evidence, including a detailed description of the employment-related activities which contributed to appellant's alleged thoracic back condition. It also requested a comprehensive medical report containing a diagnosis, description of her symptoms, the results of examinations and tests and medical rationale explaining how her diagnosed condition was causally related to specific factors of her employment. OWCP allotted appellant 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted two narrative statements dated May 27, 2009. She worked for the employing establishment since October 2002 and repeatedly lifted heavy baggage which caused her back to hurt almost everyday. In March 2005 appellant worked in a light-duty capacity due to a back injury, filling out the log book, writing the schedule and working on a computer. On January 3, 2009 she went to an emergency room due to chest pains and numb hands. Appellant was diagnosed with degenerative disc disease with bilateral unconvertrebral hypertrophy and mild neural foraminal narrowing at C3-4. She described her work duties as pushing, pulling, sorting, stacking, lifting, and carrying baggage weighing 40 to 70 pounds, 8 hours a day, 5 days a week. Appellant identified the part of body affected as the neck, hands and mid and upper back. She noted that she had previously accepted claims for thoracic upper back and neck sprain (OWCP claim File No. xxxxxx734).

In a letter dated June 12, 2009, the employing establishment indicated that it provided a light-duty assignment that avoided any lifting, pushing, pulling or physical exertion in compliance with appellant's medical restrictions.

In a November 12, 2008 medical report, Dr. I Hua Huang, a Board-certified radiologist, diagnosed mild multilevel disc desiccation and mild disc bulges at T3-4, T6-7, T7-8, T8-9 and T9-10 with no focal herniations, degenerative fatty narrow changes at T7-8, degenerative changes at L4-5 and L5-S1 and disc desiccation at L2-3 with only minimal annular bulge.

On November 14, 2008 a work site evaluation was conducted by Dr. Kevin Schoenfelder, a Board-certified orthopedic surgeon, who recommended different chairs for each of appellant's workstations.

In a January 5, 2009 medical report, Dr. Mary Reif, a Board-certified neurologist, diagnosed status post two-level laminectomy and foraminotomies for a disc disease, spinal stenosis, progressive thoracic disc changes likely related to lifting baggage up to 70 pounds at work, chronic pain and depression, and cervical disease, symptomatic vs. carpal tunnel syndrome.

In a June 29, 2009 narrative statement, appellant indicated that her light-duty assignment required leaning forward while sitting which aggravated her upper back. She explained that she sat in an ergonomic stool and had to lean forward to a podium to be able to write and document the requirements of the log book and push a bypass button behind her repeatedly throughout the day. Appellant indicated that when she performed her duties as a ticket document checker she sat in a nonergonomic stool which was too high and could not be lowered and she had to lean to use a stamp, light, ticket scanner and magnifying tools on a podium to inspect documents.

A November 13, 2009 statement of accepted facts stated that appellant worked as a lead screener from October 2002 to July 9, 2004

By letter dated November 19, 2009, OWCP referred appellant to an orthopedic specialist for a second opinion evaluation. In a second opinion examination report dated December 21, 2009, Dr. Gregory R. Harper, a Board-certified internist and oncologist, diagnosed thoracic pain with increasing degenerative disc disease in the thoracic spine with no evidence of trauma. He indicated that the orthopedic examination revealed minimal tenderness in the midline around C7 and the intrascapular area in the midline and extreme tenderness around the superior angle of the scapula on the right side. Dr. Harper reported that appellant was markedly limited by her low back difficulties and could only forward flex about 20 degrees and extend about 10 degrees, laterally bend less than 15 degrees and move 30 degrees to either side in a thoracolumbar rotation. He opined that the degenerative changes in her thoracic spine were more age related and weight related than related to her job on the grounds that it is unusual to develop disc bulges and ruptures that are work related. Dr. Harper stated that without a specific history of injury to the thoracic spine and without widespread degenerative change, it was more likely that appellant's thoracic back condition was related to her age and weight and not her employment. He concluded that appellant had reached maximum medical improvement and could work full-time without limitations.

In a December 7, 2009 medical report, Dr. Reif diagnosed cervical and thoracic pain, widespread degenerative changes throughout the thoracic and lumbar spine. She opined that she was not able to make a legal case on a more probable than not basis that these degenerative changes were caused solely by her work rather than other factors.

By decision dated January 21, 2010, OWCP denied appellant's claim on the grounds that the medical evidence of record did not establish causal relationship.

On January 29, 2010 appellant's attorney requested an oral hearing, noting that a copy of the second opinion evaluation was never sent to appellant, her attorney or physician. An oral hearing was held *via* telephone on April 13, 2010. Her attorney contended that appellant had developed a recurrence or consequential injury of her thoracic back condition.

In a March 29, 2009 medical report, Dr. Reif diagnosed progressive thoracic disc degeneration and opined that it was likely related to years of heavy lifting at work.

By decision dated June 22, 2010, OWCP's hearing representative found that appellant was not claiming a recurrence or consequential injury but a new injury and denied her claim for compensation on the basis that she did not submit sufficient medical evidence to establish that her thoracic back condition was causally related to factors of her federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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 and that an injury³ was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit the following: (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.⁵

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee'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 employee, must be one of reasonable medical certainty and must be

² 5 U.S.C. §§ 8101-8193.

³ OWCP's regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

⁴ See *Ellen L. Noble*, 55 ECAB 530 (2004); *O.W.*, Docket No. 09-2110 (issued April 22, 2010).

⁵ See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989); *D.R.*, Docket No. 09-1723 (issued May 20, 2010).

supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁶

ANALYSIS

The Board finds that appellant failed to meet her burden of proof to establish a claim that federal employment factors caused or aggravated her thoracic back condition. While appellant submitted statements in which she identified the factors of employment, leaning forward and heavy lifting, which she believed caused the condition, in order to establish a claim that she sustained an employment-related injury, she must also submit rationalized medical evidence which explains how her thoracic back condition was caused or aggravated by the implicated employment factors.⁷

In Dr. Harper's January 28, 2010 second opinion examination report, he diagnosed thoracic pain with increasing degenerative disc disease in the thoracic spine. He opined that the degenerative changes in appellant's thoracic spine were more age related and weight related than related to her job on the grounds that it is unusual to develop disc bulges and ruptures that are work related. Dr. Harper stated that without a specific history of injury to the thoracic spine and without widespread degenerative change, it was more likely that appellant's thoracic back condition was related to her age and weight and not her employment. He concluded that she had reached maximum medical improvement and could return to work full time without limitations. This report does not support appellant's claim; rather it suggests her claim is not work related.

In the January 5, 2009 medical report, Dr. Reif diagnosed spinal stenosis and progressive thoracic disc changes likely related to lifting baggage up to 70 pounds at work. In a December 7, 2009 medical report, she diagnosed thoracic pain and widespread degenerative changes throughout the thoracic spine and opined that these degenerative changes were probably not caused solely by appellant's work rather than other factors. In a March 29, 2009 medical report, Dr. Reif diagnosed progressive thoracic disc degeneration and opined that it was likely related to years of heavy lifting at work. Although she provided firm diagnoses, Dr. Reif failed to directly address the issue of causal relationship as she did not explain how factors of appellant's federal employment, such as sitting on a tilted seat, caused or aggravated her back condition. Lacking thorough medical rationale on the issue of causal relationship, Dr. Reif's reports are insufficient to establish that appellant sustained an employment-related injury.

Dr. Huang, in his November 12, 2008 medical report, diagnosed mild multilevel disc desiccation and mild disc bulges at T3-4, T6-7, T7-8, T8-9 and T9-10 and degenerative fatty narrow changes at T7-8. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁸ The medical report of Dr. Huang is therefore insufficient to meet

⁶ *O.W.*, *supra* note 4.

⁷ *Donald W. Wenzel*, 56 ECAB 390 (2005); *Leslie C. Moore*, 52 ECAB 132 (2000); *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

⁸ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

appellant's burden of proof to establish causal relationship between the thoracic back condition and factors of her federal employment as it fails to offer an opinion on causal relationship.

As the record contains no rationalized medical evidence to support appellant's allegation that she sustained an injury causally related to the indicated employment factors, she failed to meet her burden of proof to establish a claim.

On appeal, appellant's attorney contends that the statement of accepted facts was inadequate and the claim form used by appellant was not dispositive. The Board finds that the statement of accepted facts was not deficient as it contained the information necessary to adjudicate the claim as well as the claim form. The issue of causal relationship is medical in nature, which was supported by the medical evidence of record. Appellant's attorney also contends that the claim should have been doubled with appellant's previously accepted thoracic claim. Under OWCP procedures, cases should be combined "when correct adjudication of the issues depends on frequent cross-reference between files."⁹ In this case, the Board finds that as only a few cross-references were needed, the cases should not be doubled¹⁰ and that the other injury has no bearing on the current case¹¹ as the medical evidence as presented in this claim does not establish that appellant's current condition is employment related.

Appellant's attorney further contends that OWCP violated FECA as it did not send a copy of the second opinion evaluation to appellant, her attorney or physician and thus her physician was not provided an opportunity to comment on the claim in a timely manner. OWCP procedures do not provide appellant an automatic right to a copy of the second opinion evaluation.¹² On March 25, 2010 appellant's attorney requested a copy of all of the documents in appellant's updated claim file as of November 23, 2010. By letter dated April 1, 2010 OWCP confirmed that it sent a copy of appellant's case file from November 23, 2009 to current, which included the December 21, 2009 second opinion evaluation. The record shows that appellant received a copy of the second opinion evaluation, thus, her argument that OWCP violated FECA is without merit.

Finally, appellant's attorney contends that OWCP misrepresented the standard of causation by failing to ask whether appellant's work duties "contributed" to her condition in any way and the second opinion evaluation was not well reasoned and of diminished probative value because Dr. Harper attributed appellant's thoracic condition to age. The Board finds that OWCP properly found that appellant had not met her burden to establish that her condition was causally related to factors of her federal employment.

⁹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (March 2011).

¹⁰ See *id.* at Chapter 2.400.8(d). Office procedures provide in part: "When to Avoid Doubling Cases. If only a few cross-references will be needed, the cases should not be doubled."

¹¹ *Id.* at Chapter 2.400.8(f)

¹² See *id.* at Part 3 -- Medical, *Medical Examination*, Chapter 3.500.3 (March 2010).

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. Should she claim this condition is a consequential injury to her previously accepted thoracic injury, she can file such claim with OWCP.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a thoracic back condition in the performance of duty causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the June 22, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 8, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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