

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

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P.B., Appellant )  
and ) Docket No. 11-542  
U.S. POSTAL SERVICE, INTERNATIONAL ) Issued: October 18, 2011  
STATION, Seattle, WA, Employer )  
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)

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 3, 2011 appellant filed a timely appeal of a December 15, 2010 Office of Workers' Compensation Programs' (OWCP) merit decision denying an injury. Pursuant to the Federal Employees' Compensation Act (FECA)<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

**ISSUE**

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty on October 12, 2010 as alleged.

On appeal, appellant alleged that OWCP should have considered medical evidence contained in her prior claims.

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

## **FACTUAL HISTORY**

On October 14, 2010 appellant, then a 51-year-old mail clerk filed a recurrence of disability claim alleging that on October 12, 2010 she stopped work due to a recurrence of back pain. She noted that she had been on light duty for three years. Appellant stated, "Holding mail on left arm and in left hand put a lot of pressure on my lower back and tail bone." She noted that mail was very heavy on October 12, 2010 and that there was a change in the way she had to carry the mail. Appellant returned to work on October 14, 2010. On the reverse of the form, her supervisor stated, "Carrier instructed to deliver mail within restrictions and deliver one bundle at a time."

Appellant sought medical treatment on October 14, 2010 from Dr. Janna L. Chao, a Board-certified family practitioner, due to back pain. Dr. Chao noted that appellant experienced intermittent or recurrent back pain and that a change in her routine at work may have reaggravated the area. She noted that appellant felt that her back pain was related to a change in technique at work which required her to hold mail in the crook of her left arm and in her hand. Dr. Chao stated that it was unclear whether this was a new injury or an exacerbation of an existing condition. She diagnosed sprain lumbar region. In a note dated October 14, 2010, Dr. Chao stated that appellant should not hold mail material in the crook of her elbow while also using the same hand with other material. On October 16, 2010 she repeated appellant's statement that holding mail in her left arm and left hand put pressure on her lower back and that reaching down and retrieving more mail repetitively caused a strain on her back resulting in pain. Appellant indicated that she had a claim for a back injury.<sup>2</sup> Dr. Chao indicated that appellant could return to light duty and was to avoid holding material in the crook of her left elbow. She diagnosed lumbar sprain.

In a letter dated November 29, 2010, OWCP informed appellant that, as her claim was based on a new work exposure, her claim would be developed as an occupational disease. It requested additional factual and medical information from her regarding her claim.

By decision dated December 15, 2010, OWCP denied appellant's claim on the grounds that she failed to submit the necessary medical evidence to establish a causal relationship between her implicated work factor and her diagnosed condition of lumbar sprain.<sup>3</sup>

## **LEGAL PRECEDENT**

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment

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<sup>2</sup> Appellant listed the claim number as xxxxxx905. This claim is not currently before the Board.

<sup>3</sup> Appellant requested an oral hearing on December 21, 2010. The Branch of Hearings and Review issued a decision on March 15, 2011 after the date she filed her appeal with the Board on January 3, 2011. The Board and OWCP may not simultaneously have jurisdiction over the same case. Because OWCP must review its prior decision in order to determine whether appellant submitted additional new and relevant evidence, OWCP may not issue a decision regarding the same issue on appeal before the Board. OWCP therefore did not have the authority to issue its March 15, 2011 decision. *Arlonia B. Taylor*, 44 ECAB 591, 597 (1993).

that caused the illness.<sup>4</sup> OWCP defines 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.”<sup>5</sup> OWCP’s regulations define an occupational disease as “a condition produced by the work environment over a period longer than a single workday or shift.”<sup>6</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) a 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 evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.<sup>7</sup>

## ANALYSIS

While appellant filed a claim for a recurrence of disability, the Board finds that OWCP properly developed her claim as a new occupational disease. In her claim form and before her physician, she implicated changes in her employment duties as resulting in her current condition. Appellant stated that she was now required to carry mail in both her left arm and her left hand which resulted in back pain. As she has attributed her condition to a new work exposure, the requirement that she carry mail differently, her current condition cannot be considered a recurrence of her accepted back condition, but instead a new work-related injury. Furthermore, as appellant did not specify a specific time or day that the change in work requirements occurred, OWCP properly considered that the change had been ongoing for more than one workday or shift resulting in an occupational disease claim rather than a traumatic injury.

In support of her claim, appellant submitted reports from Dr. Chao indicating that appellant believed that her current back pain was the result of holding mail in both her left arm and left hand, rather than in her left hand alone. Dr. Chao diagnosed lumbar sprain and provided additional work restrictions. However, she did not provide her own opinion regarding how and why the new employment duty implicated would result in appellant’s diagnosed condition. As noted above, appellant’s belief that a condition was caused or aggravated by the employment is

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<sup>4</sup> 20 C.F.R. § 10.5(x).

<sup>5</sup> 20 C.F.R. § 10.5(ee).

<sup>6</sup> *Id.* at § 10.5(q).

<sup>7</sup> *Lourdes Harris*, 45 ECAB 545, 547 (1994).

not sufficient to establish causal relation, which must be established through medical evidence. As Dr. Chao did not provide the necessary medical opinion evidence, appellant has failed to meet her burden of proof in establishing that her new current back condition is related to factors of her 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. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not submitted the necessary medical opinion evidence to establish a causal relationship between her diagnosed back strain and her implicated employment duties and has, therefore, failed to meet her burden of proof in establishing an occupational disease.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the December 15, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 18, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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