

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

T.W., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS HEALTH ADMINISTRATION,
Battle Creek, MI, Employer**

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**Docket No. 13-1125
Issued: August 27, 2013**

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
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On April 9, 2013 appellant, through her attorney, filed a timely appeal from a February 12, 2013 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.

ISSUE

The issue is whether appellant met her burden of proof to establish right arm, neck, back and right leg conditions in the performance of duty causally related to factors of her federal employment.

On appeal, counsel contends that OWCP's decision is contrary to fact and law.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 24, 2012 appellant, then a 50-year-old nursing assistant, filed an occupational disease claim (Form CA-2) alleging that she sustained right arm, neck, back and right leg conditions due to factors of her federal employment, including repetitively lifting patients in and out of bed.

By letter dated August 21, 2012, OWCP requested additional factual and medical information from appellant. It allotted her 30 days to submit additional evidence and respond to its inquiries.

Subsequently, appellant submitted a narrative statement indicating that her duties required repeatedly lifting patients, including a 150-pound quad patient who she lifted over and into a high-back wheelchair with her coworker.

In an August 13, 2012 statement, the employing establishment indicated that appellant's duty station was considered a "lift free" facility. All staff members received annual hands-on training in various lift devices and additional training was provided online. Appellant indicated to her supervisor in February 2012 that she needed time off for surgery on March 14, 2012 related to a cyst on her kidney that she was having removed. She had not returned to work since her initial request for leave.

In reports dated May 21 through November 8, 2012, Dr. Daryl Warder, a Board-certified neurosurgeon, diagnosed low back pain radiating to right leg, degenerative disc disease, lumbar spinal stenosis, neck pain and right arm numbness. On October 8, 2012 he indicated that appellant's primary diagnosis was lumbar radicular pain and that she was scheduled to have surgery on November 20, 2012. On November 20, 2012 Dr. Warder reported that appellant underwent surgery and he took her off work from June 7, 2012 through January 10, 2013. Dr. Warder indicated that appellant had been placed on restrictions due to her medical condition, including no bending, twisting or lifting. He further required: no lifting greater than 10 pounds; must be able to sit/stand/walk at will; no driving while on narcotics; no driving for two weeks postoperation.

Appellant submitted a May 10, 2012 magnetic resonance imaging (MRI) scan of the lumbar spine which showed asymmetric narrowing of right L4-5 and L5-S1 foramen and a May 29, 2012 MRI scan of the cervical spine which revealed left paracentral disc protrusion at C4-5 with significant soft disc component.

By decision dated November 9, 2012, OWCP denied the claim on the basis that the medical evidence failed to establish a causal relationship between the diagnosed conditions and the implicated employment factors.

On January 16, 2013 appellant, through her attorney, requested reconsideration and submitted a May 23, 2012 report from Dr. Warder who reiterated his diagnoses and stated that appellant's low back pain started approximately four months ago while working extra shifts at her job. Dr. Warder noted that her recurrent back pain was aggravated by bending and standing. Appellant stated that she had neck and back pain in the past, but her symptoms never lasted that

long and had never been as severe. She noted progressive onset of low back pain with radiation into the right lower extremity with a cramping sensation to the right thigh and lateral leg. Appellant also noted numbness to the left upper back region and burning into the right groin. Dr. Warder indicated that appellant was diagnosed with a right kidney cyst and liver lesion which was surgically resected four weeks prior. He stated that the surgery did not result in a resolution or improvement of her symptoms. Appellant had right infrascapular pain that radiated into the right chest, right arm, right forearm and into digits 3 through 5 on the right side. The right infrascapular pain also radiated into the right lower back, right hip, right groin, right thigh calf and ankle. Appellant indicated that her right leg symptoms were constant and her right arm symptoms occurred approximately four times per day.

By decision dated February 12, 2013, OWCP denied modification of its November 9, 2012 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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 and that an injury³ was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit 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 evidence. 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

² 5 U.S.C. §§ 8101-8193.

³ OWCP regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

⁴ See *O.W.*, Docket No. 09-2110 (issued April 22, 2010); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁵ See *D.R.*, Docket No. 09-1723 (issued May 20, 2010). See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁶

ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish that federal employment factors caused or aggravated her right arm, neck, back and right leg conditions. While appellant submitted a statement in which she identified the factors of employment that she believed caused the condition, in order to establish her claim, she must also submit rationalized medical evidence which explains how her medical conditions were caused or aggravated by the implicated employment factors.⁷

In his reports, Dr. Warder diagnosed low back pain radiating to right leg, degenerative disc disease, lumbar spinal stenosis, neck pain and right arm numbness. On November 20, 2012 he reported that appellant underwent surgery and took her off work from June 7, 2012 through January 10, 2013. On May 23, 2012 Dr. Warder indicated that appellant was diagnosed with a right kidney cyst and liver lesion which was surgically resected four weeks prior. He stated that the surgery did not result in a resolution or improvement of her symptoms. Dr. Warder indicated that appellant's low back pain started approximately four months ago while working extra shifts at her job. He noted that her recurrent back pain was aggravated by bending and standing. Dr. Warder provided firm diagnoses and identified appellant's work duties. However, he failed to provide a rationalized opinion explaining how factors of appellant's federal employment, such as lifting, twisting, bending and standing, caused or aggravated her right arm, neck, back and right leg conditions. Dr. Warder noted that appellant's conditions occurred while she was at work and were aggravated by bending and standing, but such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how her physical activity at work actually caused or aggravated the diagnosed conditions.⁸ Thus, the Board finds that the reports from Dr. Warder are insufficient to establish that appellant sustained an employment-related injury.

The MRI scan reports dated May 10 and 29, 2012 are diagnostic in nature and therefore do not address causal relationship. As such, the Board finds that they are insufficient to establish appellant's claim.

As appellant has not submitted any rationalized medical evidence to support her allegation that she sustained an injury causally related to the indicated employment factors, she failed to meet her burden of proof to establish a 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.

⁶ See *O.W.*, *supra* note 4.

⁷ See *A.C.*, Docket No. 08-1453 (issued November 18, 2008); *Donald W. Wenzel*, 56 ECAB 390 (2005); *Leslie C. Moore*, 52 ECAB 132 (2000).

⁸ See *K.W.*, Docket No. 10-98 (issued September 10, 2010).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish right arm, neck, back and right leg conditions in the performance of duty causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the February 12, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 27, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board