United States Department of Labor
Employees' Compensation Appeals Board

L.K., Appellant	)	
and	)	**Docket No. 14-1072**
	)	**Issued: August 3, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 8, 2014 appellant, through counsel, filed a timely appeal from the December 13, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this issue.

ISSUE

The issue is whether appellant has met her burden of proof to establish an occupational disease causally related to factors of her federal employment.

FACTUAL HISTORY

This case has previously been before the Board.[2] In an August 15, 2013 decision, the Board set aside OWCP's December 28, 2012 decision, finding that it improperly refused to

[1] 5 U.S.C. § 8101 *et seq.*

[2] Docket No. 13-949 (issued August 15, 2013).

reopen appellant's case for further review of the merits under 5 U.S.C. § 8128(a). The Board remanded the case for OWCP to conduct a merit review and issue an appropriate merit decision. The facts contained in the Board's prior decision are incorporated by reference.[3]

The medical evidence received in support of the claim included a May 27, 2011 report, from Dr. Brian K. Reiter, a Board-certified orthopedic surgeon. He reviewed appellant's history and saw her for complaints of back and bilateral knee pain. He advised that she worked for the employing establishment and had back pain which began in 2009, with a severe flare up which included five to six days of significant back pain; but only baseline-type pain since. Recently in January and February 2011, appellant began having bilateral knee pain, which was related to an increase in the outdoor hours she walked, the way that she carried mail and the steps that she climbed while at work. He provided findings and diagnosed mechanical low back pain, likely bilateral patellofemoral syndrome and mild calf pain. Dr. Reiter opined that appellant's musculoskeletal complaints were directly related to the amount of walking she performed as well as the weight that she carried.

Subsequent to OWCP's August 3, 2011 denial of her claim, appellant submitted an August 24, 2012 report from Dr. John F. Lozowski, an associate of Dr. Reiter and Board-certified in family medicine. Dr. Lozowski noted her history of injury and stated that he examined her on April 25 and May 11 and 24, 2011. He diagnosed bilateral patellofemoral syndrome and mechanical low back pain. Dr. Lozowski stated: "most likely that her diagnosis is due to repetitive motion (climbing stairs) and carrying heavy sacks of mail." In an August 19, 2011 report, Dr. Reiter provided findings and diagnosed bilateral patellofemoral syndrome and mechanical back pain. In an August 19, 2011 duty status report, he diagnosed patellofemoral syndrome and found that appellant could work full time within physical restrictions as set forth.

In an October 31, 2012 report, Dr. Steven Valentino, a Board-certified orthopedic surgeon and osteopath, noted that appellant carried mail sacks weighing approximately 35 pounds up and down stairs. Appellant had decreased range of motion. Dr. Valentino diagnosed lumbar disc syndrome and patellofemoral syndrome. He listed appellant's work restrictions.

In an undated report, received on December 17, 2012, Dr. Reiter noted seeing appellant on May 27 and August 19, 2011. He noted her history and diagnosed mechanical low back pain, likely patellofemoral syndrome, and mild calf pain. Dr. Reiter discussed causal relationship, stating that he believed that appellant's complaints were consistent with the increasing amount of walking and carrying she did in her job. He further noted:

> "I do feel within a reasonable degree of medical certainty that [appellant's] back pain and bilateral knee pain are due to her work-related activities including long periods of walking, heavy carrying in excess of 70 pounds and stair climbing between 9,000 and 10,000 stairs per day. [Appellant's] symptoms were

[3] Appellant, a letter carrier, filed an occupational disease claim for a knee condition and low back pain. On August 3, 2011 OWCP denied the claim finding that the medical evidence was insufficient to establish causal relationship between her claimed conditions and work factors.

exacerbated by an increase in the amount of hours she spent performing these activities."

Dr. Reiter advised that her repetitive work for the employing establishment contributed to her mechanical low back pain and bilateral patellofemoral syndrome.

In a December 26, 2012 addendum, Dr. Reiter noted that upon review of appellant's recent imaging studies, he found evidence of lumbar facet arthropathy at L4-5 based on a lumbar spine MRI scan obtained on November 15, 2012. He advised that the initial diagnoses of patellofemoral syndrome and calf strain remained unchanged. Dr. Reiter reiterated that to a reasonable degree of medical certainty appellant's patellofemoral syndrome, calf strain, and exacerbation of her lumbar facet arthropathy were directly related to her work activities, which included long periods of walking, excessive "tearing" and stair climbing.[4] OWCP also received reports from a physician assistant.

Subsequent to the Board's August 15, 2013 decision, OWCP issued a December 13, 2013 decision, which denied modification of its August 3, 2011 decision.

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 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 and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[5] 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.[6]

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. The medical evidence required to establish causal relationship, generally, is 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

[4] Submitted with this addendum was a copy of Dr. Reiter's report, received on December 17, 2012. The copy attached to the addendum had a date added, December 11, 2012.

[5] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *Victor J. Woodhams*, 41 ECAB 345 (1989).

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.[7]

ANALYSIS

The Board finds that this case is not in posture for decision.

An employee who claims benefits under FECA has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or work factors. As part of this burden, the employee must present rationalized medical opinion evidence based on a complete and accurate factual and medical background. However, it is well established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While an employee has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence and has the obligation to see that justice is done.[8]

The issue is whether appellant sustained an injury in the performance of duty causally related to her repetitive duties as a letter carrier.

The evidence establishes that appellant engaged in activities at work such as carrying mail up to 35 pounds of mail for six to eight hours a day in the performance of her duties. OWCP denied the claim on the basis that the medical evidence was insufficient to establish that work factors caused or aggravated her diagnosed condition.

In reports dated May 27, 2011, Dr. Reiter related that appellant worked for the employing establishment and indicated that her back pain began in 2009 when she had a severe flare up with five to six days of significant back pain, but no flare ups since then. He noted that in January and February 2011, appellant began having bilateral knee pain, which was related to the increased amount of outdoor hours she was walking and the way that she was carrying and the steps that she was climbing at work. Dr. Reiter examined her, provided findings and diagnosed mechanical low back pain, likely bilateral patellofemoral syndrome and mild calf pain. He opined that the musculoskeletal complaints "are directly related to the amount of walking she is doing for the 'postop' as well as the weight that she is carrying." In a report received on December 17, 2012, Dr. Reiter stated that he believed that appellant's complaints were consistent with increased walking and carrying in her job. He opined that "within a reasonable degree of medical certainty that [appellant's] back pain and bilateral knee pain are due to her work-related activities including long periods of walking, heavy carrying in excess of 70 pounds and stair climbing between 9,000 and 10,000 stairs per day. [Appellant's] symptoms were exacerbated by an increase in the amount of hours she spent performing these activities." In a December 26, 2012 report, Dr. Reiter noted reviewing MRI scan findings and advised that within a reasonable degree of medical certainty appellant's patellofemoral syndrome, calf strain and exacerbation of her lumbar facet arthropathy were directly related to her work activities. While Dr. Reiter's

[7] *Id.*

[8] *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *William J. Cantrell*, 34 ECAB 1233 (1983).

reports do not contain sufficient medical reasoning to discharge appellant's burden of proof, these reports sufficiently support causal relationship to require further development of the case record by OWCP.[9]

Upon return of the case record, OWCP should forward the medical record and a statement of accepted facts to an OWCP medical adviser for a reasoned opinion regarding the cause of appellant's diagnosed conditions. After this and any other such further development of the case record as OWCP deems necessary, a *de novo* decision shall be issued.

On appeal, appellant's representative submitted arguments that the December 11, 2012 report from Dr. Reiter was not reviewed by OWCP. However, as noted above, this report was considered by OWCP.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the December 13, 2013 decision of the Office of Workers' Compensation Programs is set aside and remanded.[10]

Issued: August 3, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[9] *See John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

[10] Michael E. Groom, Alternate Judge, participated in the preparation of this decision but was no longer a member of the Board effective December 27, 2014.