

“This is an ongoing injury. By working in the mail case and the window makes me hurt [*sic*]. I’m not doing anything out of the ordinary. It just keeps getting worse.” Appellant noted that on February 13, 2013 she first became aware of her claimed condition and its relationship to her work. She stopped work on January 15, 2013.

In an accompanying May 20, 2013 statement, appellant advised that her work required her to engage in stooping and kneeling and that she was required to move around to process mail that fluctuated in weight. When she cased mail, she had to reach for and lift items, including packages. When she lifted a package, appellant might be required to turn her back to the left or right. She indicated that she worked 40 hours a week.

Under a separate claim file, OWCP previously accepted that appellant sustained a traumatic injury in the form a lumbosacral strain on January 29, 1999 due to lifting and throwing mail sacks on that date. Appellant filed claim forms alleging entitlement to disability compensation commencing January 15, 2013 in connection with her January 29, 1999 injury. In a May 9, 2013 decision issued under that file, OWCP denied her claim on the grounds that she had not submitted sufficient medical evidence to establish the claimed disability was related to her January 29, 1999 injury. It found that the medical evidence of record, including a February 13, 2013 report of Dr. Michael E. Hebrard, an attending Board-certified physiatrist, suggested that she might have a potential claim for a new work-related occupational disease. After the issuance of this decision, appellant filed the present occupational disease claim.²

Appellant submitted the February 13, 2013 report of Dr. Hebrard, who reported constant and significant “achy, stinging, numbing, cramping and throbbing pain going down to both her legs.” The pain was reported as being worse with prolonged sitting, standing, walking, stooping, crouching, bending, twisting at the waist, pushing, pulling, reaching and lifting. Appellant stated that sitting, standing and walking were limited to 5 to 10 minutes due to fatigue and lower extremity weakness. Dr. Hebrard noted that, on physical examination, she had hypesthesias along the medial aspect of the feet and legs and the dorsal aspect of the feet. Straight leg testing to 60 degrees was negative in both legs. Dr. Hebrard diagnosed lumbosacral stain and stated:

“Beyond OWCP accepted diagnosis of lumbosacral strain, the patient does have anatomic disc and spinal pathology, which was aggravated in the course of [appellant’s] employment with the long prolonged periods of standing, twisting, bending, reaching, pushing, pulling, lifting activities over the 30+ years of service within the [employing establishment]. This has led to ongoing cumulative trauma, which has in the opinion of the undersigned, caused significant aggravation of her underlying and preexisting condition.”

In an April 29, 2013 report, Dr. Hebrard stated that appellant described her pain as located in the back and bilateral hips, but did not radiate anywhere.³ Appellant stated that the

² The Board notes that the issue of whether appellant sustained any periods of disability due to her January 29, 1999 traumatic work injury is not currently before the Board.

³ In his February 13, 2013 report, Dr. Hebrard noted that appellant reported that the pain went “down to both her legs.”

intensity of her pain was 8 out of 10 and was exacerbated by bending, carrying, crouching, exercise, lifting, moving from sitting to standing, pulling, pushing, reaching, rolling in bed, sexual activity, sitting, standing, stooping, taking stairs, twisting, walking and weather changes. Dr. Hebrard advised that she was restricted from lifting more than eight pounds intermittently, could not bend at the waist more than five times a hour, needed to alternate between sitting and standing every 10 minutes or as needed and had to take breaks for 10 minutes every hour for stretching and position changes.

In a May 28, 2013 letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim. Appellant was asked to submit a comprehensive medical report which contained a reasoned opinion explaining how specific work factors caused or aggravated her claimed conditions.

In a June 17, 2013 report, Dr. Hebrard stated that it was his opinion to a reasonable degree of medical certainty and on a more-probable-than-not basis that appellant's medical condition was aggravated as a result of the "natural history of her industrially-related injury which was a traumatic injury to the back in 1999." Based on the work-related mechanisms, including a more than 30-year history of twisting, bending, reaching, pushing and pulling, among other activities, there had been increased intradiscal pressure that ultimately led to inflammation and irritation to the circumferential fibers of the annulus, pressuring the adjacent nerve roots and sending radicular pain down the leg.

The findings of electromyogram (EMG) and nerve conduction velocity (NCV) testing obtained by Dr. Hebrard on June 26, 2013 showed evidence for a right sciatic neuropathy affecting the peroneal branch of that nerve. There was no electrodiagnostic evidence for a peripheral neuropathy.⁴

By letter dated July 26, 2013, OWCP requested that Dr. Hebrard provide clarification of his June 17, 2013 report. Dr. Hebrard was asked to further explain how appellant's specific work duties caused or contributed to any diagnosed medical condition.

In an August 23, 2013 supplemental report, Dr. Hebrard stated that he had submitted medical evidence to support to a reasonable degree of medical certainty and on a more-probable-than-not basis that the condition of appellant's lumbar spine had deteriorated and was causally related to the 1999 industrial injury, which continued to worsen overtime. He stated:

"Sitting causes five times more interdiscal pressure of the lumbosacral spine than [does] standing and walking, resulting in damage to the circumferential fibers of the intervertebral discs of the annulus. There is microscopic tearing and thereby posterior bulging of the disc resulting in compressive forces along the adjustment nerve roots, sending pain, pain, paresthesias and weakness down through the

⁴ A previous EMG and NCV study from January 15, 2013 showed electrodiagnostic evidence of "bilateral S1 radiculopathy versus sciatic neuropathy." The January 15, 2013 magnetic resonance imaging (MRI) scan testing of appellant's back showed L4-5 and L5-S1 spondylosis without significant progression since April 8, 2011; grade 1 degenerative spondylolisthesis of L4 on L5 with moderate central spinal stenosis and bilateral compressive foraminal stenosis (unchanged); and bilateral compressive L5-S1 intraforaminal disc protrusions.

lower extremities. There is MRI scan evidence to substantiate this which is consistent with clinical evaluation.”

Appellant also submitted disability slips in which Dr. Rakesh Donthineni, an attending Board-certified orthopedic surgeon, indicated that she was totally disabled from work between January 16 and June 1, 2013.

By decision dated September 6, 2013, OWCP denied appellant’s claim. It found that the medical evidence was insufficient to establish an occupational disease in the performance of duty. It found that Dr. Hebrard had failed to adequately explain how any condition had been caused or changed by appellant’s specific work duties. OWCP also noted that he was essentially asserting that all of appellant’s activities caused a worsening in the underlying condition and indicated that it was unclear how her employment had actually caused or contributed to the worsening of any condition.

Appellant requested a hearing with an OWCP hearing representative regarding the denial of her claim. She submitted a December 9, 2013 report of Dr. Hebrard in support of her claim. Dr. Hebrard detailed examination findings and stated:

“The patient’s underlying lumbar stenosis and spondylosis was [*sic*] aggravated during the course of [appellant’s] employment from the prolonged standing and bending activities, as well sitting and lifting throughout the years. It is the opinion of the undersigned there is a causal relationship between the patient’s functional deficits and impairment and her job due to the twisting, bending, prolonged standing, sitting and standing activities.”

At the February 27, 2014 hearing, appellant testified that she was not working and had retired on January 31, 2014. She stated that after her January 29, 1999 work injury she was provided limited-duty work including logging in trucks and doing paperwork at the computer. Appellant testified that about five years before retiring in January 2014 she had returned to performing her regular duties which included a great deal of lifting, twisting, bending and stooping.⁵ She stated that in January 2013 she began having excruciating pain and stopped work.

In a May 14, 2014 decision, OWCP’s hearing representative affirmed its September 6, 2013 decision noting that the reports of Dr. Hebrard did not contain a rationalized medical opinion explaining how specific work duties caused or aggravated the claimed medical conditions.

LEGAL PRECEDENT

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 timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged

⁵ Appellant stated that she returned to performing her old duties because someone had bid on the limited-duty position she had been performing.

and that any disability and specific condition for which compensation is claimed are causally related to the employment injury.⁶ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

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.

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the compensable 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.⁸

ANALYSIS

On May 20, 2013 appellant, then a 61-year-old clerk, filed an occupational disease claim alleging that she sustained injury to her "back and bilateral legs" due to performing her job duties over time.⁹ She indicated that her job since about early 2009 required her to case mail which involved reaching, lifting, twisting, bending, kneeling, stooping and moving around. OWCP denied appellant's claim on the grounds due to insufficient medical evidence establishing a work-related occupational disease. It found that the reports of Dr. Hebrard did not contain a rationalized medical opinion explaining how specific work duties caused or aggravated the claimed medical conditions.

⁶ *B.B.*, 59 ECAB 234 (2007); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ See *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990). A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift. 20 C.F.R. § 10.5(ee), (q); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

⁸ See *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

⁹ Appellant stopped work on January 15, 2013. OWCP had previously accepted that she sustained a traumatic injury in the form a lumbosacral strain on January 29, 1999 due to lifting and throwing mail sacks on that date. The issue of whether appellant sustained any periods of disability due to her January 29, 1999 traumatic work injury is not currently before the Board.

The Board finds that appellant failed to establish an occupational disease in the performance of duty.

In his February 13, 2013 report, Dr. Hebrard noted that appellant reported pain radiating down to both legs which was worse with prolonged sitting, standing, walking, stooping, crouching, bending, twisting at the waist, pushing, pulling, reaching and lifting. He indicated that, on physical examination, she had hypesthesias along the medial aspect of the feet and legs and the dorsal aspect of the feet. Straight leg testing to 60 degrees was negative in both legs. Dr. Hebrard diagnosed lumbosacral stain and stated that, beyond OWCP-accepted diagnosis of traumatic lumbosacral strain, appellant had anatomic disc and spinal pathology, which was aggravated in the course of her employment by prolonged periods of standing, twisting, bending, reaching, pushing, pulling and lifting over her more than 30 years of service with the employing establishment. He stated, "This has led to ongoing cumulative trauma, which has in the opinion of the undersigned, caused significant aggravation of her underlying and preexisting condition."

Dr. Hebrard's report is not based on a complete factual history and he did not provide adequate medical rationale in support of his opinion on causal relationship. He generally made reference to appellant engaging in prolonged periods of standing, twisting, bending, reaching, pushing, pulling and lifting over her more than 30 years of service with the employing establishment, but he did not provide any detailed account of her work duties over time. For example, Dr. Hebrard did not indicate how often she engaged in each of these activities. Nor did he acknowledge that, by appellant's own admission, she was performing limited-duty tasks between early 1999 and early 2009 and only performed more demanding work duties between early 2009 and early 2013. Dr. Hebrard suggested that her work duties aggravated her preexisting degenerative back condition, but he did not describe the mechanism through which her work duties could have caused such an aggravation. He did not explain why appellant's continuing complaints were not due to the natural progression of her preexisting nonwork-related degenerative back condition.¹⁰

In a June 17, 2013 report, Dr. Hebrard stated that it was his opinion with a reasonable degree of medical certainty and on a more-probable-than-not basis that appellant's medical condition was aggravated as a result of the "natural history of her industrially-related injury which was a traumatic injury to the back in 1999." He stated that, based on the work-related mechanisms including a more than 30-year history of twisting, bending, reaching, pushing and pulling, among other activities, there had been increased intradiscal pressure that ultimately led to inflammation and irritation to the circumferential fibers of the annulus which pressured the adjacent nerve roots and sent radicular pain down the leg. This report is of limited probative value in showing that appellant sustained a work-related occupational disease because its opinion on causal relationship is equivocal in nature.¹¹ On the one hand, Dr. Hebrard appears to be

¹⁰ In an April 29, 2013 report, Dr. Hebrard indicated that appellant was restricted from lifting more than eight pounds intermittently, could not bend at the waist more than five times per hour, needed to alternate between sitting and standing every 10 minutes or as needed and had to take breaks for 10 minutes every hour for stretching and position changes. However, he did not provide any opinion on what medical condition necessitated these work restrictions.

¹¹ See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956) (finding that an opinion which is equivocal in nature is of limited probative value regarding the issue of causal relationship).

indicating that appellant sustained an occupational disease due to the performance of her work duties over time. However, he also appears to relate her condition to the natural progression of her January 29, 1999 work injury.¹² Moreover, Dr. Hebrard again provided a general and incomplete account of appellant's work duties and therefore the opinion on causal relationship in this report is also based on an incomplete and inaccurate factual history.

In the August 23, 2013 report, Dr. Hebrard stated that he had provided medical evidence to support to a reasonable degree of medical certainty and on a more-probable-than-not basis that the condition of appellant's lumbar spine had continued to deteriorate and therefore was causally related to the 1999 industrially-related injury which continued to worsen over time. He then provided a general discussion of how sitting caused five times more interdiscal pressure on the lumbosacral spine than did standing and walking, resulting in damage to the circumferential fibers of the intervertebral discs of the annulus and disc bulging, which in turn caused radicular symptoms. Dr. Hebrard again provided an equivocal opinion regarding the cause of appellant's symptoms. He provided a general discussion about how lumbar radiculopathy occurred, but he did not explain how such a process might have occurred given her particular work duties. Dr. Hebrard again failed to provide adequate details about appellant's specific work duties and how they might have led to a work-related occupational condition. In the December 9, 2013 report, he stated that her underlying lumbar stenosis and spondylosis were aggravated during the course of her employment due to the duties she performed, including prolonged standing, sitting, lifting and bending. This report also is of limited probative value in establishing a work-related occupational condition because Dr. Hebrard did not adequately explain what specific duties appellant performance or how the specific work duties caused such an aggravation of her underlying condition.¹³ The Board, therefore, finds that appellant failed to meet her burden of proof to establish an occupational disease on the performance of duty.

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 did not meet her burden of proof to establish an occupational disease in the performance of duty.

¹² As previously noted, the issue of whether appellant sustained any periods of disability due to her January 29, 1999 traumatic work injury is not currently before the Board.

¹³ The record contains disability slips in which Dr. Donthineni, an attending Board-certified orthopedic surgeon, indicated that appellant was totally disabled from work between January 16 and June 1, 2013. However, Dr. Donthineni did not provide any opinion on the cause of this disability.

ORDER

IT IS HEREBY ORDERED THAT the May 14, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 7, 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