

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

P.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Tampa, FL, Employer**

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**Docket No. 14-837
Issued: August 12, 2014**

Appearances:

*Lenin V. Perez, for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 5, 2014 appellant, through her representative, filed a timely appeal from a February 3, 2014 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 a lower back condition causally related to an August 22, 2011 employment incident, as alleged.

On appeal, appellant's representative contends that her treating orthopedic surgeon submitted reports and magnetic resonance imaging (MRI) scans which clearly related the

¹ 5 U.S.C. § 8101 *et seq.*

² On appeal, appellant requested oral argument before the Board. By letter dated June 12, 2014, appellant, through her representative, requested that the oral argument request be withdrawn and a decision issued on the record.

diagnosed conditions to the August 22, 2011 employment incident and were sufficient to establish causal relationship.

FACTUAL HISTORY

On August 22, 2011 appellant, then a 50-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that she injured her lower back as a result of bending over to retrieve mail out of a case while in the performance of duty that day. An OWCP Form CA-16, authorization for examination, was issued by the employing establishment on August 22, 2011.³

Appellant submitted hospital records and physical therapy notes from South Lake Hospital and Rehabilitation/Physical Therapy dated October 7, 2011. She also submitted physical therapy notes dated August 23 through October 19, 2011 from the National Training Center (NTC) Sports Medicine Institute.

In a November 14, 2011 letter, OWCP notified appellant of the deficiencies of her claim. It afforded her 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted MRI scans of the cervical spine dated May 22, 2006, January 14, 2008, January 14, 2009 and October 24, 2011. She also submitted computerized tomography (CT) scans of the neck and cervical spine dated September 13, 2007. Results of an electromyography and nerve conduction studies (EMG/NCS) dated March 17, 2009 revealed no electrical evidence of neuromuscular disease and no evidence suggesting cervical radiculopathy. Appellant also submitted: x-rays of the left and right hip dated September 25, 2009; an x-ray of the right foot dated May 18, 2011; and MRI scans of the brain dated February 16, 2010 and November 9, 2011.

A February 9, 2009 MRI scan of the thoracic spine revealed postsurgical changes in the lower cervical spine. An MRI scan of the thoracic spine dated August 24, 2010 showed a tiny right paracentral disc bulge. An MRI scan of the lumbar spine dated July 14, 2010 revealed multilevel facet hypertrophy and posterior annular tears at L4-5 and L5-S1.

In reports dated September 15 through November 22, 2011, Scott A. Wheeler, a physician's assistant, diagnosed sacroiliac back pain, lumbar spine pain, bilateral hip pain and neck pain. He indicated that the "onset of the low back pain ha[d] been gradual and ha[d] been occurring for weeks" and aggravated by bending, twisting, lifting, sitting, standing and walking.

By decision dated December 29, 2011, OWCP denied appellant's claim. It accepted that the August 22, 2011 incident occurred as alleged but denied the claim as the medical evidence was not sufficient to establish causal relation.

On January 11, 2012 appellant, through her representative, requested an oral hearing before an OWCP hearing representative. She submitted a December 20, 2011 report from Mr. Wheeler who diagnosed a sprain to the lumbar region.

³ Appellant filed claims for wage-loss compensation (Form CA-7s) for intermittent periods commencing October 25, 2011.

In an undated report, Dr. James M. Ray, a Board-certified orthopedic surgeon, diagnosed lumbar spine pain, bilateral hip pain and neck pain. He checked a box "yes" indicating that appellant's condition was caused or aggravated by an employment activity, stating that on August 22, 2011 she bent over and felt a pinch. On December 20, 2011 and January 12, 2012 Dr. Ray diagnosed lumbar sprain and took appellant off work until further notice.

A telephonic hearing was held before an OWCP hearing representative on April 18, 2012.

Appellant submitted a May 10, 2012 report from Dr. Ray who reiterated that appellant bent over while at work on August 22, 2011 and felt pain and had difficulty standing up as a result. She stated that her back pain was aggravated from continued bending. Dr. Ray noted that appellant had a history of disc tears at L4-5 and L5-S1 and bulging disc at L4-5 which were aggravated by her injury.

On May 9, 2012 Mr. Wheeler reiterated his previous opinion.

By decision dated May 24, 2012, an OWCP hearing representative affirmed the December 29, 2011 decision. He found that the medical evidence failed to establish a causal relationship between appellant's lower back condition and the August 22, 2011 employment incident.

On April 18, 2013 appellant, through her representative, requested reconsideration. She submitted a January 12, 2012 report from Dr. Ray who diagnosed sacroiliac back pain, left foot pain, bunion and tendinitis. Appellant informed him that her left foot diagnoses were aggravated by her lumbar spine condition.

In a February 5, 2013 report, Dr. Samy F. Bishai, an orthopedic surgeon, noted that appellant complained of lower back pain, radicular pain down the legs, more severe on the right side and tingling and numbness in her feet. He stated that she suffered injuries to her back while working at the employing establishment as a rural carrier. Appellant bent over to get mail out of a case and felt a pull in her lower back. Dr. Bishai diagnosed lumbar disc syndrome, bilateral leg radiculopathy, more severe on the right, and degenerative disc disease of the lumbosacral spine. He opined that appellant's August 22, 2011 injury at work was "an aggravation of preexisting conditions that [she] had before." Appellant advised Dr. Bishai that she had previous problems with her back and sustained work injuries that occurred prior to August 22, 2011. Dr. Bishai stated that appellant was predisposed to this type of injury since the work she performed required bending, stooping, lifting heavy objects, pushing and pulling heavy carts or hampers, lifting trays of mail, standing for long periods of time and twisting the body. On March 26, 2013 he reiterated the diagnoses and referred appellant to physical therapy. On April 17, 2013 Dr. Bishai advised that appellant not only had a problem with her back and lower extremities but also suffered from other injuries while working, including an injury to the right shoulder and arm, as well as an injury to her left foot and other consequential injuries to different parts of her body as a result of her back condition.

On April 17, 2013 Dr. Murthy Ravipati, a specialist in internal medicine, diagnosed lumbar disc syndrome, bilateral leg radiculopathy, more severe on the right and degenerative

disc disease of the lumbosacral spine. He stated that appellant sustained an acute work-related injury on August 22, 2011 and, even though she had prior mild low back pain, she was able to function and do her work activities. Dr. Ravipati stated that since the acute back injury when appellant bent over to get mail out of a case, she had a pulling sensation of the back immediately that radiated both legs and had multiple other injuries to the right shoulder, left foot and bilateral hip. On May 8, 2013 he diagnosed chronic low back pain and lumbar disc disease. Dr. Ravipati stated that appellant “had a mild low back pain prior to the work-related injury [on August 22, 2011, which was] exacerbated to a significant degree.” Dr. Bishai indicated that appellant “was unable to work and do her work activities.”

By decision dated May 22, 2013, OWCP denied modification of the May 24, 2012 decision.

On December 3, 2013 appellant, through her representative, requested reconsideration. She submitted reports dated May 15 and June 17, 2013 from Dr. Bishai who reiterated his diagnoses and opinion. On September 12, 2013 Dr. Bishai noted that an MRI scan dated September 5, 2013 revealed a bilateral posterolateral disc bulge at L2-3, a broad-based right parasagittal disc herniation at L3-4, a grade 1 anterolisthesis of L4 on L5 and a loss of disc height and hydration with disc herniation at L5-S1. He diagnosed herniated lumbar discs at L3-4 and L5-S1 and bilateral neural foraminal impingement at L2-3, L3-4, L4-5 and L5-S1. Dr. Bishai stated that by comparing the July 14, 2010 MRI scan to the September 5, 2013 MRI scan it “easily show[ed] that [appellant’s] current condition [was] a lot worse than her preexisting condition.”

By decision dated February 3, 2014, OWCP denied modification of the May 22, 2013 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 injury⁵ was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established.

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

⁶ See *T.H.*, 59 ECAB 388 (2008). See also *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must constitute sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion 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 the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁸

ANALYSIS

OWCP accepted that the employment incident of August 22, 2011 occurred at the time, place and in the manner alleged. The issue is whether appellant's lower back condition resulted from the August 22, 2011 employment incident. The Board finds that appellant did not meet her burden of proof to establish a causal relationship between the condition for which compensation is claimed and the employment incident.

Dr. Bishai diagnosed lumbar disc syndrome, bilateral leg radiculopathy, more severe on the right and degenerative disc disease of the lumbosacral spine. He indicated that appellant sustained injuries to her back while working for the employing establishment as a rural carrier when she bent over to get mail out of a case and felt a pull in her lower back. Dr. Bishai opined that appellant's August 22, 2011 injury at work was "an aggravation of preexisting conditions that [she] had before." Appellant advised Dr. Bishai that she had previous problems with her back and other work injuries prior to August 22, 2011. He stated that appellant was predisposed to this type of injury since the work she performed required bending, stooping, lifting heavy objects, pushing and pulling heavy carts or hampers, lifting trays of mail, standing for long periods of time and twisting the body. On April 17, 2013 Dr. Bishai indicated that appellant not only had a problem with her back and lower extremities but also suffered from other injuries while working, including an injury to the right shoulder and arm, as well as an injury to her left foot and other consequential injuries to different parts of her body as a result of her back condition.

On September 12, 2013 Dr. Bishai indicated that an MRI scan dated September 5, 2013 revealed a bilateral posterolateral disc bulge at L2-3, a broad-based right parasagittal disc herniation at L3-4, a grade 1 anterolisthesis of L4 on L5 and a loss of disc height and hydration with disc herniation at L5-S1. He diagnosed herniated lumbar discs at L3-4 and L5-S1 and bilateral neural foraminal impingement at L2-3, L3-4, L4-5 and L5-S1. Dr. Bishai stated that by

⁷ *Id.* See *Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carbone*, 41 ECAB 354 (1989).

⁸ *Id.* See *Gary J. Watling*, 52 ECAB 278 (2001).

comparing the July 14, 2010 MRI scan to the September 5, 2013 MRI scan it “easily show[ed] that [appellant’s] current condition [was] a lot worse than her preexisting condition.”

Dr. Bishai did not provide medical rationale explaining the mechanism of how appellant’s lower back condition was caused or aggravated by bending over to retrieve mail on August 22, 2011. He simply noted that appellant’s condition occurred after bending over at work. Such generalized statements do not establish causal relationship because they merely repeat the employee’s allegations and are unsupported by adequate medical rationale explaining how this physical activity actually caused the diagnosed conditions.⁹ The Board finds that Dr. Bishai’s reports are insufficient to establish that appellant sustained an employment-related injury in the performance of duty on August 22, 2011.

Dr. Ray diagnosed lumbar sprain, lumbar spine pain, bilateral hip pain and neck pain, noting that appellant had a history of disc tears at L4-5 and L5-S1 and bulging disc at L4-5 which were aggravated by her injury. On January 12, 2012 he diagnosed sacroiliac back pain, left foot pain, bunion and tendinitis and indicated that appellant informed him that her left foot diagnoses were aggravated by her lumbar spine condition. Dr. Ray checked a box “yes” indicating that appellant’s condition was caused or aggravated by an employment activity, stating that on August 22, 2011 she bent over and felt a pinch. Although the “yes” check mark indicates support for causal relationship, Dr. Ray’s reports are insufficient to establish a causal relationship.¹⁰ The Board has held that when a physician’s opinion on causal relationship consists only of a check mark on a form, without more by way of medical rationale, the opinion is of diminished probative value.¹¹ Even though Dr. Ray indicated with a check mark “yes” that appellant’s condition was caused or aggravated by her employment, he failed to provide sufficient medical rationale explaining how appellant’s conditions were caused or aggravated by bending over to retrieve mail on August 22, 2011. Lacking thorough medical rationale on the issue of causal relationship, Dr. Ray’s reports are of limited probative value and insufficient to establish that appellant sustained an employment-related injury in the performance of duty on August 22, 2011.

Dr. Ravipati diagnosed lumbar disc syndrome, bilateral leg radiculopathy, more severe on the right, degenerative disc disease of the lumbosacral spine, chronic low back pain and lumbar disc disease. He stated that since the acute back injury when appellant bent over to get mail out of a hard case, she had a pulling sensation of the back immediately that radiated both legs and had multiple other injuries to the right shoulder, left foot and bilateral hip. On April 17, 2013 Dr. Ravipati indicated that appellant sustained an acute work-related injury on August 22, 2011 and even though she had a mild low back pain prior to that she was able to function and do her work activities. However, on May 8, 2013, he stated that appellant “had a mild low back pain prior to the work-related injury [on August 22, 2011, which was] exacerbated to a significant degree” and indicated that appellant “was unable to work and do her work activities.” The Board

⁹ See *K.W.*, Docket No. 10-98 (issued September 10, 2010).

¹⁰ See *Lucrecia Nielsen*, 42 ECAB 583 (1991); *Lillian Jones*, 34 ECAB 379 (1982) (an opinion on causal relationship which consists only of a physician checking yes to a medical form report question on whether the claimant’s disability was related to the history given is of little probative value).

¹¹ See *Gary J. Watling*, 52 ECAB 278 (2001).

finds that Dr. Ravipati failed to reconcile the discrepancy in his reports regarding whether appellant was capable of her work activities subsequent to the August 22, 2011 incident and did not provide sufficient medical rationale to establish that bending over to retrieve mail caused or aggravated the diagnosed conditions. Thus, the Board finds Dr. Ravipati's reports are of limited probative value and fail to establish appellant's claim.

Appellant contends that the performance of her federal duties on August 22, 2011 led to an aggravation of a preexisting back condition. The Board has held that the mere fact that appellant's symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between appellant's condition and her federal employment.¹² The Board finds that the reports of Drs. Bishai, Ray and Ravipati are insufficiently rationalized to establish that appellant's low back conditions were caused or aggravated by bending over to retrieve mail on August 22, 2011.

In support of her claim, appellant submitted reports dated September 15, 2011 through May 9, 2012 from Mr. Wheeler, a physician's assistant, hospital records and physical therapy notes dated August 23 through October 19, 2011, a March 17, 2009 EMG/NCS, and MRI scan and CT scans dated May 22, 2006 through November 9, 2011. These documents do not constitute competent medical evidence as they are not from a physician as defined under FECA.¹³ As such, the Board finds that appellant did not meet her burden of proof with these submissions.

As appellant has not submitted sufficient rationalized medical evidence to support that she sustained an injury causally related to the August 22, 2011 employment incident.

On appeal, appellant's representative contends that the reports and MRI scans submitted by Dr. Bishai clearly relate the diagnosed conditions to the August 22, 2011 employment incident and are sufficient to establish causal relationship. Based on the findings and reasons stated above, the Board finds that appellant's representative's arguments are not substantiated.

The Board also notes that the employing establishment issued appellant a Form CA-16 on August 22, 2011 authorizing medical treatment. The Board has held that where an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim.¹⁴ Although OWCP denied appellant's claim for an injury, it did not address whether she is entitled to reimbursement of medical expenses pursuant to the Form CA-16. Upon return of the case record, OWCP should further address this issue.

¹² See *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹³ See 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law." See also *Paul Foster*, 56 ECAB 208, 212 n.12 (2004); *Joseph N. Fassi*, 42 ECAB 677 (1991); *Barbara J. Williams*, 40 ECAB 649 (1989).

¹⁴ See *D.M.*, Docket No. 13-535 (issued June 6, 2013). See also 20 C.F.R. §§ 10.300, 10.304.

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 lower back condition is causally related to an August 22, 2011 employment incident, as alleged. On return of the record, OWCP should consider the Form CA-16 issued in this case.

ORDER

IT IS HEREBY ORDERED THAT the February 3, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 12, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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