

stenosis of the lumbar region as a result of repetitively bending and lifting parcels of mail during her federal employment for 25 years. Appellant first became aware of her condition on February 21, 2011 and of its relationship to her employment on January 4, 2012.²

In a May 22, 2012 attending physician's report (Form CA-20), Dr. Joseph P. Spott, an osteopath, diagnosed spinal stenosis based on findings from a magnetic resonance imaging (MRI) scan. He checked the box marked "yes" on whether he believed appellant's condition was caused or aggravated by her employment activity, noting that her job required her to twist her back and carry loads in a repetitive motion over the course of 25 years.

By letter dated June 26, 2012, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the medical and factual evidence needed and was directed to submit it within 30 days.

In an undated narrative statement, appellant reported that she had worked for the postal service since March 1987. Her duties as a distribution clerk required her to manually sort mail and parcels from both a sitting and standing position. This required appellant to repetitively bend, twist and stack bundles of mail for two to three hours a day. She further stated that the bundles and parcels weighed 5 to 70 pounds. Appellant first experienced lower back pain in 1989 and sought medical treatment but did not file a workers' compensation claim. In December 2010, the volume of mail increased for the holidays, causing her back pain to worsen. Appellant argued that the physical duties of her employment aggravated her condition.

In medical reports dated November 8, 2010 to July 16, 2012, Dr. Spott noted treatment for lumbar complaints which had existed since August 2010, worse with bending, sitting, walking and working. He provided findings on physical examination as well as results of diagnostic tests. Initially, Dr. Spott diagnosed sacroiliitis, lumbar spinal stenosis and lumbar degenerative disc disease. On January 4, 2012 appellant underwent a micro lumbar discectomy at L5-S1 on the left; partial medial facetectomy and foraminotomy at L4-5 bilateral and L3-4 foraminotomy on the right. On April 20, 2012 she underwent additional diagnostic testing including an electromyography (EMG)/nerve conduction study, an MRI scan of the lumbar spine and an x-ray of the cervical spine. Upon review of the diagnostic testing, Dr. Spott diagnosed lumbar spinal stenosis, mechanical low back pain, segmental instability and acquired spondylolisthesis at L4-5 bilateral.

In a July 16, 2012 report, Dr. Spott opined that appellant's symptoms were related to the described repetitious work activities, as well as her day-to-day nonwork activities. He enclosed a description of employment duties which was provided to him by appellant. The employment duties included manually sorting mail/parcels from the sitting and standing position and bending and twisting to lift mail/parcels weighing 5 to 70 pounds for two to three hours a day. Dr. Spott opined that the environment in which appellant worked lacked satisfactory ergonomics for a person of her stature and physical condition. He noted that no specific date could be identified for the onset of or that initiated the symptoms. Dr. Spott stated that the work activities caused

² The Board notes that appellant has filed three other occupational disease claims on April 15 and May 4, 2005 and January 26, 2012 and one traumatic injury claim on May 18, 2006. The record before the Board contains no other information pertaining to her prior claims.

appellant's underlying degenerative spine to be aggravated due to the demands of her occupation and her short stature. He concluded that her lumbar arthritis and lumbar spinal stenosis were not related to the described work duties.

By decision dated October 18, 2012, OWCP denied appellant's claim. It found that the medical evidence of record failed to establish that her diagnosed lumbar conditions were causally related to the established work-related activities.

On November 12, 2012 appellant requested review of the written record before the Branch of Hearings and Review. She submitted the October 21, 2012 and February 25, 2013 medical reports from Dr. Louis Teodori, an osteopath, who treated appellant for chronic low back pain and chronic accessory bilateral lower extremity lumbosacral radiculopathy which ultimately led to surgery. Dr. Teodori noted a history of chronic low back pain, spinal stenosis, and degenerative disc disease. He stated that appellant's employment for the prior 20 years involved repetitive lifting and strenuous activity which exacerbated her degenerative spinal disc disease and facet disease, causing chronic low back pain. Dr. Teodori opined that the repetitive nature of appellant's work activities aggravated her baseline low back pain secondary to spinal stenosis and spondylolisthesis. He added that the spondylolisthesis, spinal stenosis and degenerative changes in the lumbar spine were not caused by her work-related duties, but that the conditions associated with her employment aggravated the baseline conditions.

By decision dated March 20, 2013, a hearing representative affirmed the October 18, 2012 decision. He found that the medical reports of record failed to establish that her diagnosed low back conditions were causally related to the accepted factors of federal employment.

On August 15, 2013 appellant requested reconsideration of the March 20, 2013 decision. She submitted a June 18, 2013 report from Dr. Teodori, who diagnosed spinal stenosis, chronic low back pain, and degenerative disc disease which he opined was aggravated by the nature of her employment. Dr. Teodori noted significant degenerative changes, arthritic changes and spinal stenosis which were potentially superimposed issues; however, they were exacerbated by the nature of appellant's work-related activities. The facet disease and degenerative disc disease were undoubtedly exacerbated by appellant's occupation and it was more than likely that the nature of her position caused the condition to progress in a more rapid manner over the years.

By decision dated August 28, 2013, OWCP denied appellant's request for reconsideration. It found that the report of Dr. Teodori was substantially the same as his prior opinion and previously considered.

On October 9, 2013 appellant requested reconsideration of OWCP's decision. She argued that Dr. Spott incorrectly stated that her condition was caused from her daily activities as he failed to identify what those daily activities were. Appellant noted that her employment duties required her to repetitively bend and twist for up to four hours a day. She reported that she did not engage in any type of work or activity in her daily home routine that required her to do these same repetitive movements.

In support of her claim, appellant submitted an October 1, 2013 medical report from Dr. Richard L. Cristea, a Board-certified neurologist, who reviewed appellant's medical records,

including the reports of Dr. Spott and Dr. Teodori, and had intermittently been involved in her care. Dr. Cristea noted a prior lumbar spine surgery which he opined was directly related to her occupation as a clerk for the postal service dating back to March 1987. He further noted that appellant's job was physically demanding and required her to stand on her feet throughout the day. Dr. Cristea opined that appellant's short stature increased her risk of injury related to repetitive movements. Appellant developed low back pain approximately two years after starting to work for the postal service, with no evidence of a preexisting lumbar spine diagnosis. Dr. Cristea opined that her current lumbar condition was directly related to her occupation as a postal service clerk and that the repetitive bending and movements initiated, exacerbated and caused her spinal stenosis.

By decision dated January 13, 2014, OWCP affirmed the March 20, 2013 decision finding that the medical evidence of record failed to establish that appellant's diagnosed conditions were causally related to factors of her federal employment.

On March 19, 2014 appellant requested reconsideration of OWCP's decision. She did not submit any evidence or argument with her appeal.

By decision dated June 9, 2014, OWCP denied appellant's request for reconsideration finding that she neither raised substantive legal questions nor included new and relevant evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA 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 or specific condition for which compensation is claimed is causally related to the employment injury.³ These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁵ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment

³ Gary J. Watling, 52 ECAB 278 (2001); Elaine Pendleton, 40 ECAB 1143, 1154 (1989).

⁴ Michael E. Smith, 50 ECAB 313 (1999).

⁵ Elaine Pendleton, *supra* note 3.

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

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁷ The opinion of the physician 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁸

ANALYSIS -- ISSUE 1

OWCP accepted that appellant engaged in repetitive bending, twisting and lifting activities in her employment duties as a distribution clerk. It denied her claim, however, on the grounds that the medical evidence failed to establish a causal relationship between these activities and her lumbar condition. The Board finds that the medical evidence of record is insufficient to establish that appellant developed a lumbar condition causally related to factors of her federal employment as a distribution clerk.

Dr. Spott's reports documented the history of treatment for appellant's lumbar condition with findings on physical examination and review of diagnostic testing. He diagnosed sacroiliitis, lumbar degenerative disc disease, lumbar spinal stenosis, mechanical low back pain, segmental instability and acquired spondylolisthesis at L4-5 bilateral. In a July 16, 2012 report, Dr. Spott opined that appellant's symptoms were related to the described repetitious work activities, as well as her day-to-day nonwork activities. The Board notes that Dr. Spott did not provide an unequivocal opinion regarding the cause of appellant's condition as he also related the cause to nonoccupational factors. Furthermore, Dr. Spott attributed her symptoms to her employment duties without adequately addressing her diagnosed lumbar conditions.⁹ While he noted a review of the employment duties as provided to him by appellant; but failed to specifically state any employment duties explained or how repetitive activities would cause injury. As there are multiple diagnosed conditions, it is unclear which condition Dr. Spott attributed to her work-related duties.¹⁰ Dr. Spott further stated that appellant's lumbar arthritis

⁶ See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁷ See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁸ *James Mack*, 43 ECAB 321 (1991).

⁹ *M.R.*, Docket No. 14-11 (issued August 27, 2014).

¹⁰ *B.S.*, Docket No. 13-920 (issued 13-920 July 9, 2013).

and lumbar spinal stenosis were not related to the described work duties. This statement contradicts the May 22, 2012 Form CA-20 which noted that appellant's spinal stenosis was caused or aggravated by her employment activity of twisting and carrying loads in a repetitive motion for the last 25 years. As Dr. Spott failed to provide a clear and unequivocal opinion regarding the cause of appellant's conditions, his reports are insufficient to establish her claim.¹¹

The reports from Dr. Teodori are also insufficient to establish appellant's claim. He failed to provide a detailed medical history other than noting a prior surgery and history of chronic low back pain, spinal stenosis and degenerative disc disease. Dr. Teodori stated generally that appellant's employment for the last 20 years involved repetitive lifting and strenuous activity which exacerbated her degenerative spinal disc disease and facet disease, causing her chronic low back pain. He failed, however, to adequately explain how the repetitive movements in her work caused or aggravated her degenerative disease other than offering a generalized conclusion that strenuous and repetitive work contributed to degenerative disease in the lumbar spine. Dr. Teodori failed to adequately describe appellant's work duties, did not specify how many hours per day she would repetitively lift, the weight of the objects she lifted, how often she was required to perform these tasks and the frequency of other physical movements. He stated that her work duties did not cause but aggravated her conditions, noting that it was more than likely that the nature of her position caused the condition to progress in a more rapid manner over the years. As noted, Dr. Teodori's opinion does not provide sufficient detail or clarity explaining how appellant's preexisting conditions were aggravated by her repetitive employment duties as a distribution clerk. Moreover, his opinion is speculative in stating causal relationship as more than likely rather than to a reasonable degree of medical certainty. As Dr. Teodori failed to provide a sufficient explanation as to the mechanism of injury, his reports are insufficient to meet appellant's burden of proof.¹²

The Board also finds that Dr. Cristea's October 1, 2013 report is not well rationalized. Dr. Cristea failed to adequately discuss appellant's medical history other than generally stating no evidence of a preexisting lumbar spine diagnosis. He did not provide findings on physical examination or detail review of diagnostic reports. Dr. Cristea's opinion that appellant's lumbar spine surgery was directly related to her occupation as a postal service clerk is vague with no reference to the specific procedure performed. He also opined that her current lumbar spine condition was directly related to her occupation as a postal service clerk and that the repetitive bending and movements initiated, exacerbated and caused her spinal stenosis. Dr. Cristea failed to describe appellant's work duties, did not specify how many hours she worked as a distribution clerk and the frequency of physical movements and tasks which would cause her injury. While he stated that her work duties contributed to her preexisting spinal stenosis, he failed to explain how these tasks and movements would cause her greater injury. Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.¹³ The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address

¹¹ *A.P.*, Docket No. 13-2014 (issued February 21, 2014).

¹² *S.W.*, Docket 08-2538 (issued May 21, 2009).

¹³ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

the specific factual and medical evidence of record and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.¹⁴ As Dr. Cristea failed to provide a sufficient explanation as to the mechanism of injury, his general statement that appellant sustained a work-related injury is of limited probative value.¹⁵

The record lacks rationalized medical evidence establishing a causal relationship between appellant's sacroiliitis, lumbar degenerative disc disease, lumbar spinal stenosis, segmental instability and acquired spondylolisthesis at L4-5 bilateral and factors of her federal employment as a distribution clerk. As such, appellant failed to meet her burden of proof.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

LEGAL PRECEDENT -- ISSUE 2

To reopen a case for merit review under section 8128(a), the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant new evidence not previously considered by OWCP.¹⁶ Section 10.608(b) of OWCP regulations provide that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.¹⁷

ANALYSIS -- ISSUE 2

The Board finds that the refusal of OWCP to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.¹⁸

The issue is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In her March 19, 2014 application for reconsideration, appellant did not contend that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a new and relevant legal argument. The underlying issue in this case was whether appellant sustained a diagnosed condition causally

¹⁴ See *Lee R. Haywood*, 48 ECAB 145 (1996).

¹⁵ *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

¹⁶ *D.K.*, 59 ECAB 141 (2007).

¹⁷ *K.H.*, 59 ECAB 495 (2008).

¹⁸ *Glen E. Shiner*, 53 ECAB 165 (2001). Abuse of discretion is generally shown through proof of manifest error clearly unreasonable exercise of judgment or actions taken that are contrary to both logic and probable deduction from established facts.

related to her federal employment duties as a distribution clerk. That is a medical issue which must be addressed by relevant evidence from a physician.¹⁹

Appellant failed to submit any evidence or argument with her March 19, 2014 reconsideration request.²⁰ Her recitation of the facts does not support her allegation that her employment factors as a distribution clerk caused her injury.²¹ It is appellant's burden to submit medical evidence in support of her claim. A claimant may obtain a merit review of an OWCP decision by submitting new and relevant evidence. As appellant failed to submit any medical evidence with her request for reconsideration, OWCP properly denied merit review of her claim.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that her lumbar injuries are causally related to factors of her federal employment as a distribution clerk. OWCP properly denied her request for reconsideration.

¹⁹ See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

²⁰ *M.C.*, Docket No. 14-596 (issued June 6, 2014).

²¹ *Paul Foster*, 56 ECAB 1943 (2004); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated June 9 and January 13, 2014 are affirmed.

Issued: December 3, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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