

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

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**J.T., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Hermiston, OR, Employer**

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**Docket No. 13-378  
Issued: May 1, 2013**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On December 6, 2012 appellant filed a timely appeal from a July 5, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her occupational disease claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 sustained a low back condition in the performance of duty causally related to factors of her federal employment.

**FACTUAL HISTORY**

On December 19, 2011 appellant, then a 53-year-old rural mail carrier, filed an occupational disease claim alleging that she experienced severe back pain due to factors of her

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

federal employment. The pain occurred after she returned to her regular employment following ankle surgery. Appellant stopped work on December 2, 2011.

In a letter received December 27, 2011, Lana Eckman, a supervisor, related that appellant did not mention back problems until December 13, 2011. Appellant noted that she informed Ms. Eckman that she had experienced a twinge in her back while at a physical therapy appointment following her recent surgery.

In an undated disability certificate received December 27, 2011, Dr. Jerry Crum, a Board-certified orthopedic surgeon, indicated that appellant should remain off work until December 30, 2011.

By letter dated December 28, 2011, OWCP requested additional factual and medical information from appellant, including a detailed medical report addressing the relationship between any diagnosed condition and factors of her federal employment.

On December 30, 2011 Dr. Crum found that appellant could return to work on December 31, 2011 without restrictions.

In a statement dated January 10, 2012, appellant related that she returned to work on November 28, 2011 after ankle surgery on October 24, 2011 to remove hardware. From Monday, November 28 to Thursday, December 1, 2011 she worked more hours and handled significantly more mail than usual, and also used orthotics for her ankle. On December 2, 2011 appellant had physical therapy and woke the next morning with back pain. She stated, "I think I went back to work full duty too soon and had a lot more mail to handle than I had expected and the use of the orthotics may have contributed to the problem." Appellant noted that her back improved after she stopped wearing the orthotics.

A magnetic resonance imaging (MRI) scan study dated December 16, 2011 revealed L5-S1 central stenosis and a moderate focal protrusion on the left paracentral aspect.

By decision dated January 30, 2012, OWCP denied appellant's claim after finding that she did not establish that she sustained a medical condition causally related to the accepted work factors.

In a report dated May 16, 2012, Dr. Crum related that on December 24, 2008 appellant sustained an employment-related right ankle fracture and underwent an internal fixation of the ankle. On October 24, 2011 he removed the ankle hardware. Appellant returned to work in December 2011 but was very busy due to the holidays working long hours and lifting heavy packages. She began to experience back pain which worsened during a long car trip. Dr. Crum stated, "It was felt that [appellant's] back pain was most likely brought on by excessive work after returning from an extended leave of absence. We ordered an MRI scan of her lower back, which demonstrated degenerative disc disease at L5-S1, with a left paracentral disc protrusion and significant central canal stenosis. We kept [appellant] off work to allow her back to rest." Dr. Crum noted that she returned to her usual employment in January 2012. He stated:

“[Appellant] has some degenerative disc disease and that was exacerbated by her excessive work for a very brief period following an extended leave of absence.

This was causally related to her hardware removal and the time required to recover from that. In essence, this then makes it related, although distantly, to [appellant's] initial injury on December 24, 2008.”

On June 22, 2012 appellant requested reconsideration. She argued that her November 2011 injury resulted from her December 24, 2008 work injury.

By decision dated July 5, 2012, OWCP denied modification of its January 30, 2012 decision. It found that the medical evidence was sufficient to establish fact of injury but not causal relationship. OWCP further found that Dr. Crum attributed appellant's back pain to her December 24, 2008 injury and advised her to pursue her claim under the other file number.

On appeal, appellant argues that in his May 16, 2012 report Dr. Crum asserted that her back injury began from lifting heavy packages at work.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

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;<sup>5</sup> (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;<sup>6</sup> and (3) medical evidence establishing 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.<sup>7</sup>

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and

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<sup>2</sup> *Id.*

<sup>3</sup> *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *See Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>5</sup> *Michael R. Shaffer*, 55 ECAB 386 (2004).

<sup>6</sup> *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

<sup>7</sup> *Beverly A. Spencer*, 55 ECAB 501 (2004).

medical background of the claimant,<sup>8</sup> must be one of reasonable medical certainty<sup>9</sup> explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>10</sup>

### ANALYSIS

Appellant attributed her back pain to working extra hours and handling a large volume of mail from November 27 to December 1, 2011 after being off work recovering from ankle surgery. OWCP accepted the occurrence of the claimed employment factors. The issue, therefore, is whether the medical evidence establishes a causal relationship between the claimed conditions and the identified employment factors.

In an undated disability certificate, Dr. Crum advised that appellant should remain off work until December 30, 2011. On December 30, 2011 he released her to return to her usual employment. Dr. Crum did not address the cause of appellant's disability from employment. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.<sup>11</sup>

On May 16, 2012 Dr. Crum discussed appellant's history of ankle surgeries on December 24, 2008 and October 24, 2011 due to a prior work injury. Following her October 2011 surgery, appellant returned to work in December 2011. She worked long hours and lifted heavy packages upon her return and started having back pain, which increased while on a trip by car. Dr. Crum found that appellant's back pain was most likely due to performing heavy work after she returned from being off for a significant period of time. He indicated that he took her off work so that she could rest her back. Dr. Crum diagnosed an exacerbation of degenerative disc disease due to working excessively following an absence from employment. He noted that the work absence was caused by a December 24, 2008 employment injury, and thus appellant's back condition was "distantly" related to the prior ankle injury. Dr. Crum's finding that her back pain was "most likely" a result of the duties she performed after returning to work following surgery is couched in speculative terms and thus of diminished probative value.<sup>12</sup> While he opined that appellant's work duties beginning December 2011 caused an aggravation of degenerative disc disease, he did not provide any rationale for his causation finding. A mere conclusion without the necessary rationale explaining how and why the physician believes that a claimant's accepted exposure could result in a diagnosed condition is not sufficient to meet a claimant's burden of proof.<sup>13</sup>

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<sup>8</sup> *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>9</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>10</sup> *Judy C. Rogers*, 54 ECAB 693 (2003).

<sup>11</sup> *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003).

<sup>12</sup> *Id.*

<sup>13</sup> *See supra* note 7.

On appeal, appellant contends that Dr. Crum's opinion supports that she sustained a back injury from heavy lifting at work. As discussed, however, a physician must provide an opinion on whether the employment factors described caused or contributed to the claimant's diagnosed medical condition and support that opinion with medical reasoning to demonstrate that the conclusion reached is sound, logical and rationale.<sup>14</sup> Appellant failed to submit such evidence and this 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 and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not established that she sustained a low back condition causally related to factors of her federal employment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the July 5, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 1, 2013  
Washington, DC

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

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

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

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<sup>14</sup> *John W. Montoya*, 54 ECAB 306 (2003).