



## **FACTUAL HISTORY**

On May 3, 2010 appellant, then a 35-year-old part-time flexible clerk, filed an occupational disease claim alleging that her back condition was due to her employment duties. She related that she first became aware of her condition on August 4, 2008, but did not realize it was employment related until October 3, 2008.<sup>2</sup>

In a March 19, 2010 report, Dr. Steven Mandel, an examining Board-certified neurologist, diagnosed S1 radiculopathy with chronic and acute changes.

In a March 22, 2010 report, Dr. Larry H. Chou, an examining Board-certified physiatrist, provided physical findings and reviewed objective evidence. He diagnosed left S1 acute chronic radiculopathy, L4-5, L5-S1 facet arthropathy and bilateral L5 and left S1 myotomes weakness.

On August 26, 2010 OWCP received a March 12, 2010 report from Dr. Shailen Jalali, a treating Board-certified anesthesiologist and pain medicine physician, who diagnosed spinal stenosis, lumbar radiculitis and sacroilitis.

By decision dated August 11, 2010, OWCP denied appellant's claim.

In a letter dated August 17, 2010, appellant's counsel requested an oral hearing before an OWCP hearing representative, which was held on December 7, 2010.

Following the hearing, appellant submitted additional medical evidence including reports from Dr. Frederick B. Vivino, a treating Board-certified internist and rheumatologist, as set forth below.

In progress notes dated September 22 and December 9, 2009, Dr. Vivino noted findings on examination and diagnoses of cervical/lumbar spondylosis, L5-S1 radiculopathy, bilateral carpal tunnel syndrome and L4-5 spinal stenosis. In the December 9, 2009 progress note, appellant related having poor balance, falling twice at home since her last visit and "occasional episodes of back pain with heavy lifting at the [employing establishment]."

In progress notes dated October 1, 2010, Dr. Vivino provided physical examination findings and diagnosed multiple sclerosis (MS), back pain, L4-5 lateral recess spinal stenosis and bilateral carpal tunnel syndrome. He noted that appellant's magnetic resonance imaging (MRI) scan showed lateral recess stenosis at L4-5 and clinically that she had weakness in L2-4 dermatomes. Dr. Vivino related that "[t]his discordant finding would suggest the weakness to be more due to MS."

On January 24, 2011 OWCP received a February 12, 2010 progress note from Dr. Jalali diagnosing spinal stenosis, lumbar radiculitis and sacroilitis.

By decision dated February 7, 2011, the hearing representative set aside the August 11, 2010 decision denying appellant's claim. The hearing representative found that the medical

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<sup>2</sup> Appellant stopped work on April 9, 2010 and retired on disability in May 2011.

evidence was insufficient to establish her claim, but sufficient to warrant further development of the evidence. OWCP was instructed to refer appellant for a second opinion evaluation after preparing a new statement of accepted facts.

Following the February 7, 2011 decision, OWCP received a February 2, 2011 report and February 23, 2010 progress note from Dr. Vivino. In the February 23, 2010 progress note, Dr. Vivino provided physical examination findings as well as review of objective testings. Diagnoses included cervical/lumbar spondylosis, L5-S1 radiculopathy, bilateral carpal tunnel syndrome and L4-5 spinal stenosis. Appellant related having poor balance, no sciatica and no falls since November. She reported occasional back pain episodes due to heavy lifting at the employing establishment.

In his February 2, 2011 report, Dr. Vivino reported that appellant was being treated for spinal stenosis, cervical and lumbosacral spondylosis, radiculopathy and bilateral carpal tunnel syndrome. He noted that she had increased back pain as a result of having to perform heavy lifting at the employing establishment.

In a September 30, 2011 report, Dr. Robert Franklin Draper, Jr., a second opinion Board-certified orthopedic surgeon, diagnosed MS, C3-4, C4-5, C5-6 and C6-7 degenerative bulging disc disease with facet hypertrophy and L2-3, L3-4, L4-5 and L5-S1 degenerative bulging disc disease, facet hypertrophy and osteoarthritis. He provided physical findings, reviewed the medical evidence and referenced the statement of accepted facts. Dr. Draper attributed appellant's cervical and lumbar spine degenerative bulging disc disease and facet arthritis to the aging process. He opined that these conditions were unrelated to her job duties or her employment at the employing establishment. Dr. Draper concluded that appellant was capable of working with restrictions which he attributed to her MS, bilateral carpal tunnel syndrome and cervical and lumbar degenerative disc disease.

By decision dated November 20, 2011, OWCP denied appellant's claim that her employment caused or aggravated cervical and lumbar conditions.

On November 28, 2011 appellant's counsel requested an oral hearing before an OWCP hearing representative, which was held on March 30, 2012.

By decision dated June 14, 2012, the hearing representative set aside the November 20, 2011 decision and remanded for OWCP to obtain a supplemental report from Dr. Draper explaining his conclusions.

In a September 20, 2012 supplemental report, Dr. Draper noted that all of the changes seen in the cervical, thoracic and lumbar MRI scans are due to the degenerative processes. He explained that disc osteophyte complexes, degenerative bulging disc disease, facet hypertrophy and facet osteoarthritis are degenerative processes which occur due to changes associated with the aging process. None of the changes seen were structural which would be attributable to trauma. Dr. Draper related that, by the age of 30, disc disease processes start with drying up of the disc or disc desiccation. At age 40 and 50 patients with disc degeneration develop bulging discs disease. The bone spurs and facet osteoarthritis appellant has "are part of the arthritis that develops in the neck and back with the aging process." In concluding, Dr. Draper opined that

her cervical and lumbar conditions were not employment related nor were they aggravated by her employment duties.

By decision dated October 11, 2012, OWCP denied appellant's claim that her cervical and lumbar conditions had been caused or aggravated by her employment.

In an October 23, 2012 letter, appellant's counsel requested an oral hearing before an OWCP hearing representative, which was held on March 25, 2013.

By decision dated June 12, 2013, the hearing representative affirmed the denial of appellant's claim.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</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>4</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>5</sup>

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 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.<sup>6</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>7</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.<sup>8</sup> 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

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>5</sup> *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *D.U.*, Docket No. 10-144 (issued July 27, 2010); *R.H.*, 59 ECAB 382 (2008); *Roy L. Humphrey*, 57 ECAB 238 (2005); *Donald W. Wenzel*, 56 ECAB 390 (2005).

<sup>7</sup> *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

<sup>8</sup> *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

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.<sup>9</sup>

### ANALYSIS

Appellant filed a claim alleging that her neck and back conditions were caused or aggravated by her employment. By decision dated October 11, 2012, OWCP denied her claim that her cervical and lumbar conditions had been caused or aggravated by her employment. On June 12, 2013 an OWCP hearing representative affirmed the denial of appellant's claim. The Board finds that appellant has not established that her neck or back conditions are causally related to the implicated factors of her federal employment.

In support of her occupational disease claim, appellant submitted reports from her treating physicians. In a February 12, 2010 progress note and a March 12, 2010 report, Dr. Jalali diagnosed lumbar radiculitis, sacroilitis and spinal stenosis. On March 19, 2010 Dr. Mandel diagnosed S1 radiculopathy with chronic and acute changes. Dr. Chou diagnosed left S1 acute chronic radiculopathy, L4-5, L5-S1 facet arthropathy and bilateral L5 and left S1 myotomes weakness in a March 22, 2010 report. Drs. Chou, Jalali and Mandel did not address how any of the diagnosed lumbar and back conditions were due to appellant's employment duties. The Board has held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>10</sup> Thus, these reports are insufficient to support her claim.

The record also contains reports from Dr. Vivino diagnosing spinal stenosis, cervical and lumbosacral spondylosis, radiculopathy, bilateral carpal tunnel syndrome. Dr. Vivino offered no opinion as to the cause of appellant's diagnosed conditions in progress notes dated September 22, 2009 and October 1, 2010. As noted above, medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>11</sup> Thus, these progress notes of Dr. Vivino are insufficient to meet appellant's burden of proof to establish causal relationship between her cervical and back conditions and factors of her federal employment as they fail to offer an opinion on causal relationship. The December 9, 2009 and February 23, 2010 progress notes from Dr. Vivino are also insufficient to support her claim. While Dr. Vivino noted that appellant related having occasional episodes of back pain or increased back pain as the result of having to perform heavy lifting at work, they do not specifically address how work conditions caused or contributed to any diagnosed medical conditions.<sup>12</sup> For these reasons, this evidence is not sufficient to meet her burden of proof.

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<sup>9</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>10</sup> *See A.D.*, 58 ECAB 149 (2006); *Conard Hightower*, 54 ECAB 796 (2003).

<sup>11</sup> *Id.*

<sup>12</sup> *See Joan R. Donovan*, 54 ECAB 615 (2003) (medical opinion regarding causal relationship must explain from a medical perspective how the current condition is related to the injury).

To further develop the claim, OWCP referred appellant to Dr. Draper for a second opinion as to whether her right knee condition was causally related to her accepted work injury. In his September 30, 2011 report, Dr. Draper diagnosed MS, C3-4, C4-5, C5-6 and C6-7 degenerative bulging disc disease with facet hypertrophy and L2-3, L3-4, L4-5 and L5-S1 degenerative bulging disc disease, facet hypertrophy and osteoarthritis. He opined that these conditions were unrelated to appellant's job duties or her employment at the employing establishment, but were instead due to the aging process. In a September 20, 2012 supplemental report, Dr. Draper explained that disc osteophyte complexes, degenerative bulging disc disease, facet hypertrophy and facet osteoarthritis are degenerative processes which occur due to changes associated with the aging process. According to him, none of the changes seen were structural which would be attributable to trauma. Dr. Draper related that he bone spurs and facet osteoarthritis appellant has "are part of the arthritis that develops in the neck and back with the aging process." In concluding, he opined that her cervical and lumbar conditions were not employment related nor were they aggravated by her employment duties.

The Board finds that the opinion of Dr. Draper represents the weight of the evidence and establishes that appellant's cervical and back conditions were not causally related to her accepted employment duties. Neither the fact that a claimant's condition became apparent during a period of employment, nor the belief that the condition was caused, precipitated or aggravated by the employment is sufficient to establish causal relationship.<sup>13</sup> Thus, appellant did not meet her burden of proof to establish that her cervical and back conditions are causally related to her employment duties.

On appeal, appellant's counsel contends that there is an unresolved conflict in the medical opinion evidence requiring referral for an impartial medical examination. As explained above none of the medical reports submitted by appellant were sufficient to establish her claim. As these reports either contained no opinion as to the cause of appellant's conditions or were insufficiently rationalized, they are insufficient to create a conflict in the medical opinion evidence. Counsel also argues that Dr. Draper's opinion is insufficient to support the denial of her claim. However, this argument is not supported by the evidence. As found above, Dr. Draper provided sufficient rationale supporting his conclusion that appellant's cervical and back conditions were not employment related. His report constitutes the weight of the medical evidence.

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 failed to meet her burden of proof to establish that she developed neck and back conditions in the performance of duty causally related to factors of her federal employment.

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<sup>13</sup> *D.I.*, 59 ECAB 158 (2007); *Robert Broome*, 55 ECAB 339 (2004); *Anna C. Leanza*, 48 ECAB 115 (1996).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 12, 2013 is affirmed.

Issued: March 6, 2014  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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