

FACTUAL HISTORY

On May 6, 2013 appellant, then a 48-year-old lobby director, filed an occupational disease claim (Form CA-2) alleging that on April 9, 2013 she first realized that the severe pain on her right side in the buttocks and hip area that radiated down her right leg was caused by her federal employment. She stated that she had been employed for over 26 years at the employing establishment as a city letter carrier, sales and service associate and mail handler.

On the CA-2 form, the employing establishment indicated that appellant returned to work in a modified lobby assistant position on February 27, 2013 under a prior claim assigned OWCP File No. xxxxxx746.² It challenged the instant claim, stating that fact of injury had not been established. The employing establishment stated that appellant failed to identify how the alleged injury occurred and that she had not established a causal relationship between a diagnosed condition and an event or injury. In a May 9, 2013 letter, it challenged her claim on the grounds that she had not performed the duties of city carrier since April 1995. In May 1995 appellant transferred crafts to work as a clerk. In February 2004 she became a mail handler. Appellant had been out of work since April 2010 and returned to work in July 2011. She was off work again in December 2011 and returned to work in February 2013 in a modified lobby assistant position. The employing establishment contended that appellant had not worked on a consistent basis. It noted that her modified lobby assistant job required lifting 10 pounds intermittently and standing and walking intermittently four hours. The position mostly required providing verbal instructions to customers to aid them in the lobby.

By letter dated May 22, 2013, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested additional factual and medical evidence. OWCP also requested that the employing establishment respond to appellant's allegations and submit any medical evidence regarding treatment she received at its medical facility.

Appellant stated, in a June 6, 2013 narrative statement, that she had been employed at the employing establishment for 26.9 years. She attributed her condition to her work duties in several positions she held at the employing establishment. As a city letter carrier, appellant was required to stand on concrete floors approximately four to five hours a day while casing mail, deliver mail in a mailbag on her shoulders for six years, walk nonstop four to five hours a day, five to six days per week. She had a maximum lifting requirement of 70 pounds. Appellant constantly lifted heavy trays of mail and pulled heavy gurneys and hampers filled with mail. As a sales and service associate for six years she was required to stand on concrete flooring for eight hours a day, five days a week while lifting heavy packages which involved continuous twisting and turning. As a mail handler for nine years, appellant was required to stand on concrete

² Appellant had a prior appeal under OWCP File No. xxxxxx746 before the Board regarding an overpayment issue. By decision dated September 7, 2012, the Board affirmed in part and set aside in part a November 1, 2011 OWCP overpayment decision. The Board found that OWCP properly determined that appellant had received a \$960.84 overpayment of compensation from July 21 to 30, 2011, but it improperly found that she was at fault in the creation of the overpayment. The Board remanded the case for OWCP to consider waiver of recovery of the overpayment. Docket No. 12-688 (issued September 7, 2012). Appellant has filed a separate appeal from OWCP's September 12, 2013 decision under File No. xxxxxx746 which found that she had no more than 12 percent impairment of the right upper extremity. The Board will review that decision under Docket No.14-409.

flooring eight hours a day and to constantly bend, push and pull heavy ergo carts, wire cages, all-purpose containers, gurneys and hampers filled with parcels and magazines. As a lobby director her duties entailed standing and walking on concrete flooring eight hours a day and retrieving parcels, accountable mail and vacation hold mail for customers.

In a May 7, 2013 medical report, Dr. Perl listed a history that appellant had an acute onset of pain that started on April 9, 2013 when she assisted a customer by lifting a package while standing as a window clerk. The pain on appellant's right side was so severe that it caused her to limp. She reported that she continued to have right-sided lower extremity pain radiating from her low back into her hip and into her lower extremities. Dr. Perl listed a history of appellant's medical treatment, family and social background. She reported findings on physical and neurological examination. Dr. Perl diagnosed lumbar radiculitis affecting the right lower extremity and bilateral sacroiliac joint pain related to appellant's post office injury.

A June 1, 2013 x-ray report authenticated by Dr. Terri L. Allen, a Board-certified radiologist, found the bilateral hips normal. A June 3, 2013 report, also authenticated by Dr. Allen, stated that a magnetic resonance imaging (MRI) scan of the lumbar spine revealed disc degeneration, a diffuse annular bulge and a two-millimeter left posterolateral disc protrusion at L3-4 with mild left foraminal encroachment. The MRI scan also revealed disc degeneration and a diffuse annular bulge at L4-5 without focal disc protrusion or stenosis.

By letter dated June 28, 2013, the employing establishment again controverted appellant's claim. It contended that she was not required to work outside her lifting restrictions as a lobby assistant. Appellant was allowed to sit during down time when there was no activity in the lobby. She was then given desk duties to assist in the office. The employing establishment reiterated its prior contention that appellant failed to submit medical evidence to establish that she sustained a condition or an injury causally related to her employment.

In a July 30, 2013 decision, OWCP denied appellant's occupational disease claim. It found that the medical evidence was insufficient to establish that she sustained an injury or a medical condition causally related to the established employment factors.

By letter dated December 3, 2013, appellant requested reconsideration and submitted medical evidence. In a June 4, 2013 report, Dr. Perl listed diagnostic, physical and neurological examination findings. She reiterated her prior opinion that appellant's lumbar radiculitis affecting the right lower extremity and bilateral sacroiliac joint pain were caused by her employment duties. Dr. Perl also diagnosed an L3-4 two-millimeter protrusion and L4-5 right two-millimeter protrusion and opined that the diagnosed conditions were related to her work duties.

In a December 18, 2013 decision, OWCP denied modification of the July 30, 2013 decision. It found that the medical evidence submitted was not sufficiently rationalized to establish that appellant sustained a work-related injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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.⁴ 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.⁵

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. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable 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.⁶ Neither the fact that appellant's condition became apparent during a period of employment nor, his or her belief that the condition was caused by his or her employment is sufficient to establish a causal relationship.⁷

ANALYSIS

OWCP accepted appellant's factors of federal employment as a lobby director. It denied her claim, however, on the grounds that the evidence failed to establish a causal relationship between those activities and her diagnosed conditions. The Board finds that the medical evidence of record is insufficient to establish that appellant developed a back condition causally related to factors of her federal employment.

Dr. Perl's May 7 and June 4, 2013 reports listed diagnostic, physical and neurological examination findings and advised that appellant had lumbar radiculitis affecting the right lower extremity, bilateral sacroiliac joint pain, an L3-4 two-millimeter protrusion and an L4-5 right two-millimeter protrusion. While she opined that the diagnosed conditions were caused by

³ 5 U.S.C. §§ 8101-8193.

⁴ C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *id.* at 351-52.

⁷ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

appellant's work duties, she failed to adequately explain how the established employment factors caused or contributed to these conditions other than offering a generalized opinion that such work duties caused the lumbar conditions. As Dr. Perl failed to provide a sufficient explanation as to the mechanism of injury, her general statement that appellant sustained a work-related injury is of limited probative value.⁸

Dr. Allen's June 3, 2013 diagnostic test results addressed appellant's lumbar conditions, but failed to provide an opinion addressing whether her diagnosed conditions were caused by the established employment factors. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.⁹ Dr. Allen's June 1, 2013 diagnostic test results revealed normal bilateral hips. He did not opine that appellant had a medical condition causally related to the established employment factors. The Board finds that Dr. Allen's reports are insufficient to establish appellant's claim.

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a back condition causally related to the accepted employment factors. Appellant did not meet her burden of proof.

On appeal, appellant contended that Dr. Perl's June 4, 2013 report established that she sustained a condition related to her federal employment. As discussed above, Dr. Perl's reports are of diminished probative value and not sufficient to represent the weight of medical opinion.

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 failed to establish that she sustained a back injury causally related to factors of her federal employment.

⁸ *S.W.*, Docket 08-2538 (issued May 21, 2009).

⁹ See *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

ORDER

IT IS HEREBY ORDERED THAT the December 18, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 3, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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