

FACTUAL HISTORY

On December 16, 2013 appellant, then a 50-year-old distribution clerk, filed an occupational disease claim alleging tension and pain in her back left side as a result of walking back and forth, while loading and pulling packages to the side door. She first became aware of her condition and realized it resulted from her employment on December 6, 2013. Appellant stopped work.³

In a December 13, 2013 treatment note, Dr. Bernice Ly, a Board-certified internist, noted that she treated appellant for chronic low back pain. She recommended that appellant take ibuprofen for pain control. Dr. Ly recommended that appellant not work until December 16, 2013. On December 18, 2013 she noted that appellant was incapacitated from December 16 to 29, 2013 due to low back pain. Dr. Ly recommended rest and pain medications. She authorized appellant to return to work full time on December 30, 2013 with restrictions of lifting up to 10 pounds for five hours a day; standing and walking intermittently for four hours a day; reaching above the shoulders, twisting, pushing and pulling for four hours a day; and bending, stooping and kneeling for five hours a day. Dr. Ly anticipated that appellant could resume full-duty work on February 3, 2014.

By letter dated December 19, 2013, the employing establishment controverted appellant's claim contending that she failed to establish causal relationship and fact of injury. The employing establishment reported that appellant had complained of a work-related accident five times in the past six years. It noted that she had requested leave but was denied before she filed an occupational disease claim. The employing establishment stated that the week of December 6, 2013 appellant worked an average of 6.16 hours a day and that on December 6, 2014 she worked 7.09 hours without requesting additional help or informing her supervisors of any back problems. It further alleged that the medical documentation failed to show a correlation between the injury and the condition being work related. The employing establishment provided statements from Sheryl Yazzie and Mary A. Speck, distribution clerks at the employing establishment, and Daniel Fuller, appellant's postmaster, which noted that she complained of back pain for the past five to seven years and that she never alleged that her condition was related to her employment. It also provided a December 19, 2013 job offer for a modified distribution clerk, which appellant refused to accept.⁴

By letter dated January 3, 2014, OWCP advised appellant that the evidence received was insufficient to establish her claim. It requested additional evidence to establish that she sustained a diagnosed condition as a result of her duties as a distribution clerk. OWCP also sent a development letter to the employing establishment.

³ The record reflects that appellant previously filed an occupational disease claim on January 10, 2006 and two traumatic injury claims for December 24, 2009 and September 21, 2011 employment injuries.

⁴ The duties of the modified assignment included boxing mail up to three hours and window clerk duties up to four hours. Its physical requirements involved standing, walking, reaching above the shoulders, kneeling, bending, stooping, pushing and pulling, and lifting and carrying up to 10 pounds for four hours per day.

On January 7, 2014 the employing establishment responded to OWCP's development letter. It did not agree with appellant's allegations, noting that she failed to notify her supervisors of any job injury. The employing establishment stated that, although appellant reported that she continuously walked, stood, and picked up packages all day, workers were provided with a 10-minute break every 2 hours and a lunch break each day. It noted that all employees received mandatory classes on proper lifting techniques and that equipment was provided for heavy and/or multiple packages. The employing establishment provided statements by appellant's postmaster and a human resource specialist challenging appellant's claim. It also provided a description of duties for a sales or distribution associate.

In a handwritten January 21, 2014 report, Dr. Ly stated that she was appellant's primary care provider. She examined her on December 18, 2013 for exacerbation of low back pain with radicular symptoms to the left leg suggestive of a neuropathy. Dr. Ly opined that this exacerbation was work related during one of the busiest times of the year at the employing establishment. During her January 15, 2014 examination, appellant's condition had worsened. When Dr. Ly examined her again on January 21, 2014 her symptoms had improved after complete rest from work for six days. She opined that appellant's low back pain exacerbation and neuropathy were work related. In a duty status report, Dr. Ly stated that appellant could not work until she was reevaluated on February 10, 2014.

In February 10 and March 1, 2014 duty status reports, Dr. Ly noted that appellant worked as a sales distribution clerk. She stated that appellant's pain on the left side of her back and left leg had improved. Dr. Ly diagnosed low back pain exacerbation. She advised appellant to resume work part time on February 10, 2014 with restrictions.

In a February 24, 2014 handwritten report, Dr. Ly stated that she had treated appellant for the past 2½ months for a low back strain that she incurred at work. She opined that appellant's duties at work worsened her low back strain. Dr. Ly reported that work restrictions were recommended on December 18, 2013 but were not followed, which led to complete rest from work on January 15, 2014. She explained that appellant's prognosis for recovery was excellent as long as appellant followed a gradual return to work.

On February 25, 2014 appellant stated that she received medical treatment from December 13, 2013 to February 24, 2014, including a February 20, 2014 magnetic resonance imaging (MRI) scan and steroid injections. She described her symptoms as lower back and hip pain, an inability to stand for long periods of time, limited strength and movement and inability to stoop. Appellant described the pain as chronic right side pain from the bottom of her heel with neuropathy pain, numbness and tingling that radiated into her right thigh. She explained that she was still under medical care for a work-related injury that occurred six to seven years ago at her employing establishment. Appellant stated that because of the heavy volume of work required in December she experienced stress to the left side of her body, which carried a lot of her weight. She noted that she attempted to resume light duty on December 30, 2014 based on her physician's recommendations but full duty was imposed on her. Appellant alleged that this work caused more injury and time off without pay from January 11 to February 25, 2014. She stated that she received steroid injections. Appellant provided a description of her employment duties.

In a February 28, 2014 handwritten report, Dr. Ly stated that appellant's low back exacerbation had continued to improve. She authorized appellant to return to work part time on March 3, 2014 with restrictions of lifting and carrying up to five pounds, sitting or standing up to 90 minutes before taking a break, and walking, kneeling or bending up to 90 minutes before taking a break.

In a decision dated March 19, 2014, OWCP denied appellant's occupational disease claim. It accepted that appellant worked as a distribution clerk, but denied her claim finding insufficient medical evidence to establish that her low back condition was causally related to her employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence⁵ including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁶ In an occupational disease claim, appellant's burden requires submission of the following: (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.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁸ 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 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.⁹

ANALYSIS

Appellant alleged that she sustained a low back condition as a result of her repetitive duties as a distribution clerk. OWCP accepted that she worked as a distribution clerk and was diagnosed with low back strain. It denied appellant's claim, finding insufficient medical evidence to establish that her back condition was causally related to factors of her employment.

⁵ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁶ *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁸ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

⁹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

Appellant submitted various reports by Dr. Ly, who initially treated appellant on December 13, 2013 for low back pain and recommended that she not return to work. In duty status reports dated February 10 and March 1, 2014, Dr. Ly noted that appellant worked as a sales distribution clerk and provided work restrictions. In handwritten reports dated January 21 to February 28, 2014, she stated that she had treated appellant for a low back strain that occurred at work. Dr. Ly opined that appellant's duties at work worsened her low back strain. She reported that she recommended work restrictions on December 18, 2013 but they were not followed. Dr. Ly recommended that appellant return to work part time on March 3, 2014 with restrictions.

The Board notes that Dr. Ly provided a medical diagnosis and an opinion that appellant's low back was related to her duties at work. Dr. Ly did not, however, provide adequate explanation of how appellant's specific duties as a distribution clerk caused or contributed to her back condition. She did not provide a factual history that described appellant's employment duties with details of the repetitive duties or lifting appellant was required to perform. The Board has found that rationalized medical opinion evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician.¹⁰ The Board also notes that a physician's opinion must be based upon a complete factual and medical background. Dr. Ly did not provide sufficient medical opinion which discussed appellant's prior back injuries and her medical condition prior to December 2013.¹¹ Although she generally attributed appellant's back condition to her duties, the mere fact that 78 work activities may produce symptoms revelatory of an underlying condition does not raise an inference of an employment relation. Such a relationship must be shown by rationalized medical evidence of a causal relation based upon a specific and accurate history of employment conditions which are alleged to have caused or exacerbated a disabling condition.¹² Dr. Ly has failed to provide a rationalized medical opinion in this case and her reports are insufficient to establish appellant's claim.

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 that her low back condition was causally related to factors of her employment.

¹⁰ *L.F.*, Docket No. 10-2287 (issued July 6, 2011); *Solomon Polen*, 51 ECAB 341 (2000).

¹¹ *Supra* note 9.

¹² *Patricia J. Bolleter*, 40 ECAB 373 (1988).

ORDER

IT IS HEREBY ORDERED THAT the March 19, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 10, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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