

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

J.L., Appellant)
and) Docket No. 12-1273
U.S. POSTAL SERVICE, POST OFFICE,) Issued: November 9, 2012
San Jose, CA, Employer)

)

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 14, 2012 appellant filed a timely appeal from a January 17, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 met her burden of proof to establish that she developed degenerative disc disease and bilateral knee sprains as a result of factors of her federal employment.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of the January 17, 2012 OWCP decision, appellant submitted new evidence. The evidence was not reviewed by OWCP at the time it issued its January 17, 2012 decision. Therefore, the Board is precluded from reviewing the evidence as it was not before OWCP at the time it issued its final decision. See 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On October 31, 2011 appellant, then a 48-year-old mail carrier, filed an occupational disease claim alleging lower back and leg pain as a result of heavy lifting and carrying at work. She first became aware of her condition and realized it resulted from her employment on September 1, 2011.

In an October 25, 2011 work status report, Dr. Donna M. Hickox, a Board-certified family practitioner, put appellant on modified duty from October 25 to November 8, 2011. She restricted appellant to no lifting or carrying more than 15 pounds, no pushing or pulling more than 30 pounds, no prolonged sitting, standing, walking, or repetitive bending, no walking over three hours, and no sitting or standing over one hour.

On November 1, 2011 OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested that she submit a detailed description of the employment activities that she believed caused her condition and respond to specific questions. OWCP also requested that appellant submit a comprehensive medical report, including a diagnosis, results of examinations and tests, and a physician's opinion with medical rationale explaining the cause of her condition.

In an October 6, 2011 progress note, Dr. James Nguyen, Board-certified in physical medicine and rehabilitation, stated that appellant was a 49-year-old female postal carrier who complained of left leg numbness and noted mild improvement of lower back pain. Examination of the lumbar spine revealed normal lordosis and nontender bilateral midline and paraspinal to palpation. Straight leg raise testing was negative. Examination of the bilateral lower extremities did not reveal any deformity, edema or ecchymosis. Range of motion was 90 degrees flexion and 15 degrees extension. Dr. Nguyen noted that a magnetic resonance imaging (MRI) scan of the lumbar spine revealed minimal retrolisthesis of L3 on L4, disc desiccation at L2-3 with mild narrowing of the intervertebral disc spaces and mild spondylitic changes. He diagnosed multilevel broad-based disc bulges causing lateral region of narrowing which was most severe at L4-5 on the left and degenerative disc disease at the L5-S1 level. Dr. Nguyen recommended modified duty from October 11, 2011 to February 5, 2012.

In a November 8 and 21, 2011 progress notes, Dr. Elizabeth D.E. Kaiser, Board-certified in occupational medicine, noted that appellant worked as a letter carrier since March 2007 and complained of low back and knee pain. She was a part-time letter carrier who worked four to five hours a day and her duties involved carrying 30 to 50 pounds of mail in satchels and delivering mail on walking routes. Appellant stated that she recently transferred branches and that her new walking route involved more deliveries per street and had more stairs. She explained that she began to experience occasional low back pain in 2008 and that the pain worsened about late August to early September 2011. Upon examination, Dr. Kaiser observed tenderness in the low back but no redness, swelling, warmth or bruising. She also noted tenderness in the right lateral and left medial knees but no joint line tenderness or instability. Dr. Kaiser diagnosed degenerative disc disease of the lower back, chronic low back pain and bilateral knee sprain. She recommended that appellant remain on modified duty.

In December 7 and 21, 2011 progress reports, Dr. Kaiser noted that appellant did not complain of a discrete injury. She related that appellant was transferred to another postal service in March 2011 and now made more deliveries per street, with more walking and more stairs. Appellant stated that her low back and knee pain felt the same and that the knee pain worsened with prolonged standing. She explained that her low back felt better after physical therapy but worsened after she cleaned her home cabinet for one hour. Examination of the back revealed mild tenderness midline low back and pain on extension, flexion and lateral bending to the left. Examination of the knees revealed bi-medial tenderness, no instability and full range of motion without pain. Dr. Kaiser diagnosed degenerative disc disease of the low back and bilateral knee strain. She recommended appellant remain on modified duty.

In status reports dated November 8 to December 21, 2011, Dr. Kaiser diagnosed degenerative disc disease of the lower back and knee strain and put her on modified duty until January 11, 2012.

In a decision dated January 17, 2012, OWCP denied appellant's occupational disease claim finding insufficient medical evidence to establish that she sustained degenerative disc disease and bilateral knee sprains as a result of her employment duties.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence³ including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or 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

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁶ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.⁷ The mere fact that work activities may produce symptoms

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

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

⁵ *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁶ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

⁷ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

revelatory of an underlying condition does not raise an inference of an employment relation. Such a relationship must be shown by rationalized medical evidence of a causal relation based upon a specific and accurate history of employment conditions which are alleged to have caused or exacerbated a disabling condition.⁸

ANALYSIS

Appellant alleged that her back and knee conditions resulted from her duties as a letter carrier. OWCP accepted that her duties included walking and carrying a heavy satchel of mail. It denied appellant's claim finding insufficient medical evidence to establish that her conditions resulted from her employment duties.

Appellant submitted medical reports by Dr. Kaiser, who related appellant's complaints of low back pain since 2008 and bilateral knee pain that worsened with prolonged standing. She noted that appellant worked as a letter carrier since March 2007 and that her duties involved carrying 30 to 50 pounds of mail in satchels and delivering mail on walking routes. Dr. Kaiser reported appellant's examination findings and diagnosed degenerative disc disease of the lower back, chronic low back pain and bilateral knee sprains. She recommended that appellant remain on modified duty. The Board notes that, although Dr. Kaiser mentioned appellant's duties as a letter carrier, she did not offer any opinion as to whether appellant's lower back and bilateral knee conditions were causally related to her federal employment duties. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁹

Likewise, Drs. Nguyen and Hickox also failed to provide any opinion on the cause of appellant's back and bilateral knee conditions. Because Drs. Kaiser, Nguyen, and Hickox failed to explain how appellant's lower back degenerative disc disease and bilateral knee sprains were causally related to her employment duties, these reports are insufficient to establish her claim. Without rationalized medical opinion evidence demonstrating that appellant sustained degenerative disc disease and bilateral knee sprains as a result of her letter carrier duties, the Board finds that OWCP properly denied her claim.

On appeal, appellant requested that the Board reconsider her claim based on the additional information and findings of her doctors. The Board's jurisdiction, however, is limited to the 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.¹⁰ The Board cannot consider the new medical evidence on appeal. The Board has reviewed the medical evidence of record and found that it fails to establish that appellant sustained degenerative disc disease and bilateral knee sprains as a result of her employment duties. Causal relationship is a medical question that must be

⁸ *Patricia J. Bolleter*, 40 ECAB 373 (1988).

⁹ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *.A.D.*, 58 ECAB 149 (2006).

¹⁰ See 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

established by reasoned medical opinion evidence.¹¹ Because appellant has not provided such rationalized medical opinion in this case, she has failed to meet her burden of proof.

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 her degenerative disc disease and bilateral knee sprains were causally related to factors of her employment.

ORDER

IT IS HEREBY ORDERED THAT the January 17, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 9, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

¹¹ *W.W.*, Docket No. 09-1619 (issued June 2, 2010); *David Apgar*, 57 ECAB 137 (2005).