

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

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**L.R., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
North Metro, GA, Employer**

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**Docket No. 12-239  
Issued: August 17, 2012**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On November 14, 2011 appellant filed a timely appeal from an August 4, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her occupational disease claim. 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.

**ISSUE**

The issue is whether appellant met her burden of proof to establish that she sustained a back condition causally related to factors of her federal employment.

**FACTUAL HISTORY**

On May 13, 2011 appellant, then a 60-year-old distribution operations supervisor, filed a notice of occupational disease claim (Form CA-2) alleging that she developed back pain due to reorganizing files which entailed extensive lifting and carrying of flat tubs weighing at least 30

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

pounds and bending up and down for four to five hours a day. She first became aware of her condition on February 15, 2008 and of its relationship to her employment on November 26, 2010.

In narrative statements dated May 10 and 11, 2011, appellant reported that she had two prior back injuries. In September 2005, she sustained a back sprain when a cabinet at work tilted forward on her. On February 15, 2008 appellant sustained a back sprain at work after jumping out of the way to avoid an all-purpose container from pinning her to the rail.<sup>2</sup> In June 2008, she experienced a recurrence of back and leg pain for which she sought treatment. In November 2010, appellant reported that she was instructed to alphabetize files at work which consisted of placing files in flat tubs, extensive bending, reaching and lifting over 30 pounds for four to five hours per day which caused tightness and soreness in her lower back. She continued to experience pain in her lower back on November 26, 2010 when she was rising from placing files in a cabinet on the floor. On December 6, 2010 appellant sought medical treatment for her back injury. In support of her statements, she provided an official United States Postal Service supervisor distribution operations job description.

In a December 14, 2010 magnetic resonance imaging (MRI) scan of the lumbar spine, Dr. Aurora Peacock, a Board-certified diagnostic radiologist, reported moderate to severe degenerative arthropathy at L4-5 and L5-S1, moderate left neural foraminal narrowing at L4-5, mild right neural foraminal narrowing at L5-S1 and loss of intervertebral disc height at T10-11, which was either degenerative in nature or caused by an infection.

In medical reports dated December 3, 2010 to April 8, 2011, Dr. Gary A. Levensgood, a Board-certified orthopedic surgeon, reported that appellant complained of increased back pain. He obtained a history that appellant had been bending, filing and sitting on the floor over the last few weeks, which caused her sharp pains in the back with pain radiating down her left leg. Upon review of x-rays and an MRI scan of the lumbar spine, Dr. Levensgood diagnosed L5-S1 herniated nucleus pulposus, degenerative facet arthropathy at L4-5 and L5-S1, moderate left neuroforaminal stenosis at L4-5 and mild neuroforaminal stenosis at L5-S1. He opined that appellant's back injury was an exacerbation of a chronic injury for which she was treated on June 30, 2008.

In a February 4, 2011 emergency room report, Dr. Richard M. Reisman provided a lumber epidural steroid injection.

On May 31, 2011 OWCP informed appellant that the evidence of record was insufficient to support her claim. It requested that she provide additional factual and medical evidence within 30 days. By letter of the same date, OWCP requested additional factual information from the employing establishment.

On June 10, 2011 appellant reported that she had been on detail assignment from her distribution operations supervisor assignment since August 21, 2009.

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<sup>2</sup> The Board notes that the record does not contain any information on other OWCP claims filed by appellant. On her CA-2 form, appellant referenced Claim No. xxxxxx128. This prior claim is not explained or developed in the record before the Board on this appeal.

In a June 10, 2011 medical report, Dr. Levensgood reported that appellant had prior back injuries in September 2005 and February 2010. Since then appellant's symptoms had worsened with activity, sitting and bending. Upon physical examination, Dr. Levensgood diagnosed herniated nucleus pulposus and released her to work with no lifting over 25 pounds.

By decision dated August 4, 2011, OWCP denied appellant's claim finding that the medical evidence did not demonstrate that her back condition was causally related to the established work-related events.

### **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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>3</sup> These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.<sup>4</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>5</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (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.<sup>6</sup>

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.<sup>7</sup> The opinion of the physician must be based on a complete factual and

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<sup>3</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

<sup>4</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>5</sup> *Elaine Pendleton*, *supra* note 3 at 1143 (1989).

<sup>6</sup> *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

<sup>7</sup> *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>8</sup>

### ANALYSIS

The Board finds that this case is not in posture for decision as to whether appellant sustained an injury in the performance of duty.

An employee who claims benefits under FECA has the burden of establishing the essential elements of his or her claim. The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship. However, it is well established that, proceedings under FECA are not adversarial in nature and while the claimant has the burden of establishing entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.

OWCP accepted that appellant engaged in repetitive lifting and bending while performing her employment duties. It denied her claim, however, on the grounds that the medical evidence was insufficient to establish causal relationship between those activities and her diagnosed lower back condition. The Board finds that the medical evidence of record is sufficient to require further development of the case record.

Dr. Levengood reported a history that appellant had been bending, filing and sitting on the floor, which caused her sharp pains in the back with pain radiating down her left leg. He noted that she had prior back injuries in September 2005 and February 2010 and that her symptoms were made worse with activity, sitting and bending. Upon review of x-rays and an MRI scan of the lumbar spine, Dr. Levengood diagnosed L5-S1 herniated nucleus pulposus, degenerative facet arthropathy at L4-5 and L5-S1, moderate left neuroforaminal stenosis at L4-5 and mild neuroforaminal stenosis at L5-S1. He opined that appellant's back condition of L5-S1 herniated nucleus pulposus was an exacerbation of a chronic injury she previously had, which she was treated for on June 30, 2008.

The Board notes that, while none of Dr. Levengood's reports are completely rationalized, they are consistent in relating appellant's back condition to the activities performed at work and are not contradicted by any substantial medical or factual evidence of record. Dr. Levengood provided an opinion based on examination findings and an accurate factual and medical background. He noted that appellant sustained her L5-S1 herniated nucleus pulposus due to her

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<sup>8</sup> *James Mack*, 43 ECAB 321 (1991).

employment duties as a distribution operations supervisor. Dr. Levensgood demonstrated a clear understanding of her work duties and discussed how these duties would cause her injuries. He provided a medical history and based his findings on diagnostic testing and physical examination. Although the reports are not sufficient to meet appellant's burden of proof to establish her claim, they raise an uncontroverted inference between her condition and the identified employment factors and are sufficient to require OWCP to further develop the medical evidence and the case record.<sup>9</sup>

On remand, OWCP should prepare a statement of accepted facts which includes a detailed employment history, job descriptions for each position held and specific functions performed by appellant in each position. It should submit the statement of accepted facts to a second opinion examiner, in order to obtain a rationalized opinion as to whether her current condition is causally related to factors of her employment, either directly or through aggravation, precipitation or acceleration.

### **CONCLUSION**

The Board finds that this case is not in posture for a decision as to whether appellant developed L5-S1 herniated nucleus pulposus causally related to factors of her federal employment as a distribution operations supervisor.

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<sup>9</sup> See *Virginia Richard*, 53 ECAB 430 (2002); see also *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 4, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision.

Issued: August 17, 2012  
Washington, DC

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

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

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