

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

L.G., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
TRANSPORTATION SECURITY)
ADMINISTRATION, Chicago, IL, Employer)

**Docket No. 14-247
Issued: May 28, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 15, 2013 appellant filed a timely appeal of the May 15, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). She also appealed a September 25, 2013 nonmerit decision which denied her request for reconsideration. 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 the case.²

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish an occupational disease in the performance of duty; and (2) whether OWCP properly denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. §§ 8101-8193.

² With her request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).

FACTUAL HISTORY

On February 14, 2013 appellant then a 44-year-old transportation security officer, filed a Form CA-2, notice of occupational disease, alleging that she developed low back pain and disc damage due to repetitive lifting required in her job. She first became aware of her condition on January 29, 2013 and realized that it was causally related to her employment on February 14, 2013.

Appellant was treated by Dr. Jeffrey Rado, a Board-certified internist, who on February 13, 2013 released her to work the next day with restrictions. Dr. Rado noted that she would be reevaluated on February 19, 2013. In a February 19, 2013 report, Dr. Samil A. Kakodkar, a Board-certified internist, treated appellant and released her to work on February 21, 2013 with restrictions. In an attending physician's report dated February 19, 2013, he noted a date of injury of January 29, 2013 and examination findings of L4-5 disc herniation and L5-S1 posterior disc bulge. Dr. Kakodkar diagnosed disc herniation and noted with a check mark "yes" that appellant's condition was caused or aggravated by work activity specifically noting that twisting, bending and lifting aggravated her condition. He noted that she was disabled from January 29, 2013 to the present.

On March 6, 2013 OWCP advised appellant of the type of evidence needed to establish her claim. It particularly requested that she submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific work factors.

In a March 29, 2013 statement, appellant indicated that her job duties included continuous sitting, walking, standing, lifting, bending, pushing and pulling bags, bins, wheelchairs and bin carts which contributed to her condition. She noted performing these duties 40 hours a week. Appellant submitted a duty status report from Dr. Rado dated March 13, 2013 who noted clinical findings of severe low back pain. Dr. Rado returned her to light duty. In an April 2, 2013 report, he noted that appellant's symptoms worsened after bending over and patting down a traveler in January 2013 and she felt pain in the right lumbar area. Dr. Rado noted symptoms of low back pain which was worse with walking and sitting for prolonged periods. He diagnosed low back pain and opined that activity at appellant's job incited the current episode of back pain.

Dr. Rado noted that a March 18, 2013 magnetic resonance imaging (MRI) scan revealed degenerative changes at L4-5 and L5-S1, mild-to-moderate foraminal stenosis at L4-5 and L5-S1, central disc extrusion at left L4-5 and a broad-based disc protrusion at L5-S1. In an attending physician's report dated April 13, 2013, he noted a January 29, 2013 date of injury and indicated that appellant's back pain worsened by doing a pat down of a passenger. Dr. Rado noted appellant's history of back problems and diagnosed low back pain, degenerative joint disease and lumbar disc herniation. He checked a box "yes" that appellant's condition was caused or aggravated by employment activity, specifically stating "straining + lifting luggage increases her pain." Dr. Rado noted that appellant was totally disabled from April 17 to 29, 2013 and could resume light-duty work on April 30, 2013. Appellant submitted a February 19, 2013 duty status report from Dr. Kakodkar which noted that she had L4-5 herniation and L5-S1 posterior disc bulge causing right neuroforaminal stenosis and could return to work with restrictions.

In a May 15, 2013 decision, OWCP denied the claim on the grounds that the medical evidence was insufficient to establish that appellant's claimed conditions were causally related to work events.

In an August 19, 2013 appeal form, appellant requested reconsideration. In a letter dated August 19, 2013, she requested that OWCP reconsider the May 15, 2013 decision and indicated that she was submitting additional medical evidence that established her claim. No additional evidence was submitted prior to OWCP's decision.

In a September 25, 2013 decision, OWCP denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant a merit review.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. Appellant must also establish that such event, incident or exposure caused an injury.³

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) 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 causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.⁴

³ See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Solomon Polen*, 51 ECAB 341 (2000).

ANALYSIS -- ISSUE 1

It is not disputed that appellant's work duties included repetitive lifting. It is also not disputed that she has been diagnosed with L4-5 disc herniation, L5-S1 posterior disc bulge causing right neuroforaminal stenosis and degenerative joint disease. However, appellant has not submitted sufficient medical evidence to establish that any of these conditions are causally related to specific employment factors or conditions.

In the April 2, 2013 report, Dr. Rado noted that appellant's episode of back pain occurred after bending over and patting down a traveler in January 2013. He diagnosed low back pain and opined that activity at appellant's job incited the current episode of back pain. Dr. Rado noted that a March 18, 2013 magnetic resonance imaging (MRI) scan revealed degenerative changes at L4-5 and L5-S1, mild-to-moderate foraminal stenosis at L4-5 and L5-S1, central disc extrusion at left L4-5 and a broad-based disc protrusion at L5-S1. Although he supported causal relationship, he did not provide medical rationale explaining the basis of his opinion regarding causal relationship. Dr. Rado did not sufficiently explain how lifting and bending at work would cause or aggravate the diagnosed degenerative changes at L4-5 and L5-S1, mild-to-moderate foraminal stenosis at L4-5 and L5-S1, central disc extrusion at left L4-5 and a broad-based disc protrusion at L5-S1 and why these conditions were not solely due to age-related degeneration.

Dr. Rado noted, in the attending physician's report dated April 13, 2013, a date of injury of January 29, 2013 and noted appellant's back pain worsened after doing a pat down. He diagnosed low back pain, degenerative joint disease and lumbar disc herniation. Dr. Rado noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity, specifically stating "straining + lifting luggage increases her pain." The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.⁵ Similarly, in his report dated February 13, 2013, Dr. Rado released appellant to work with restrictions. In the March 13, 2013 duty status report, he noted clinical findings of severe low back pain and diagnosed back pain. Dr. Rado returned appellant to light duty. These reports are insufficient to meet appellant's burden of proof as she does not relate a history of the claimed work injury⁶ or offer any specific opinion regarding whether work factors caused or contributed to a diagnosed medical condition.⁷

Neither the February 19, 2013 report from Dr. Kakodkar, who released appellant to work on February 21, 2013 with restrictions, nor the duty status report dated February 19, 2013, which noted that appellant had L4-5 disc herniation and L5-S1 posterior disc bulge causing right neuroforaminal stenosis and could return to work with restrictions was sufficient to establish causal relationship. Dr. Kakodkar did not specifically support that the January 29, 2013 work

⁵ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

⁶ *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history have little probative value).

⁷ *See J.F.*, Docket No. 09-1061 (issued November 17, 2009) (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).

incident caused or contributed to appellant's diagnosed medical condition. Similarly, in the attending physician's report dated February 19, 2013, he noted findings of L4-5 disc herniation and L5-S1 posterior disc bulge, but noted only with a check mark "yes" that appellant's condition was caused or aggravated by an employment activity specifically twisting, bending, lifting aggravated appellant's condition. As noted above, the Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim. Consequently these reports are of little probative value and insufficient to establish appellant's occupational illness claim.

On appeal, appellant disagreed with OWCP's decision denying her claim for compensation and noted that she had submitted sufficient evidence to establish her claim. As noted above, the medical evidence does not establish that her diagnosed conditions were causally related to her employment. Reports from appellant's physicians failed to provide sufficient medical rationale explaining the reasons why her L4-5 disc herniation and L5-S1 posterior disc bulge causing right neuroforaminal stenosis was caused or aggravated by particular employment duties. The need for such rationale is particularly important in view of appellant's preexisting degenerative disc disease.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of FECA,⁸ OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence which:

“(i) Shows that OWCP erroneously applied or interpreted a specific point of law;
or

“(ii) Advances a relevant legal argument not previously considered by OWCP; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”⁹

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.¹⁰

⁸ 5 U.S.C. § 8128(a).

⁹ 20 C.F.R. § 10.606(b)(2).

¹⁰ *Id.* at § 10.608(b).

ANALYSIS -- ISSUE 2

OWCP denied appellant's claim on the grounds that she failed to provide sufficient medical evidence to establish that the diagnosed condition was causally related to her work duties. Thereafter, it denied her reconsideration request, without a merit review.

The issue presented on appeal 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 request for reconsideration, she did not show that OWCP erroneously applied or interpreted a specific point of law. Appellant did not identify a specific point of law or show that it was erroneously applied or interpreted. She did not advance a new and relevant legal argument. In her August 19, 2013 letter, appellant requested that OWCP reconsider the May 15, 2013 decision and indicated that she was submitting additional medical evidence that established her claim. No additional evidence was submitted prior to OWCP's decision. These assertions do not show a legal error by OWCP or a new and relevant legal argument. The underlying issue in this case is whether appellant's diagnosed condition is causally related to her workplace exposures. That is a medical issue which must be addressed by relevant new medical evidence.¹¹ However, appellant did not submit any new and relevant medical evidence in support of her claim. She indicated that a medical report was submitted but no additional medical evidence was received.

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 constitute 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 claimed conditions were causally related to her employment. The Board finds that OWCP properly denied her request for reconsideration.

¹¹ See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

ORDER

IT IS HEREBY ORDERED THAT the September 25 and May 15, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 28, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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