

On May 27, 2006 appellant, then a 40-year-old rural carrier, filed an occupational disease claim alleging that she sustained upper and lower back pain and a herniated disc as a result of bending, lifting and sitting for extended periods of time at work.

FACTUAL HISTORY

This case has previously been before the Board. In an August 26, 2009 decision, the Board affirmed OWCP's decisions dated January 23 and October 6, 2008, finding that appellant had not established that she sustained an injury in the performance of duty.² The Board accorded special weight to the December 21, 2007 medical opinion of Dr. Emmanuel N. Obianwu, a Board-certified orthopedic surgeon and impartial medical specialist, who found that appellant's cervical and lumbar conditions were not causally related to her established employment duties.³ In a September 22, 2011 decision, the Board affirmed an October 4, 2010 OWCP decision, again finding that appellant had not sustained an injury while in the performance of duty.⁴ The Board found that the additional medical evidence submitted from an attending physician who was on one side of the conflict was insufficient to outweigh the special weight accorded to Dr. Obianwu's impartial medical opinion or to create a new conflict. The facts of the case as set forth in the Board's prior decisions are incorporated by reference.

On June 7, 2012 appellant, through her attorney, requested reconsideration before OWCP. In an April 26, 2012 medical report, Dr. Strzoda reviewed Dr. Obianwu's report. She stated that his finding that appellant's cervical and lumbosacral spine conditions had no connection to her federal employment was fallacious. Dr. Strzoda related that Dr. Obianwu examined appellant at a time when she was no longer performing her job duties and, therefore, she had a paucity of physical findings. When appellant was performing her job regularly, she had recurrent exacerbations of pain in her neck and lower back. Dr. Strzoda stated that the chronic nature of the problem in appellant's spine was caused by her job after many years performing required movements. She noted that rural mail carriers perform multiple movements during their work shifts, including repetitive bending, twisting and lifting up to 70 pounds. When loading or unloading mail hampers, appellant could not lift properly. She had to bend over into a hamper to place or remove parcels and full trays of mail which required an improper gait balance. These movements increased appellant's risk of back injury due to improper body mechanics. Dr. Strzoda advised that the daily repetitive activities lead to her back and neck problems. It was also noteworthy that appellant's neck and back symptoms had improved since avoiding work. The antidepressant she used had neuropathic pain treatment effects which helped her pain. Appellant did not have depression or anxiety that accompanied her back and neck pain. Tricyclic antidepressant pain medications were commonly used to treat patients with neuropathic pain. Dr. Strzoda strongly recommended that appellant no longer perform her repetitive work

² Docket No. 09-431 (issued August 26, 2009).

³ The Board found that OWCP properly referred appellant to Dr. Obianwu to resolve the conflict in the medical opinion evidence between Dr. Cheryl Strzoda, an attending Board-certified family practitioner, Dr. Allen G. Clague, an attending neurologist, and Dr. Bruce D. Abrams, a Board-certified orthopedic surgeon and OWCP referral physician, regarding whether appellant's cervical and lumbosacral spine conditions were causally related to the accepted employment factors.

⁴ Docket No. 11-143 (issued September 22, 2011).

duties or at the minimum perform such duties only on a limited-time basis so as not to exacerbate the pain associated with her spinal pathology. She noted that appellant's workplace could not accommodate these restrictions.

In a June 4, 2013 decision, OWCP affirmed the denial of appellant's occupational disease claim. It found that Dr. Strzoda's April 26, 2012 report was not sufficiently rationalized to outweigh the special weight accorded to Dr. Obianwu's impartial medical opinion.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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 filed within the applicable time limitation; that an injury was sustained while 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.⁶ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁷

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 a causal relationship 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 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 Neither the fact that appellant's condition became apparent during a period of employment nor her belief that the condition was caused by her employment is sufficient to establish a causal relationship.⁹

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁸ *Victor J. Woodhams*, *supra* note 7.

⁹ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

Section 8123(a) of FECA provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.¹⁰ In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is properly referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on proper factual and medical background, must be given special weight.¹¹

ANALYSIS

The Board previously found that the report of Dr. Obianwu, a Board-certified orthopedic surgeon and impartial medical specialist, was entitled to special weight regarding appellant's claimed employment-related injury. Appellant requested reconsideration before OWCP and submitted an additional report from Dr. Strzoda, a Board-certified family practitioner and her attending physician. The Board notes that Dr. Strzoda was on one side of the conflict in medical opinion that Dr. Obianwu resolved.

Dr. Strzoda opined that appellant's daily repetitive work activities caused her back and neck conditions. She recommended that appellant refrain from performing these activities, or at a minimum perform them on a limited basis to avoid an exacerbation of her spinal pain. Dr. Strzoda disagreed with Dr. Obianwu's opinion that appellant's cervical and lumbosacral spine conditions were not caused by her federal employment. She stated that her examination took place when appellant was no longer performing her job duties, and thus, there were a paucity of physical findings. Dr. Strzoda related that when appellant regularly performed her work duties, which included repetitive bending, twisting, lifting up to 70 pounds and loading or unloading mail hampers, she experienced a recurrent exacerbation of her chronic spinal problems. She indicated that these movements required an improper gait balance which increased appellant's risk of back injury. Dr. Strzoda noted appellant's use of an antidepressant to treat her neuropathic pain and the employing establishment's inability to accommodate her restrictions.

While Dr. Strzoda opined that the established work factors caused appellant's cervical and lumbar problems, she failed to provide examination findings or a definitive diagnosis.¹² Further, she did not provide a sufficiently rationalized medical opinion explaining why the performance of the established work duties required an improper gait balance which caused appellant's cervical and lumbar conditions. Dr. Strzoda found that, if appellant continued to perform these duties, her spinal pain would be exacerbated. However, the Board has held that fear of future injury is not compensable.¹³ Dr. Strzoda was on one side of the conflict that

¹⁰ 5 U.S.C. § 8123(a). *See also Raymond A. Fondots*, 53 ECAB 637 (2002).

¹¹ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

¹² The Board has held that pain is a symptom, rather than a compensable medical diagnosis. *C.F.*, Docket No. 08-1102 (issued October 10, 2008); *Robert Broome*, 55 ECAB 339, 342 (2004).

¹³ *I.J.*, 59 ECAB 408 (2008).

Dr. Obianwu resolved. The additional report from her is insufficient to overcome the weight accorded Dr. Obianwu as the impartial medical examiner or to create a new conflict.¹⁴

On appeal, counsel contended that OWCP's decision was contrary to fact and law. The Board finds that appellant did not submit sufficient medical evidence to establish that she sustained an injury while in the performance of duty causally related to the established work duties.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained an injury in the performance of duty causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the June 4, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 2, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

¹⁴ *Jaja K Asaramo*, 55 ECAB 200, 205 (2004).