United States Department of Labor
Employees' Compensation Appeals Board

S.A., Appellant	)	
and	)	**Docket No. 11-788**
	)	**Issued: January 4, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Grove City, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On February 3, 2011 appellant, through her representative, filed a timely appeal from a December 27, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 lower back, leg and feet conditions in the performance of duty.

FACTUAL HISTORY

On February 19, 2010 appellant, then a 56-year-old sales and services associate, filed an occupational disease claim alleging that she suffered severe pain in her lower back, leg and foot due to repeated trauma, hours of lifting heavy tubs of unendorsed bulk business mail (UBBM)

[1] 5 U.S.C. § 8101 *et seq.*

and prolonged walking and standing. She first became aware of her conditions and realized it resulted from her employment in August 2009. Appellant did not stop work. The employing establishment noted that she was currently on light duty working four hours a day and had worked limited duty due to a previous injury.[2]

In a July 15, 2009 duty status report, Dr. Robert A. Martin, a Board-certified orthopedic surgeon, noted that appellant was a distribution window clerk and restricted her to lifting and carrying 15 pounds.

In a March 1, 2010 attending physician and duty status report, Dr. Martin diagnosed joint and lower leg pain, lower leg osteoarthritis, fibromyalgia and lumbar spinal sprain. He noted appellant's explanation that heavy lifting, prolonged walking and standing "might have" contributed to her condition. Dr. Martin also checked a box marked "yes" that her condition was caused by her employment activities, specifically repetitive motion, standing and walking.

In a March 19, 2010 letter, the employing establishment controverted appellant's claim alleging that she had been on restricted duty since May 10, 1999 due to a May 3, 1999 injury. It stated that her most recent duty status report restricted her to intermittent sitting for 30 to 60 minutes at a time with a total of three hours and intermittent standing and walking for three hours within the workday and also noted that her August 4, 2009 modified job assignment complied with these restrictions.

In an August 4, 2009 modified-duty assignment offer, appellant accepted an offer to work as a window distribution clerk eight hours a day with restrictions. She was limited to three hours of continuous standing and walking, eight hours of continuous lifting under 15 pounds and 30 to 60 minutes of sitting every three hours. Appellant's duties also included working hand stamps, return to sender (RTS) mail and UBBM for two hours, window duties, retail and carrier unit for four hours, answering telephones for 30 minutes and addressing second notices, certified mail, postage due and parcels for one-hour and 30 minutes.

In an undated statement, Karen L. Clifford, a postmaster, controverted appellant's claim alleging that her employment duties did not include lifting heavy UBBM tubs or prolonged walking and standing. She stated that a clerk lifted the heavy tubs and placed them in one location for appellant to sort through. Ms. Clifford also noted that beginning in September 2009 appellant was on light duty working only four hours a day. Appellant's duties included sitting, completing notices and returning certified mail for one-hour and intermittent standing and walking while working the window for three hours. Prior to this light-duty assignment, her work duties involved completing second notices and returning mail for one-hour and 30 minutes, answering customer inquiries *via* telephone for 30 minutes and hand stamping RTS and UBBM mail. Appellant also worked the window four to six hours every day, which required accepting parcels that weighed less than 15 pounds, standing at the window to assist customers and intermittently walking to the dispatch area to process the mail collected. Ms. Clifford further pointed out that a July 2009 medical report limited appellant to continuously lifting 15 pounds.

[2] The record reflects that appellant previously filed a claim for a May 3, 1999 injury, which was accepted for bilateral knee/leg strain, right elbow forearm strain, left ankle strain and right lateral epicondylitis (File No. xxxxxx131).

The modified assignment also required sitting for 30 to 60 minutes every 3 hours and standing and walking for 3 hours continuously.

In a February 22, 2010 note, Susan Williams, appellant's supervisor, stated that management gave appellant every opportunity to follow her medical restrictions and that she was never required to lift heavy tubs because another postal clerk collected the UBBM tubs for her and placed them on a gurney where she could sit and sort through the mail. If appellant did lift any tubs, they were not full and weighed less than 10 pounds. Ms. Williams also pointed out that appellant was assigned the carrier unit for UBBM less than three times since Thanksgiving of 2009, worked the window intermittently and was given two hours of sitting to write certified notices on a daily basis.

In a February 22, 2010 note, Cheryl L. Riser, a coworker, stated that her supervisors instructed her several times to pick up UBBM tubs for appellant and that appellant also asked her to pick up tubs due to the work restrictions. She noted that if appellant picked up any tubs there was barely anything in them. Ms. Riser also pointed out that she saw appellant at the Carrier Unit only two to three times since she started working light duty.

On April 1, 2010 OWCP advised appellant that the evidence submitted was insufficient to support her claim and requested additional information. It specifically requested that she describe how often she performed her employment duties of lifting heavy tubs, walking and standing, for how long on each occasion and explain why she violated her lifting restrictions if she did. OWCP further requested a comprehensive medical report from her treating physician which included a description of symptoms, results of examinations and tests, a firm medical diagnosis and a doctor's opinion, with medical rationale, on the cause of her condition.

In an April 29, 2010 statement, appellant advised that Dr. Gregory E. Weisenberger, a Board-certified internist, had been her treating physician since 1994 and that she was also treated by an orthopedic surgeon and pain specialist. She explained that when she stood for more than two hours, the pain started in her lower back, went through both legs and ended at the bottom of her feet.

By decision dated June 2, 2010, OWCP denied appellant's claim finding that fact of injury was not established. It determined that she did not provide sufficient evidence demonstrating that she performed the specified employment activities as alleged and did not submit probative medical evidence establishing a diagnosed condition causally related to her federal employment.

On June 7, 2010 appellant, through her representative, requested a telephone hearing, which was held on October 14, 2010. Through her representative, she stated that in 1999 she injured her left Achilles tendon, both calves and elbow. Appellant continued to work, but lost her job from 2007 to 2008. Upon returning to work in February 2009, she explained that her work duties involved lifting heavy tubs of UBBM mail from the floor to the counter, sorting the mail in the tub and putting the mail in the appropriate places. Appellant noted that the tubs were 17 to 18 inches long and about 7 or 8 inches wide and that she lifted approximately 34 to 37 heavy tubs of UBBM for eight hours a day. She further stated that she also worked the window, which included running to the carrier case to get the mail for the customers to pick up. After a

while appellant began to experience significant pain in her wrist, joints, leg, back and feet and sought medical attention from Dr. Martin, who diagnosed osteoarthrosis, fibromyalgia, lumbar spine strain and stenosis and restricted her to four hours of light-duty work. She stated that prior to being placed on light duty she had been lifting heavy objects, walking continuously, helping customers and answering telephones for around eight to nine months.

Appellant further stated that when she began to miss more work due to the significant pain, the employing establishment became upset and tried to "pull the trigger" so she asked her doctor to place her on limited duty. She stated that the postal employees who alleged that she did not perform the specified employment activities were liars and that they did not help her lift the full tubs until they thought they were going to be in trouble. Appellant also noted that no supervisors or coworkers were present when she did her job so they could not know whether or not she lifted heavy tubs. OWCP's hearing representative noted that the record would be held open for 30 days to gather more information. No additional evidence was received.

By decision dated December 27, 2010, OWCP's hearing representative denied appellant's claim on the grounds of insufficient factual evidence demonstrating that she performed the employment activities alleged and medical evidence providing a diagnosed condition causally related to the specified work duties. She noted that appellant lifted heavy tubs on an occasional basis for a period of approximately nine months beginning in February 2009, but that the record did not contain evidence demonstrating that appellant repetitively and frequently lifted heavy tubs and engaged in prolonged periods of walking and standing.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of her claim by the weight of the reliable, probative and substantial evidence[3] including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.[4] In an occupational disease claim, appellant's burden requires submission of 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]

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[4] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989); *M.M.*, Docket No. 08-1510 (issued November 25, 2010).

[5] *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000); *D.U.*, Docket No. 10-144 (issued July 27, 2010).

OWCP regulations define the term occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift.[6] To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: a detailed description of the employment factors or conditions, which the claimant believes caused or adversely affected the condition or conditions for which compensation is claimed. If a claimant does establish an employment factor, she must submit medical evidence showing that a medical condition was caused by such a factor.[7] The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence from a physician. 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.[8]

ANALYSIS

Appellant claimed that lifting heavy tubs of UBBM mail and prolonged walking and standing caused her lower back, leg and foot conditions after her return to work in February 2009. OWCP denied her claim finding that she had not established fact of injury as the evidence of record did not establish that she performed all of the specified employment activities as alleged and she had not established that her alleged conditions were causally related to her employment.

The Board finds that appellant has not met her burden of proof to establish her occupational disease claim.

The record reflects that appellant had been on restricted duty since May 10, 1999 as a result of a previous injury. Appellant did not work for a period of time from 2007 until February 2009. The record is sufficient to establish that she occasionally lifted heavy tubs of mail for a period of approximately eight months, after her return to work in February 2009, until she was placed on light duty in September 2009 working four hours a day. The record is also sufficient to establish that following appellant's return to work in February 2009 she worked at a window four to six hours a day, which required standing and intermittent walking to the dispatch area. There is insufficient factual evidence, however, to establish that her limited duties after September 2009 involved lifting heavy tubs greater than 15 pounds and prolonged walking and standing.

Appellant has failed to establish fact of injury as the medical evidence is insufficient to establish that these employment activities caused or aggravated her conditions. The only medical evidence submitted was from Dr. Martin. In a March 1, 2010 duty status report, Dr. Martin noted appellant's allegations that heavy lifting, prolonged walking and standing

[6] 20 C.F.R. § 10.5(ee).

[7] *Effie Morris*, 44 ECAB 470 (1993); *C.D.*, Docket No. 09-1881 (issued April 20, 2010).

[8] *Solomon Polen*, 51 ECAB 341 (2000); *B.B.*, 59 ECAB 234 (2007); *D.S.*, Docket No. 09-860 (issued November 2, 2009).

"might have" contributed to her condition. His report did not contain an accurate history of injury as it did not provide detail regarding the different duties appellant performed from February to September 2009 and then following September 2009.[9] Furthermore, he checked a box marked "yes" that appellant's condition was caused by her employment activities, specifically repetitive motion, standing and walking. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.[10] This medical report was insufficient to support her claim. OWCP advised appellant in an April 1, 2010 letter of the deficiencies in her claim and of the additional evidence needed, including a rationalized report from a physician regarding causal relationship. As appellant did not submit such evidence, she did not meet her burden of proof to establish her claim.

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 did not establish that she sustained lower back, leg and foot conditions in the performance of duty.[11]

[9] *M.W.*, 57 ECAB 710 (2006); *John W. Montoya*, 54 ECAB 306 (2003).

[10] *D.D.*, 57 ECAB 734, 738 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

[11] The Board notes that appellant submitted additional evidence following the December 27, 2010 decision. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005). Appellant may submit that evidence to OWCP along with a request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the December 27, 2010 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: January 4, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board