

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

R.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Baton Rouge, LA, Employer**

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**Docket No. 11-1782
Issued: March 2, 2012**

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 July 28, 2011 appellant filed a timely appeal from the February 16, 2011 Office of Workers' Compensation Programs' (OWCP) decision. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury causally related to factors of her federal employment.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted evidence subsequent to the February 16, 2011 OWCP decision. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence of record which was before OWCP at the time of its final decision. 20 C.F.R. § 501.2(c).

FACTUAL HISTORY

This case has previously been on appeal before the Board.³ In a December 9, 2009 decision, the Board affirmed OWCP's December 18, 2008 decision. It found that appellant did not submit sufficient medical evidence to establish a causal relationship between her work duties and her back and chest conditions commencing on July 23, 2007. The facts and history contained in the prior appeal are incorporated by reference.

In a letter dated December 8, 2010, appellant's representative requested reconsideration. He enclosed medical evidence from Dr. Wilbert McClay, an attending family practitioner. Appellant's representative alleged that Dr. McClay's reports supported a clear causal relationship. He requested that the prior decisions be vacated and the claim approved.

In a January 14, 2010 statement, appellant noted discrepancies in her factual history. She indicated that she stopped work on July 24, 2007 as opposed to July 8, 2007. Appellant referred to the November 30, 2005 nerve conduction study and a January 24, 2006 functional capacity evaluation. She indicated that these were not relevant to her claim as they related to her accepted carpal tunnel condition under a separate claim.⁴ Appellant noted that Dr. Yurik Ivirboz, an occupational medicine specialist, was the physician her supervisor brought her to see on the date of the incident. She also explained that the physician noticed irregularities in her heart beat. Appellant believed that OWCP was mixing up her carpal tunnel claim with the present claim.

In an October 1, 2010 report, Dr. McClay noted that on July 23, 2007 appellant was attempting to make her last delivery point and that she reached over to get mail out of a tray, then reached down to pick up a parcel from the floor of the truck. He noted that, when appellant attempted to rise up and reach over to place the mail and parcel into the mailbox, she experienced sharp pain in her lower back and could not straighten up. Dr. McClay indicated that appellant panicked and suffered from "what I now believe to be a panic attack." He also indicated that she had pain in her chest and back pain. Dr. McClay advised that appellant took aspirin and the chest pain subsided. He explained that he began treating her for back pain and referred her to a cardiologist. Dr. McClay opined that, according to the statements that he was provided from appellant, "I do believe that this injury is and was a work-related injury and should be treated as such."

In a December 7, 2010 report, Dr. McClay referred to a 1985 incident. He advised that appellant was helping her supervisor load or unload a mail truck which required her to help move a "mail bend." Dr. McClay noted that the mail bend became unstable and its weight totally or partially fell on her. He explained that appellant braced against the force, which was predominantly on her right side of her spine and the low back area. Dr. McClay indicated that she sustained a strain. He advised that in appellant's case, she suffered from continued pain over the years of varying degrees of intensity of pain and its duration occurred in various degrees of intensity of pain during the years from 1985 to 1995 and worsened in 2006 when she had to travel over bumpy roads which repeatedly caused her scars to stretch and tear. Dr. McClay

³ Docket No. 09-661 (issued December 9, 2009).

⁴ Claim No. xxxxxx820. This other claim is not presently before the Board.

explained that the basis of her disability claim was that an accident happened to her when a postal tool cart slipped causing tissue disruption in her low back due to its weight and force of motion. He noted that it caused tears especially in appellant's muscles and tissue which "cicatrized" into "hard nonvascular entities that limits the use of such muscle and connective tissue" and her "ability to function physically and mechanically in performing any type of job where the targeted tissue might be affected" as a result of activity or "repeated trauma such as continuing bouncing up and down" encountered by her when driving her "mail truck in certain conditions." Dr. McClay opined that she had repeated trauma that caused aggravation of pain. Furthermore, he referred to a 1995 car accident, which caused an aggravation and bouncing trauma from 2006 and opined that appellant was totally incapacitated for work. Dr. McClay disagreed with the Board's findings in the prior appeal. He alleged that there were many errors and misrepresentations. Dr. McClay repeated that appellant's condition occurred as a result of performing her work duties. He also asserted that his reports were "self[-]explanatory." Dr. McClay also denied indicating that appellant had an injury to her sacroiliac joint. He also noted that she had post-traumatic stress disorder.

OWCP also received a copy of a May 23, 2008 statement from appellant that was previously of record.

By decision dated February 16, 2011, OWCP denied modification of the prior decision.

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, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

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

⁵ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *Victor J. Woodhams*, 41 ECAB 345 (1989).

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.⁷

ANALYSIS

The evidence establishes that appellant has a lumbosacral condition and was involved in activities such as standing, casing or boxing mail, sitting while delivering mail, twisting, turning, leaning and lifting. Her duties also included pushing and pulling bins full of mail and parcels through heavy metal doors at work. However, appellant submitted insufficient medical evidence to establish that her low back condition and chest pains were caused or aggravated by these activities or any other specific factors of her federal employment.

Appellant submitted two new reports from Dr. McClay. In his October 1, 2010 report, Dr. McClay indicated that she was injured on July 23, 2007. He explained that appellant was attempting to make her last delivery point and reached over to get mail from a tray, then to pick up a parcel from the floor of the truck. When appellant attempted to rise and place the mail and parcel into the mailbox, she had sharp low back pain and could not straighten up. Dr. McClay opined that she panicked and had “what I now believe to be a panic attack.” He stated that “I do believe that this injury is and was a work-related injury and should be treated as such.” In his December 7, 2010 report, Dr. McClay attributed appellant’s condition to a 1985 incident in which a mail bend fell on her. The Board notes that this date or incident is not described by appellant in her claim and no claim for a 1985 injury is before the Board in the present appeal. Dr. McClay explained that she had continued from 1985 to 1995 and that this worsened in 2006 when she began traveling over bumpy roads repeatedly, causing her scars to stretch and tear.⁸ He also referred to a 1995 car accident, which he noted caused an aggravation. Dr. McClay opined that appellant suffered repeated trauma that caused aggravation of pain. He opined that she was totally incapacitated for work and also had post-traumatic stress disorder. Dr. McClay asserted that his reports were “self[-]explanatory.”

The Board notes that the factual presentations in the two reports are contradictory. In the December 7, 2010 report, Dr. McClay attributes appellant’s condition to a separate 1985 incident and notes a variety of factors including driving over rough roads in 2006 and a 1995 accident as causes or aggravators of her condition. He did not provide a reasoned report in which he clearly attributed her conditions to work factors beginning in July 2007. In his October 1, 2010 report, Dr. McClay opined that appellant was injured on July 23, 2007. The claim before the Board pertains to work factors beginning on or about July 23, 2007. It is well established that medical reports must be based on a complete and accurate factual and medical background, and medical opinions based on an incomplete or inaccurate history are of little probative value.⁹ Furthermore, in his October 1, 2010 report, Dr. McClay attributed appellant’s condition to work activities on

⁷ *Id.*

⁸ The Board notes that these factors have not been alleged by appellant as a cause of her condition.

⁹ *Douglas M. McQuaid*, 52 ECAB 382 (2001).

July 23, 2007 but he did not otherwise provide sufficient medical rationale or reasoning to explain why any of the diagnosed conditions would be caused or aggravated by specific employment duties.¹⁰ He did not explain why placing mail and parcels in a mailbox caused a particular chest or back condition nor did he explain the medical reasons why this work activity would cause a panic attack. Due to the inconsistent histories provided by Dr. McClay and the lack of medical reasoning to attribute her condition to work factors in July 2007, Dr. McClay's reports are of diminished probative value and insufficient to establish appellant's claim.

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.¹¹ Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹² Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.

On appeal, appellant repeated her arguments from her reconsideration request. She also pointed out various errors in her claim, which included that her date of injury was referred to as July 25, 2007 as opposed to July 23, 2007, her physician was referred to an "OD as opposed to an MD," that OWCP "played with words in her doctors' reports" that changed their meanings and that she was not claiming a condition but an on-the-job injury. The Board notes that the record supports that appellant claimed an injury occurred on July 23, 2007. Additionally, the reference to her physician as an "OD" appears to be a typographical error. Any administrative errors in listing the date of injury or the type of medical degree obtained by her physician is harmless and does not affect the substance of appellant's claim. Appellant also indicated that she had submitted the requested documentation in support of her claim. However, as explained the medical evidence is insufficient 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 has not met her burden of proof to establish that she sustained an injury in the performance of duty causally related to factors of her federal employment.

¹⁰ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

¹¹ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

¹² *Id.*

ORDER

IT IS HEREBY ORDERED THAT the February 16, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 2, 2012
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