

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

C.R., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
New York, NY, Employer)

**Docket No. 15-430
Issued: April 27, 2015**

Appearances:

Michael E. Welsh, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 17, 2014 appellant, through her representative, filed a timely appeal of a November 21, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish a traumatic injury in the performance of duty on March 5, 2013, as alleged.

On appeal, appellant's representative alleged that the medical evidence submitted was sufficient to establish appellant's claim for a causal relationship between her employment incident and diagnosed condition, as it was detailed and well reasoned.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 5, 2013 appellant, then a 43-year-old collection letter carrier, filed a traumatic injury claim alleging that, on that date, she experienced pain in her left middle back. She stated that she was standing and culling the mail when she felt a tingling in the middle of her back which developed into pain. Appellant submitted a narrative statement noting that her condition began about 1:00 p.m. while standing on the back of the truck. She noted that the initial tingling sensation in her back made her twitch, but she continued to work. Appellant's back became tight and painful as she performed her task of standing and culling the mail. She decreased her pace due to the pain. Appellant then took a 40-minute break and over-the-counter anti-inflammatory medication. She attempted to return to work, but contacted her supervisor at 3:08 p.m. to report her injury. Appellant completed a portion of her route as directed and returned to the employing establishment at 4:45 p.m. to file her claim. She stated that she was planning to seek medical attention.

In a note dated March 5, 2013, Dr. Herbert M. Garcia, a physician Board-certified in nuclear medicine, stated that appellant was unable to work from March 6 through 26, 2013 due to mid/low back pain and left arm pain. He completed a narrative report on March 6, 2013 and listed her history of injury as "pulling a mailbag" when she experienced a tingling pain in her back, both hips, and left arm. Dr. Garcia stated that appellant was told to complete her work schedule and that by the end of the day her pain escalated and she found it difficult to drive home. Appellant reported constant pain and stiffness in her mid-back, low back, and bilateral hips with associated weakness of the legs. She also reported pain in her left shoulder and elbow. Appellant stated that she was unable to sleep, sit, or stand due to her pain. Dr. Garcia found loss of range of motion in the thoracic spine, lumbar spine, left hip, and right hip. He stated that appellant's deep tendon reflexes were positive bilaterally. Appellant demonstrated pinwheel hypoesthesia at L4 and L5 bilaterally. Dr. Garcia stated that she had loss of muscle strength in the thoracic and lumbar spines. He also found spasms and tenderness in the parathoracic and lumbar regions as well as the hips bilaterally. Dr. Garcia diagnosed myofascitis or pain in the thoracic spine and low back. He also diagnosed bilateral hip pain. Dr. Garcia opined that appellant's findings were consistent with her history of injury and were directly related to her March 5, 2013 accident. He recommended physical therapy.

In a letter dated March 26, 2013, OWCP requested that appellant provide additional factual and medical evidence in support of her claim. It noted that she had not provided medical evidence, including a diagnosis, of her alleged employment incident. In a note dated March 7, 2013, Dr. Miriam Kanter, a physician Board-certified in physical medicine and rehabilitation, provided additional history of injury. She stated that appellant sustained injuries when collecting mail from a blue mailbox. Appellant poured the mail in a bag, which she swung over her left shoulder while in a bent position. She then felt paresthesias in her back as she stood up. Dr. Kanter stated that appellant experienced spasms in her low back while driving her mail truck. She found that appellant had a limp to the left with tenderness to palpation and spasms of the lumbar paraspinal muscles. Dr. Kanter noted that appellant's left iliac crest was higher than the right with tenderness in the left sacroiliac joint and locking of this joint with forward bending. She stated that appellant had loss of range of motion of the lumbar spine. Dr. Kanter diagnosed lumbar radiculitis and left shoulder derangement. She stated, "Within a reasonable degree of medical certainty there is a direct causal relationship between injuries to the low back (as

[appellant's] reported on the day of the accident, as well as injuries to the left shoulder, which developed the day after the accident as it took up to 24 hours to develop inflammatory response secondary to her left shoulder injury).”

On March 6 to 8, 2013 Dr. David Spina, a chiropractor, examined appellant and diagnosed thoracic and lumbar subluxations with intermittent moderate to severe pain in her low back. On March 6, 2013 appellant underwent an x-ray at his office, which demonstrated no evidence of osseous abnormalities in the thoracic and lumbar spines.

Appellant underwent an ultrasound on March 15, 2013, which demonstrated mild inflammation throughout her thoracic spine and moderate inflammatory facet joint changes in the cervical spine. On March 25, 2013 Dr. Garcia found that she was totally disabled from March 26 to April 22, 2013 and diagnosed back sprain/strain.

By decision dated April 26, 2013, OWCP denied appellant's claim for a traumatic injury, finding that she had not provided sufficient factual detail in describing the employment incident. It also noted that her physicians provided varying descriptions of the employment incident. Appellant requested an oral hearing before an OWCP hearing representative on May 15, 2013.

Following OWCP's initial denial, appellant submitted additional evidence. Dr. Spina examined her on April 15, 2013 and diagnosed lumbar subluxation. Dr. Kanter examined appellant on April 16, 2013 and stated that she sustained injuries to her low back and left shoulder while working mail delivery on March 5, 2013. She again opined that appellant's diagnosed lumbar radiculitis and left shoulder derangement was causally related to her employment activities.

Dr. Spina examined appellant on April 17, 2013 and diagnosed lumbar subluxation. On April 19, 2013 appellant underwent a magnetic resonance imaging (MRI) scan of the left shoulder, which demonstrated some frayed bursal fibers and a slight amount of fluid in the subacromial bursa. Dr. Spina examined her on April 19, 2013 and diagnosed low back pain. In a note dated April 24, 2013, Dr. Garcia opined that appellant was totally disabled from April 22 through May 20, 2013. He diagnosed cervicgia and left shoulder syndrome. Appellant underwent a nerve conduction study on April 25, 2013 which found a left C5-6 nerve root irritation. In a report dated April 25, 2013, Dr. Garcia diagnosed pain in limb, paresthesia, and low back pain. He opined that these diagnoses were consistent with appellant's history and were directly causally related to her March 5, 2013 employment incident. On April 30, 2013 appellant underwent a cervical MRI scan which demonstrated a disc bulge at C3-4 with a C4-5 right posterior disc herniation and C5-6 right posterior disc herniation.

In a note dated May 2, 2013, Dr. Andrew Beharrie, a Board-certified orthopedic surgeon, stated that appellant injured her left shoulder at work on March 5, 2013. He related that she felt an acute onset of pain in the shoulder and upper back while lifting mail. Dr. Beharrie diagnosed shoulder bursitis and possible radiculitis. He opined that appellant's pain was causally related to her work injury. Dr. Beharrie examined her on May 13, 2013 and stated that her pain was likely primarily cervical in nature.

Dr. Eric Martin, a Board-certified orthopedic surgeon, completed a form report on May 1, 2013 and stated that appellant was standing in the back of a mail truck while sorting mail and felt a tingling in the middle of her back mostly on the left side. He opined that the incident described was the competent medical cause of her injury and that her complaints were consistent with the history of injury. Dr. Martin opined that appellant was 25 percent disabled.

Dr. Kanter examined appellant on May 14, 2013 and stated that she injured her mid-back on March 5, 2013 and developed left shoulder pain on March 6, 2013. She stated that appellant had been experiencing severe neck pain with radiation down her left arm into her fingers. Dr. Kanter again stated that appellant poured mail into a bag and swung the bag over her shoulder while in a bent position. She stated that when appellant rose she felt paresthesias in her mid-back. Dr. Kanter opined that appellant experienced a traumatic injury due to her movements at work on March 7, 2013.

Appellant underwent additional cervical x-rays on May 30, 2013 which demonstrated mild multilevel spondylosis. Dr. Howard Yeon, a Board-certified orthopedic surgeon, examined her on May 30, 2013 and stated that she experienced cervical spine pain and left shoulder pain after lifting at work. He diagnosed cervicgia and thoracic pain with no radiographic evidence of left sided canal or foraminal stenosis.

Appellant testified at the oral hearing before an OWCP hearing representative on November 4, 2013. She stated that she returned to work on October 30, 2013. Appellant described her employment duties on March 5, 2013 as collecting the mail from the blue boxes and from mail chutes in buildings. She placed the mail into bags. Appellant then dragged, pulled, or threw the bag of mail over her shoulder. After performing this task several times, she felt pain when dragging a bag of mail into the truck. Appellant lifted the bag, put it in the truck, climbed aboard, and dragged the bag of mail to the back of the truck. She emptied the bag of mail. Appellant then bent over to grab a handful of mail and when she stood up to separate the mail, she felt a tingling sensation in her left middle or upper back. She noted the experience and continued to work. Appellant then experienced pain and tightness in her back. She took a break and called her supervisor. Appellant stated that she had been standing, bending, and stooping for three to four hours when her back began to hurt. She had also been lifting approximately 15 bags of mail weighing between 5 to 20 pounds. Appellant asserted that her initial physicians submitted false information regarding the location of her injury. She stated that she did not have a lower back injury. The hearing representative left the record open for 30 days to allow appellant to submit additional medical evidence.

Dr. Steven K. Jacobs, a Board-certified neurosurgeon, examined appellant on October 4, 2013 and stated that she complained of neck pain following a work injury on March 5, 2013. He diagnosed intervertebral disc displacement in the cervical spine, brachial neuritis or radiculitis, cervicgia, muscle spasm, and neck sprains and strain. Dr. Jacobs stated that appellant had herniated discs at C4-5 and C5-6 with significant stenosis at these levels. He opined that her herniated discs were the direct result of her March 2013 employment injury. Dr. Jacobs stated, “[Appellant] is required to pull, drag, and lift heavy bags over her shoulder on a regular basis. This is very strenuous and in my opinion caused the herniated discs at C4-5 and C5-6.”

By decision dated December 9, 2013, the hearing representative denied appellant's claim on the grounds that the medical evidence did not establish an injury as the result of her accepted employment activities.

Appellant, through her representative, requested reconsideration on August 26, 2014. She submitted a report from Dr. Jacobs dated July 20, 2014 and a September 2013 MRI scan. The MRI scan report dated September 24, 2013 demonstrated C4-5 and C5-6 spondylosis and small right paracentral disc protrusion at C4-5. In his July 20, 2014 report, Dr. Jacobs stated that appellant injured her neck on March 5, 2013 while collecting mail. He stated that she was required to pull, drag, and lift heavy sacks of mail weighing over 20 pounds. Dr. Jacobs noted that after dumping the heavy sacks of mail into tubs for sorting appellant felt pain, tightness, and tingling in her upper back. He opined that the work-related accident on March 5, 2013 resulted in her herniated discs. Dr. Jacobs stated, "I believe that the work injury which occurred on March 5, 2013 was the direct cause of [appellant's] neck pain. [Appellant] had no complaints of neck pain prior to this work injury nor did she receive any medical treatment for neck pain prior to the work injury."

By decision dated November 21, 2014, OWCP denied modification of its prior decisions finding that Dr. Jacobs' report did not provide sufficient medical reasoning to establish a causal relationship between her diagnosed condition and her accepted employment duties.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of FECA and 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 and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

OWCP defines a traumatic injury as, "[A] condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected."⁵ To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First the employee must submit sufficient evidence to establish that he and she actually experienced the employment

² *Id.*

³ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ 20 C.F.R. § 10.5(ee).

incident at the time, place, and in the manner alleged.⁶ Second, the employee must submit sufficient evidence, generally only in the form a medical evidence, to establish that the employment incident caused a personal injury.⁷

ANALYSIS

OWCP has accepted that appellant performed a series of lifting, dragging, bending, and straightening activities on March 5, 2013 and that she moved bags of mail weighing up to 20 pounds. Appellant has received a variety of diagnoses including cervical herniated discs, lumbar radiculitis, and left shoulder derangement. However, contrary to the arguments of representative on appeal, she has not provided the necessary medical opinion evidence to establish a causal relationship between her diagnosed condition and her March 5, 2013 employment activities.

In support of her claim for a back injury resulting from her March 5, 2013 employment activities, appellant submitted several reports from Dr. Spina, a chiropractor, who diagnosed lumbar and thoracic subluxations. Dr. Spina's office included x-rays which demonstrated no evidence of osseous abnormalities in the thoracic and lumbar spines. Under FECA a chiropractor is a physician only to the extent that the reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.⁸ Dr. Spina did not provide x-rays demonstrating a subluxation of the spine. Accordingly, the Board finds that he does not qualify as a physician under FECA. Dr. Spina's reports are, therefore, not considered the probative medical evidence needed to establish a causal connection between a diagnosed medical condition and the accepted employment incident.

Dr. Yeon examined appellant and diagnosed cervicalgia and thoracic pain. Dr. Martin stated that she was standing in the back of a mail truck while sorting mail and felt a tingling in the middle of her back mostly on the left side. The Board has held that the mere diagnosis of "pain" does not constitute the basis for payment of compensation.⁹ Neither Dr. Yeon nor Dr. Martin provided a clear diagnosis of an acceptable condition. Therefore, these reports are not sufficient to meet appellant's burden of proof.

Dr. Garcia submitted a series of reports diagnosed back sprain/cervicalgia, left shoulder syndrome, pain in limb, paresthesia, and low back pain. He opined that these diagnoses were consistent with appellant's history and were directly causally related to her March 5, 2013

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *J.Z.*, 58 ECAB 529 (2007).

⁸ Section 8101(2) of FECA provide as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners with the scope of their practice as defined by State law. The term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary. See *Merton J. Sills*, 39 ECAB 572, 575 (1988); *P.R.*, Docket No 14-1007 (issued August 13, 2014).

⁹ *Robert Broome*, 55 ECAB 339 (2004).

employment incident. Appellant also submitted a series of reports from Dr. Kanter describing appellant's March 5, 2013 employment incident and diagnosing lumbar radiculitis and left shoulder derangement. Dr. Kanter opined that the diagnosed conditions were related to appellant's employment incident. Dr. Beharrie examined appellant on May 2, 2014 and diagnosed shoulder bursitis. He opined that this condition was due to her employment activities on March 5, 2013.

A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.¹⁰ Medical rationale includes a physician's detailed opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, must be one of reasonable medical certainty, and must be supported by medical reasoning explaining the nature of the relationship between the diagnosed condition and specific employment activity or factors identified by the claimant.¹¹ While Drs. Garcia, Kanter, and Beharrie provided a diagnosis and opined that appellant's diagnosed conditions were related to her March 5, 2013 employment incident, none of these physicians provided any medical reasoning explaining how and why they reached their conclusions. Due to this deficiency, the reports of Drs. Garcia, Kanter and Beharrie are not sufficient to meet appellant's burden of proof in establishing a traumatic injury claim.

Dr. Jacobs initially examined appellant on October 4, 2013 and diagnosed intervertebral disc displacement in the cervical spine, brachial neuritis or radiculitis, cervicgia, muscle spasm, and neck sprains and strain. He opined that her herniated discs were the direct result of her March 2013 employment injury. Dr. Jacobs described appellant's employment activities of pulling, dragging, and lifting bags of mail over her shoulder and opined that this caused herniated discs at C4-5 and C5-6. He stated, "I believe that the work injury which occurred on March 5, 2013 was the direct cause of [appellant's] neck pain. [Appellant] had no complaints of neck pain prior to this work injury nor did she receive any medical treatment for neck pain prior to the work injury."

The Board finds that Dr. Jacobs' reports are not sufficiently well reasoned to meet appellant's burden of proof. Dr. Jacobs provided an accurate history of injury and opined that her diagnosed condition was due to her employment activities. However, he failed to provide adequate medical rationale to explain how and why appellant's lifting, pulling, and dragging of mailbags resulted in her cervical disc herniations. Dr. Jacobs merely stated that she had no previous complaints of neck pain and no medical treatment for this condition prior to March 5, 2013. However, the Board has held that the mere manifestation of a condition during a period of employment does not raise an inference that there is a causal relationship between the condition and the employment. Neither the fact that the condition became apparent during a period of employment nor the belief that the employment caused or aggravated a condition is sufficient to establish causal relationship.¹² As Dr. Jacobs did not provide any description of

¹⁰ *T.F.*, 58 ECAB 128 (2006).

¹¹ *A.D.*, 58 ECAB 149 (2006).

¹² *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

how and why the implicated employment activities would result in the diagnosed condition, his report is insufficient to meet appellant's burden of proof.

Due to the aforementioned determinations regarding the medical evidence, the Board disagrees with the representative's argument on appeal that appellant has submitted sufficient medical evidence to establish her traumatic injury 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 the medical evidence is not sufficiently detailed and well reasoned to establish that appellant sustained a traumatic injury in the performance of duty on March 5, 2013, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the November 21, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 27, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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