

FACTUAL HISTORY

On February 28, 2006 appellant, then a 48-year-old clerk, filed an occupational disease claim, alleging that her modified work duties aggravated her preexisting low back condition.² She became aware of her condition on June 28, 2005 and realized it was causally related to her work on November 15, 2005. Appellant retired on April 18, 2005.

Appellant submitted a statement noting that on February 25, 2005 she returned to a modified distribution clerk position after a prior work injury. While performing her work duties, which included manual casing, sitting on a rest bar and placing letters in a case one at a time, she experienced pain in her arms, neck and low back. Appellant worked intermittently and stopped on April 18, 2005. She submitted a limited-duty job offer dated November 10, 2004. On March 20, 2002 appellant was treated by Dr. Eric S. Korsh, a Board-certified orthopedic surgeon, for a work-related back injury. Dr. Korsh noted that on October 6, 2000 she underwent an anterior lumbar decompression and fusion at L4-5 and lumbar laminectomy at L4-5. Appellant experienced increasing lower extremity pain and underwent a CT scan which revealed the fusion was not consolidating. Dr. Korsh diagnosed a disc herniation at L4-5, status post automated microdiscectomy, degenerative disc disease at L4-5, status post L4-5 decompression and fusion, pseudarthrosis status post L4-5 decompression and fusion and musculoligamentous sprain/strain of the lumbar spine. He opined that appellant's disability precluded substantial work and was causally related to a work injury of December 14, 1996. Appellant submitted a report dated March 8, 2005, from Dr. Larry D. Dodge, a Board-certified orthopedic surgeon, who treated her for increased pain in her back radiating into her legs. Dr. Dodge noted limited range of motion of the thoracolumbar spine, positive straight leg raises on the left and normal motor and sensory examination with symmetrical reflexes. He advised that roentgenograms of the lumbar spine did not disclose any abnormalities and recommended a magnetic resonance imaging (MRI) scan.

In an August 16, 2006 letter, OWCP advised appellant of the evidence needed to establish her claim. It requested that she submit a physician's reasoned opinion addressing the relationship of her claimed back condition to specific work factors.

In a decision dated September 28, 2006, OWCP denied appellant's claim finding that medical evidence was insufficient to establish that her claimed back condition was caused by her employment.

On October 11, 2006 appellant requested an oral hearing which was held on March 21, 2007. The employing establishment submitted time and attendance reports dated February 25 to April 18, 2005.

² Appellant filed a claim for an emotional condition, File No. xxxxxx575 which was denied by OWCP. She filed a claim for a low back injury which occurred on December 14, 1996 which was accepted for L4-5 disc herniation and OWCP authorized surgery, File No. xxxxxx390. Appellant returned to a modified position on February 25, 2005 and worked until April 18, 2005. In File No. xxxxxx390, OWCP terminated her compensation on the grounds that she refused an offer of suitable work. The cases were consolidated. Docket No. 09-2093 (issued June 15, 2010).

In a decision dated May 15, 2007, an OWCP hearing representative affirmed the September 28, 2006 decision.

On November 2, 2007 appellant requested reconsideration. She submitted an April 4, 2007 report from Dr. John B. Dorsey, a Board-certified orthopedic surgeon, who treated her for a low back injury which occurred after lifting parcels and equipment at work on December 14, 1996. Appellant reported returning to a modified job on February 5, 2005 which consisted of casing and sorting mail and carrying trays of mail weighing 15 to 20 pounds. She stopped work on April 18, 2005 due to back pain and depression. Dr. Dorsey stated that appellant's repetitive work duties put a strain on her back and legs and aggravated her low back condition. He diagnosed failed back syndrome with diffuse facet disease, status post L4-5 fusion and secondary radiculopathy of the left lower extremity. Dr. Dorsey noted that the modified job was not sedentary but involved significant bending, stooping and reaching overhead which aggravated or accelerated her spinal condition. He noted that this conclusion was supported by objective findings and was the direct cause of appellant not being able to work after April 18, 2005.

In a decision dated November 30, 2007, OWCP denied modification of the May 15, 2007 decision.

On July 2, 2008 appellant requested reconsideration.

In a decision dated October 9, 2008, OWCP denied modification of the November 30, 2007 decision.

On March 27, 2009 appellant requested reconsideration.

In a decision dated June 25, 2009, OWCP denied appellant's reconsideration request finding that the request was insufficient to warrant further review of the prior decision. On August 17, 2009 appellant appealed her claim to the Board. In an order dated June 15, 2010, the Board set aside OWCP's October 9, 2008 and June 25, 2009 decisions and remanded the case to combine the case files and issue a merit decision on appellant's claim for compensation.³

In a decision dated September 16, 2010, OWCP denied modification of the prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a

³ Docket No. 09-2093 (issued June 15, 2010).

specific event, incident or exposure occurring at the time, place and in the manner alleged. Appellant must also establish that such event, incident or exposure caused an injury.⁴

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) 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 is generally 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.⁵

ANALYSIS

It is not disputed that appellant's duties as a clerk included performing repetitive duties including manual casing, sitting on a rest bar and placing letters in a case. It is also not disputed that she has been diagnosed with a low back condition. However, appellant has not submitted sufficient medical evidence to establish that her back condition including failed back syndrome and diffuse facet disease was causally related to specific employment factors or conditions. On August 16, 2006 OWCP advised her of the type of medical evidence needed to establish her claim. Appellant did not submit a rationalized medical report from a physician addressing how specific employment factors may have caused or aggravated her claimed conditions.

Appellant submitted an April 4, 2007 report from Dr. Dorsey who treated her for a low back injury which occurred after lifting parcels and equipment at work on December 14, 1996. Dr. Dorsey noted that she returned to a modified job on February 5, 2005 which consisted of casing and sorting mail and carrying trays of mail weighing 15 to 20 pounds. Appellant reported stopping work on April 18, 2005 due to back pain and depression. Dr. Dorsey diagnosed failed back syndrome with diffuse facet disease, status post L4-5 fusion and secondary radiculopathy of the left lower extremity. He opined that appellant's work materially worsened and aggravated her low back condition and was the direct cause of her not being able to work after April 18, 2005. The Board finds that, although Dr. Dorsey supported causal relationship, he did not base this opinion on an accurate description of her work duties. In an undated statement,

⁴ See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Solomon Polen*, 51 ECAB 341 (2000).

appellant noted that her work duties included manual casing, sitting on a rest bar and placing letters in a case individually. However, Dr. Dorsey noted that her work duties including lifting parcels and equipment and casing and sorting mail and carrying trays of mail weighing 15 to 20 pounds. He opined that these work duties materially worsened and aggravated appellant's low back condition. The Board has found that medical opinions based on an incomplete history are of little probative value.⁶ The Board further notes that Dr. Dorsey's opinion was given nearly two years after appellant retired and there is no contemporaneous medical evidence to support that she sought treatment during this time for a failed back syndrome as one would expect with such a condition. Therefore, this report is insufficient to meet her burden of proof.

Appellant submitted a March 20, 2002 report from Dr. Korsh who diagnosed certain low back conditions and opined that appellant's current disability was causally related to her work injury of December 14, 1996. The Board finds that, although Dr. Korsh provided conclusory support for causal relationship with regard to the 1996 low back injury, his report predates the 2006 occupational disease claim as well as the date that she stated that she was first aware of her condition, June 28, 2005. Thus, his report provides no specific support for the claim that is at issue on the present appeal. Similarly, a March 8, 2005 report from Dr. Dodge also predates when appellant first became aware of her claimed condition. He also failed to specifically address whether she had a diagnosed medical condition that was causally related to work factors.⁷

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.⁸ Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence, and OWCP therefore properly denied appellant's claim for compensation.⁹

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 meet her burden of proof to establish that her claimed conditions were causally related to her employment.

⁶ *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

⁷ *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

⁸ *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁹ *See* 5 U.S.C. § 501.2(c). The Board's jurisdiction is limited to the evidence that was before OWCP at the time it issued its final decision; therefore, the Board is unable to review evidence submitted by appellant after the October 29, 2008 OWCP decision.

ORDER

IT IS HEREBY ORDERED THAT September 16, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 8, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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