

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

---

J.J., Appellant )  
and ) Docket No. 11-123  
U.S. POSTAL SERVICE, POST OFFICE, ) Issued: September 15, 2011  
Washington, DC, Employer )  
\_\_\_\_\_  
)

*Appearances:*  
Appellant, *pro se*  
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 October 19, 2010 appellant timely appealed the June 3, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 over the merits of this case.

**ISSUE**

The issue is whether appellant sustained an injury in the performance of duty on July 30, 2007.

**FACTUAL HISTORY**

Appellant, a 55-year-old distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that she injured her lower back in the performance of duty on July 30, 2007. She claimed to have injured herself while attempting to remove a parcel from an all-purpose

---

<sup>1</sup> 5 U.S.C. §§ 8101-8193 (2006).

container (APC). Appellant described her injury as “lower back pain.” Her employer challenged the claim on the basis that she never lifted the package. The employing establishment further indicted that there was no reason for appellant to even move the package because it was already in an APC that was headed out for dispatch.

On August 1, 2007 appellant sought treatment at the Providence Hospital emergency department. Her chief complaint was lower back pain, which she attributed to a July 30, 2007 employment incident where she “tried to lift an object....” Appellant received a diagnosis of low back pain and was discharged later that afternoon. An August 1, 2007 x-ray of the lumbar spine revealed mild scoliosis, mild degenerative disease, mild sclerosis in the sacroiliac joints and a small density that was most likely a renal stone.

Appellant subsequently came under the care of Dr. Easton L. Manderson, a Board-certified orthopedic surgeon, whose August 29, 2007 progress notes included a diagnosis of lumbar strain. Dr. Manderson excused her from work and referred her to physical therapy beginning September 5, 2007. Appellant’s diagnoses included lumbar strain and lumbar degenerative disc disease. Dr. Manderson’s September 19, 2007 progress notes similarly included a diagnosis of strain. He also questioned whether appellant had a herniated disc. Dr. Manderson’s October 31, 2007 progress notes referenced a magnetic resonance imaging (MRI) scan that reportedly revealed a disc extrusion at L5-S1. His November 25, 2007 progress notes included a diagnosis of herniated nucleus pulposus (HNP) at L5-S1.

In a decision dated December 28, 2007, OWCP denied appellant’s claim because she failed to establish fact of injury. Appellant had not demonstrated that the incident occurred as alleged. OWCP also found that the medical evidence, which included a diagnosis of lumbar strain, did not include a history of injury or a discussion on causal relationship.

On January 29, 2008 appellant requested reconsideration.<sup>2</sup>

Appellant submitted a November 29, 2007 statement. She explained that she had been scanning parcels and the box was the last piece in the APC. Appellant pulled the box closer to her so she could safely pull it up. However, as she pulled it to the front of the APC she realized the box was too heavy to lift alone. Appellant asked a coworker to assist her. She estimated the box weighed over 50 pounds. Appellant indicated that she did not feel pain until the end of the following day. She also reported having previously injured her back in a July 1987 motor vehicle accident (xxxxxx671).<sup>3</sup> Appellant reportedly returned to full duty without restrictions in June 1999.

Delvin L. Johnson, appellant’s coworker, provided a December 19, 2007 statement confirming that on July 30, 2007 appellant asked him to help her lift a heavy box out of an APC.

---

<sup>2</sup> Appellant had previously requested a review of the written record which the Branch of Hearings & Review denied as untimely.

<sup>3</sup> Appellant also sustained an employment-related injury on December 31, 1987, which OWCP accepted for cervical disc displacement (25-0320058).

He provided the requested assistance. Mr. Johnson also stated that the box was heavy, but he could not say how much it weighed.

In addition to the above-noted statements, OWCP received various medical reports following the December 28, 2007 denial of the claim. The additional evidence included a physician's referral form, several medical reports and progress notes from Dr. Manderson and an October 25, 2007 lumbar MRI scan.

On August 2, 2007 Dr. Robert H. Williams, a Board-certified family practitioner, referred appellant for treatment of acute lumbar muscular strain.

In an August 17, 2007 report, Dr. Manderson noted that he examined appellant on August 15, 2007 for complaints of low back pain with radicular symptoms into her legs. He stated that she reportedly injured herself at work on July 31, 2007, when she was working with an APC and she reached to remove a box and hurt her back. Dr. Manderson noted that appellant went to the emergency room on August 1, 2007 and her x-rays were apparently negative. Objective findings included moderate tenderness to palpation bilaterally over the iliolumbar intervals. Appellant's straight leg raising test was negative in the sitting position. Dr. Manderson also noted that she was able to ambulate independently, but she used a cane. His assessment was lumbar strain superimposed upon mild degenerative changes of the lumbar spine.

An October 25, 2007 lumbar MRI scan revealed a small right foraminal disc extrusion at L5-S1, which was likely the source of appellant's right-sided radicular symptoms. There was also evidence of a mild disc bulge at L4-5 and multi-level facet hypertrophy, most pronounced at L3-4, L4-5 and L5-S1.

In a December 19, 2007 report, Dr. Manderson noted that appellant had a herniated lumbar disc and was presently undergoing lumbar epidural blocks.

In a handwritten note dated January 29, 2008, Dr. Manderson indicated that on July 31, 2007 appellant was trying to remove a heavy object from an APC and suffered an injury to her lower back.<sup>4</sup> Appellant subsequently had severe right lower extremity pain and was unable to sit without great discomfort. Dr. Manderson further indicated that her objective and subjective signs and symptoms were consistent with a herniated lumbar disc as confirmed by MRI scan.

By decision dated May 5, 2009, OWCP affirmed the December 28, 2007 denial of the claim, but modified the prior decision to reflect that appellant's claim was denied based on a failure to establish causal relationship. It found that she established that the July 30, 2007 employment incident occurred as alleged. However, the medical evidence was insufficient to establish a causal relationship between the diagnosed conditions and the accepted employment incident.

On March 6, 2010 appellant requested reconsideration. OWCP subsequently received a January 31, 2008 report from Dr. Steven C. Scherpding, a Board-certified orthopedic surgeon,

---

<sup>4</sup> Dr. Manderson mistakenly dated his report "January 29, 2007" rather than 2008.

who diagnosed lumbar disc herniation with associated radiculopathy. Dr. Scherping recommended obtaining a new MRI scan and an electromyography and nerve conduction study. He noted that appellant had a history of diabetes and thought it appropriate to rule out any associated neuropathy/peripheral nerve disorder. Dr. Scherping indicated that she reported having developed acute severe pain in her low back following a late July 2007 incident when she “was lifting a box.” He did not otherwise attribute appellant’s diagnosed lumbar condition to a specific cause.

By decision dated June 3, 2010, OWCP denied modification of the May 5, 2009 decision.

### **LEGAL PRECEDENT**

A claimant seeking benefits under FECA has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.<sup>5</sup>

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether “fact of injury” is established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.<sup>6</sup> The second component is whether the employment incident caused a personal injury.<sup>7</sup>

### **ANALYSIS**

OWCP accepted that the July 30, 2007 employment incident occurred as alleged. However, it denied appellant’s claim on the basis that the medical evidence did not establish a causal relationship between the accepted employment incident and the diagnosed lumbar conditions, which included lumbar strain and herniated disc at L5-S1. The Board finds that the record, particularly Dr. Manderson’s August 17, 2007 report, establishes that she sustained a lumbar strain in the performance of duty on July 30, 2007. Dr. Manderson examined appellant on August 15, 2007 for complaints of low back pain with radicular symptoms. Although he mistakenly identified the date of injury as July 31, 2007 rather than July 30, 2007, he reported an otherwise accurate history of injury noting that she had been working with an APC when she reached to remove a box and hurt her back. Dr. Manderson also correctly noted that appellant

---

<sup>5</sup> 20 C.F.R. § 10.115(e), (f) (2010); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

<sup>6</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>7</sup> *John J. Carbone*, 41 ECAB 354 (1989). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician’s opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician’s opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant’s specific employment factors. *Id.*

went to the emergency room on August 1, 2007. He diagnosed lumbar strain superimposed upon mild degenerative changes of the lumbar spine. This diagnosis is consistent with Dr. Manderson's own examination findings and appellant's August 1, 2007 lumbar x-ray, which revealed mild degenerative disease. Accordingly, appellant's claim is accepted for lumbar strain.

The current record, however, does not support acceptance of the claim for herniated disc at L5-S1. While the diagnosis is supported by the record, particularly the October 25, 2007 lumbar MRI scan, there is insufficient evidence to establish that this condition is causally related to the July 30, 2007 employment incident. Dr. Manderson's January 29, 2008 report ostensibly links appellant's lumbar herniated disc to her employment injury, however, he did not provide adequate rationale to support causal relationship. There is no clear explanation of how Dr. Manderson purportedly distinguished the July 30, 2007 employment incident from the normal age-related degenerative process. While it is arguable that the July 30, 2007 employment incident aggravated a previously asymptomatic lumbar degenerative disc disease, Dr. Manderson provided no discussion in this regard. A physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.<sup>8</sup> Dr. Manderson's January 29, 2008 report does not rise to this level. Thus, the record does not establish that appellant's L5-S1 herniated disc was either directly caused or aggravated by the July 30, 2007 employment incident.

### **CONCLUSION**

Appellant established that she sustained a lumbar strain in the performance of duty on July 30, 2007. Accordingly, OWCP's June 3, 2010 decision is modified to reflect lumbar strain as an accepted condition.

---

<sup>8</sup> *Victor J. Woodhams, id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 3, 2010 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: September 15, 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