

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

J.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Pittsburgh, PA, Employer**

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**Docket No. 14-1002
Issued: December 19, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 25, 2014 appellant filed a timely appeal from a February 25, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied her occupational disease claim. 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 back and hip injury causally related to factors of her employment.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence following the February 25, 2014 decision. Since the Board's jurisdiction is limited to 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. *See* 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005). Appellant may submit that evidence to OWCP with a request for reconsideration.

FACTUAL HISTORY

On November 12, 2013 appellant, then a 63-year-old mail handler, filed an occupational disease claim alleging that she experienced intermittent pain in her back and hips as a result of lifting and bending at work. While lifting and bending she felt like she moved the wrong way and her back and hips would lock up for a minute. Appellant first became aware of her condition on November 5, 2013 and realized it was due to her employment on November 12, 2013. She stopped work on November 6, 2013 and returned to work the next day.³

In a November 5, 2013 statement, John W. Norman III, a coworker, stated that on November 5, 2013 he arrived at the double doors at the entrance of the building when he observed appellant finishing up the third automated postal center (APC) of her load. The second APC in her tow line was not moving freely, which caused her to catch the mail staged on the dock as she attempted to drive around it. Mr. Norman observed that the APC continued to cause problems so he and another employee helped to unhook the last APC and move the troubled one to the side.

In a December 3, 2013 letter, Brandon Gardner, a human resource specialist at the employing establishment, controverted appellant's claim. He contended she did not submit sufficient medical evidence addressing how her claimed condition was causally related to her federal employment. Mr. Gardner also noted that appellant filed a traumatic injury claim for the same alleged injury.

By letter dated January 9, 2014, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested that she submit a factual statement detailing the employment-related activities that contributed to her condition and activities outside of her federal employment. OWCP also requested a medical report from an attending physician, which included an explanation of how appellant's work activities caused, contributed to or aggravated her medical condition. It asked appellant to clarify whether she claimed a traumatic injury or an occupational disease and provided the definitions of both. OWCP sent a development letter to the employing establishment requesting information regarding her employment.

By letter dated January 22, 2014, Mark Smider, a Distribution Operations Supervisor, stated that appellant first claimed that she was injured on November 5, 2013 but she did not report the injury until the next day. He contended that there was no evidence that she sustained an injury and no witnesses validated an injury on that date. Mr. Smider stated that appellant's duties as an equipment operator included bending to hook up containers to the power tug, lifting and pushing containers into place to hook them up or unhook them and pushing them into the delivery area. On an average day, appellant hooked up about 300 containers in an eight-hour workday. She had two 15-minute breaks and one half-hour lunch in a workday, as well as breaks in-between transporting equipment throughout the building.

Mr. Smider included a description of appellant's duties as a mail handler and as an equipment operator. A mail handler's duties involved unloading mail from trucks, carrying mail

³ The record indicates that appellant also filed a traumatic injury claim for a November 5, 2013 injury, which was denied under File No. xxxxxx536.

to the distributors for processing, handling sacks and inspecting equipment for mail, cancelling stamps on parcel posts, operating cancelling machines, assisting in supply and slip rooms, operating copy machine and office-related equipment, making occasional simple distribution of parcel post mail, operating electric forklifts, rewrapping damaged parcels, weighing incoming sacks, cleaning and sweeping work areas and acting as an armed guard for a valuable registry shipment when approved by the chief postal inspector. The duties of a mail handler equipment operator included operating a jitney, forklift or pallet truck, moving empty equipment utilized in transporting mail to storage or staging area, performing routine safety inspection of vehicular equipment, observing established safety practices and requirements, and performing other mail handler duties.

In a February 6, 2014 prescription notes, Dr. George R. McCollum, a Board-certified family practitioner, reported that he saw appellant in his office that day for lumbar pain and spasms caused by a work-related injury.

In a February 7, 2014 return to work note, Dr. Brandon Wentzel, a chiropractor, indicated that appellant was able to return to work on February 7, 2014 with no restrictions.

In a decision dated February 25, 2014, OWCP denied appellant's claim finding insufficient factual evidence to establish that the lifting or bending activities occurred as she described. It also determined that the medical evidence was insufficient to establish that she sustained medical condition causally related to her employment.

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 evidence⁴ 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.⁵ Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established. To establish fact of injury in an occupational disease claim, an employee must submit: (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.⁶

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁷ An

⁴ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁵ *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁷ *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.⁸ An employee has not met his or her burden of proof establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statement in determining whether a *prima facie* case has been established.⁹

The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.¹⁰ Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹¹ 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.¹²

ANALYSIS

Appellant alleged that she sustained a back and hip injury as a result of her duties as a mail handler at the employing establishment. OWCP denied her claim, finding insufficient factual and medical evidence to establish that she actually performed any lifting or bending activities or that she sustained a medical condition as a result of those employment duties. The Board finds that the evidence of record is sufficient to establish that appellant's duties as a mail handler involved repetitive lifting and bending; but, she did not submit sufficient medical evidence to establish that she sustained a back or hip condition causally related to her employment duties.

Appellant alleged that she experienced back and hip pain while lifting and bending as a result of repetitively bending and lifting at work. In a letter dated January 22, 2014, Mr. Smider, a Distribution Operators Supervisor, stated that she occasionally worked as a mail handler equipment operator. He confirmed that appellant's duties as an equipment operator included "bending to hook up containers to the power tug, lifting and pushing containers into place to hook them up or unhook them to push them into the delivery area." The record also contains

⁸ *Gene A. McCracken*, Docket No. 93-2227 (issued March 9, 1995); *Joseph H. Surgener*, 42 ECAB 541, 547 (1991).

⁹ *Betty J. Smith*, 54 ECAB 174 (2002).

¹⁰ *J.Z.*, 58 ECAB 529 (2007).

¹¹ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

¹² *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

position descriptions for a mail handler and mail handler equipment operator positions. The descriptions corroborate that appellant bent over in a repetitive manner to load and unload mail and lifted mail and other mail equipment. The Board finds that the evidence of record establishes that appellant's duties as a mail handler and equipment operator involve repetitive bending and lifting.

The Board finds, however, that appellant did not meet her burden of proof to establish that she sustained a back or hip condition causally related to her employment duties. Appellant submitted prescription notes dated February 6, 2014 from Dr. McCollum, who noted only that she was examined in his office for lumbar pain and spasms caused "by a work-related injury." The Board has held that pain is generally a description of a symptom, not a firm medical diagnosis.¹³ Similarly, spasm is also a symptom.¹⁴ Dr. McCollum did not present any findings from his examination of appellant, did not provide a full or accurate history of appellant's condition or offer a firm medical diagnosis of a back or hip condition. Appellant did not submit a medical report based on a complete factual and medical background, supported by medical rationale which explained the nature of the relationship between the diagnosed conditions and the employment factors identified in this case. The Board finds that she has not submitted sufficient medical evidence to establish her claim.

As to the report of Dr. Wentzel, the chiropractor, the Board notes that under FECA chiropractors are defined as a "physician" only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.¹⁵ If the diagnosis of a subluxation as demonstrated by x-ray is not established, the chiropractor is not a physician and his or her report is of no probative medical value.¹⁶ Dr. Wentzel did not diagnose spinal subluxation as demonstrated by x-rays to exist; therefore, he is not a physician as defined under FECA and his opinion is insufficient to establish causal relationship.

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 she sustained a medical condition as a result of factors of her employment.

¹³ See *H.B.*, Docket No. 12-1496 (issued January 19, 2013).

¹⁴ See *E.B.*, Docket No. 13-1705 (issued January 8, 2014).

¹⁵ 5 U.S.C. § 8101(2).

¹⁶ See *Jack B. Wood*, 40 ECAB 95, 109 (1988).

ORDER

IT IS HEREBY ORDERED THAT the February 25, 2014 merit decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: December 19, 2014
Washington, DC

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

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

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