

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

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**K.G., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Louisville, KY, Employer**

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**Docket No. 11-1832  
Issued: August 28, 2012**

*Appearances:*  
*Matt Housh, for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
PATRICIA HOWARD FITZGERALD, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On August 4, 2011 appellant filed a timely appeal from the July 15, 2011 Office of Workers' Compensation Programs' (OWCP) merit decision, which found that she failed to establish that she sustained an injury as alleged. 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.<sup>2</sup>

**ISSUE**

The issue is whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty.

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

<sup>2</sup> Appellant requested oral argument before the Board. The Board has duly considered the matter and finds that the request should be denied. Pursuant to section 501.5(a) of the Board's regulations, oral argument may be held at the discretion of the Board. 20 C.F.R. § 501.5(a). The Board finds that oral argument in this appeal would delay issuance of a decision and not serve a useful purpose. Furthermore, the appeal can adequately be addressed in a decision based on the case record submitted. For these reasons, oral argument is denied.

## **FACTUAL HISTORY**

On February 3, 2011 appellant, then a 51-year-old automation clerk, filed a traumatic injury claim alleging that on January 31, 2011 she sustained injuries to her lower back and upper right arm and shoulder since being assigned the automation job. She stopped work on February 4, 2011. The employing establishment controverted the claim and alleged that appellant did not notify it until seven days after the incident. In a February 4, 2011 letter, Julie Lukens, a health and resource management specialist with the employing establishment controverted the claim.

By letter dated February 9, 2011, OWCP informed appellant of the evidence needed to support her claim and requested additional evidence within 30 days.

OWCP subsequently received a February 4, 2011 statement from appellant, who was assigned to a job in automation upon returning to work at the beginning of the year. This new position required appellant to engage in more repetitive movement than she was used to over the previous 15 years. On Friday morning, January 28, 2011, she injured her back. Appellant did not believe that it was a particular event that triggered her condition, but rather it was the “physical working of bending sweeping that was aggravated over the course of time....” She informed Barry Turley, her supervisor, and requested a “less paced machine.” Appellant explained that she felt more stress in her back and shoulders while working and noted that certain machines did not run as fast. She noted that Mr. Turley accommodated her. When she arrived at work on Thursday, February 3, 2011, appellant was placed on delivery bar code sorter (DBCS) number one. She noticed that a casual employee was working on number 14, and asked if she could switch because of her back. Appellant’s supervisor denied her request and inquired about her back. She was sent to the office to fill out paperwork.

In a letter dated February 16, 2011, Matthew Reed, an automation supervisor controverted the claim. In a statement, Michale Redman, a supervisor, addressed the morning of February 2, 2011. A statement from Mr. Turley was also received. They denied being aware that appellant had a back injury on the job. In a February 11, 2011 letter, Ms. Lukens also noted that appellant’s claim appeared to be more of an occupational disease claim.

In a February 18, 2011 response, appellant stated that she initially thought that she pulled a muscle when she first sustained her injury. She believed her condition was both a traumatic injury and an occupational disease.

OWCP received reports from Dr. David L. Jackson, a treating Board-certified physiatrist. On September 27, 2010 Dr. Jackson advised that appellant was seen for chronic skin ulceration related to allergic reactions at work and that she could not return to work. In a February 1, 2011 report, he treated her for chronic skin ulcerations. Dr. Jackson explained that appellant had to return to work in January 2011 and since that time, her eruptions had recurred. He advised that she had increasing lower back and right arm pain. Dr. Jackson diagnosed chronic allergic reactions with subsequent skin ulcerations to lower extremities, chronic low back pain with possible degenerative spinal abnormalities and right shoulder pain with evidence of right rotator cuff impingement. He recommended that appellant stop work secondary to her chronic allergies and skin eruptions and seek an orthopedic consultation for her right rotator cuff and obtain a

magnetic resonance imaging (MRI) scan of the lumbar spine to rule out any type of degenerative changes. In a February 14, 2011 treatment note, Dr. Jackson indicated that she had right shoulder and low back pain. He diagnosed skin eruptions, right shoulder impingement, low back pain and sleep apnea.

A February 23, 2011 MRI scan of the lumbar spine, read by Dr. Dennis Whaley, a Board-certified diagnostic radiologist, revealed degenerative changes at L5-S1. There was a broad-based posterior disc bulge which was more prominent on the left, bilateral facet arthropathy and mild bilateral neural foraminal narrowing. It also revealed that above the L5-S1 level the study was negative.

On February 28, 2011 Dr. Jackson indicated that appellant had low back pain and right shoulder pain due to working on a machine at work. On March 28, 2011 he diagnosed low back pain

By decision dated May 4, 2011, OWCP denied appellant's claim. It found that the claimed occupational activities occurred, but found that the medical evidence did not establish causal relations.

On May 15, 2011 appellant requested reconsideration. In a May 10, 2011 report, Dr. Jackson noted that she presented earlier in the year with complaints of back and shoulder pain related to work activities. Appellant had been doing lifting at work with increased low back and right shoulder pain. On examination, Dr. Jackson noted that muscle tightness and loss of mobility in the lower spine and findings consistent with rotator cuff impingement of the right shoulder and evidence of degenerative changes in the lumbar spine appear to have been aggravated by her work conditions. He opined that appellant had severe lower back and right shoulder pain related to work activities and advised that she could "not return to work at this time."

In a letter dated June 8, 2011, Ms. Lukens noted that appellant had not worked from April 19 to December 31, 2010. She stated that appellant could not pinpoint an exact date for a traumatic incident and had only worked from January 3 through February 3, 2011.

In a June 13, 2011 report, Dr. Jackson noted that on February 1, 2011 appellant had complaint of low back and right shoulder pain. Appellant gave a history of returning to work on January 1, 2011 after being off work for the previous eight months. Dr. Jackson related that she was placed on "machines" that required lifting and loading mail that weighed up to 70 pounds. Appellant had to lift it, twist and place it into the machine. While working on these machines, she developed acute onset of lower back pain and right shoulder pain which only worsened and was aggravated by sweeping the mail out of the machine. When Dr. Jackson saw appellant on February 1, 2011 he diagnosed right rotator cuff tendinitis secondary to impingement and overuse from work activity as described above. He indicated that she had low back pain with diagnostic tests revealing evidence of an L5-S1 bulging disc with degenerative discs at multiple levels. Dr. Jackson opined that appellant's low back pain was related to the bulging disc that was inflamed and created this discomfort secondary to the activities at work with lifting and twisting while loading the machines. He also indicated that he "assumed that her right rotator cuff tend[i]nitis was caused by the activity at work which required her to do lifting and twisting

which resulted in injury to her right rotator cuff tendon.” Dr. Jackson recommended an orthopedic evaluation. He opined that appellant had an “L5-S1 bulging disc causing low back pain that was caused by lifting, twisting and loading machines at work. Appellant also has a right rotator cuff tendinitis secondary to impingement from lifting and twisting and loading mail at work.”

In a June 20, 2011 statement, appellant noted that she promptly reported her claim and repeated that her injury was work related. She also provided a timeline pertaining to her injury.

By decision dated July 15, 2011, OWCP denied modification of its prior decision.<sup>3</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA 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<sup>4</sup> and that an injury was sustained in the performance of duty.<sup>5</sup> These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<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 medical evidence required to establish causal relationship, generally, is 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>7</sup>

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<sup>3</sup> OWCP explained that it was treating the matter as an occupational disease claim due to the fact that the work events occurred over a period of time longer than a single day or work shift. *See* 20 C.F.R. § 10.5(q).

<sup>4</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *James E. Chadden Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *Id.*

## ANALYSIS

Appellant alleged that she developed injuries to her lower back and upper right arm and shoulder due to her automation duties. The evidence supports that she performed such duties as part of her job.

OWCP denied appellant's claim for compensation finding that the medical evidence was not sufficient to establish that her low back or upper right arm and shoulder conditions were causally related to her employment. The Board notes that the medical evidence submitted by appellant generally supports that her claimed conditions were caused or aggravated by the repetitive bending and lifting at work. Dr. Jackson provided several reports in which he attributed appellant's lower back and upper right arm and shoulder condition to being placed on the automation machines at work. On May 10, 2011 he noted that appellant had complaints of back and shoulder pain related to work activities. Dr. Jackson obtained a history that he had been performing lifting at work with low back and right shoulder pain and generally opined that her conditions were related to such work activities and that she was unable to work. On June 13, 2011 he explained that he saw appellant on February 1, 2011 for complaints of lower back and right shoulder pain. Dr. Jackson noted that she had returned to work on January 1, 2011 after being off work for the prior eight months. Appellant worked on machines that required lifting and loading mail weighing up to 70 pounds. While working on the machines, she developed an acute onset of low back and right shoulder pain. Dr. Jackson generally supported that appellant's condition worsened by sweeping the mail out of the machine. He also diagnosed right rotator cuff tendinitis secondary to impingement and overuse from the work activity described above. Diagnostic testing revealed an L5-S1 bulging disc with degenerative discs at multiple levels. Dr. Jackson opined that appellant's low back pain was related to the bulging disc that was inflamed with discomfort secondary to the activities at work upon lifting and twisting while loading the machines. He also indicated that her right rotator cuff tendinitis secondary to impingement was caused by lifting and twisting and loading mail at work.

Although the reports are not sufficiently rationalized to meet appellant's burden of proof they provide an accurate history of the implicated work activities with medical opinion supporting aggravation. The evidence is sufficient to require further medical development of the case.<sup>8</sup> The Board will remand the case to OWCP for referral of appellant, to an appropriate Board-certified medical specialist to determine whether her work activities caused or aggravated her claimed conditions. Following any other medical development as deemed necessary, OWCP shall issue an appropriate merit decision on appellant's claim.

## CONCLUSION

The Board finds that this case is not in posture for decision.

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<sup>8</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 15, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this decision.

Issued: August 28, 2012  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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