

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

T.N., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Portland, OR, Employer)

**Docket No. 14-1331
Issued: February 18, 2015**

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

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 22, 2014 appellant filed a timely appeal from a November 26, 2013 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 over the merits of the case.

ISSUE

The issue on appeal is whether appellant has met her burden of proof to establish that she developed a low back condition while in the performance of duty.

FACTUAL HISTORY

This case has previously been before the Board. By decision dated September 16, 2013, the Board set aside OWCP's decision dated September 10, 2012. The Board determined that

¹ 5 U.S.C. §§ 8101-8193.

appellant had submitted sufficient medical evidence to require further development of the case.² The relevant facts and the circumstances of the case are incorporated herein by reference.

In a February 9, 2011 report, Dr. Scott Young, a Board-certified physiatrist, who treated appellant for low back pain, noted appellant's work involved repetitive lifting of trays often weighing 40 pounds and pushing heavy carts. Dr. Young advised that appellant had a history of low back strain 15 years earlier and was thereafter symptom free. He indicated that on November 30, 2010 appellant reported a gradual onset of low back pain through the workday with repetitive lifting although she could not recollect one specific incident and the next day she had pain and tingling to the anterior right thigh. Dr. Young noted diffuse midline and paravertebral tenderness to the lumbar spine, no atrophy to the lower extremities, diminished sensation to the anterior right thigh and normal motor function. He diagnosed extruded disc fragment at L2-3 with ongoing pain and recommended epidural steroid injections and possible surgery. Dr. Young noted appellant's history was onset of pain with fairly strenuous activities on the job, that she had a discrete lesion on the MRI scan and opined that this was a work-related condition.

On February 17, 2011 appellant was treated by Dr. John P. Seymour, a Board-certified orthopedist, who advised that appellant was lifting sacks and pushing bins when the injury occurred. Dr. Seymour diagnosed right L2-3 herniated disc and opined that appellant was totally disabled.

The Board found that, although these reports were not fully rationalized to meet appellant's burden of proof, they were sufficient to require OWCP to further develop the medical evidence.³

Following the Board's remand, OWCP referred appellant, along with the record, a statement of accepted facts, and a list of questions, to Dr. Aleksandar Curcin, a Board-certified orthopedist, for a second opinion. It provided Dr. Curcin with appellant's medical records as well as a detailed description of appellant's employment duties.

In his November 18, 2013 report, Dr. Curcin reviewed the medical record and noted appellant's history and current complaints. On examination, appellant had tenderness to light touch, palpation, and percussion of the sacroiliac joint. There was no discomfort with axial loading to shoulders. Appellant had normal gait and she walked on heels and tip toes without discomfort. Lumbar spine range of motion was substantially self-restricted. Appellant had self-reported pain with flexion, extension, and right lateral flexion. Right hip rotation reproduced pain. Appellant had negative straight leg raises and 5/5 motor strength. Sensory was diminished in the right L3 and S1 distribution, and reflexes were brisk at patellar and Achilles bilaterally. Dr. Curcin noted that there were no orthopedic diagnoses felt to be connected to appellant's work activities either by direct cause, aggravation, precipitation, or acceleration. He noted that his

² Docket No. 13-1000 (issued September 16, 2013). On January 8, 2011 appellant, a clerk, filed an occupational disease claim alleging that she developed a herniated disc after performing repetitive walking, standing, pushing, sorting, lifting, and bagging parcels of mail at work. She stopped work on November 30, 2010.

³ *Id.*

record review showed that there was diagnostic imaging which confirmed resolution of the disc herniation although appellant still continued with significant complaints of pain. Dr. Curcin found no work-related conditions were caused or aggravated by appellant's work activities. He noted that appellant was at maximum medical improvement without expectation for further improvement and she was capable of returning to full-time, full-duty work without restrictions. Dr. Curcin noted that no further treatment was necessary. In a work capacity evaluation dated November 18, 2013, he noted that appellant was capable of returning to her usual job, full time, eight hours per day without restrictions.

In a November 26, 2013 decision, OWCP denied the claim on the grounds that the medical evidence was not sufficient to establish that her condition was caused by employment factors.

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 filed within the applicable time limitation 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 is causally related to the employment injury. 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

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁵ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁶

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

⁴ *Gary J. Watling*, 52 ECAB 357 (2001).

⁵ *Michael E. Smith*, 50 ECAB 313 (1999).

⁶ *Id.*

identified by the claimant.⁷ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁸

ANALYSIS

In its September 16, 2013 decision, the Board set aside OWCP's decision of September 10, 2012 and remanded the claim for further medical development. The Board instructed OWCP to secure a reasoned medical report addressing whether appellant's low back condition was caused or aggravated by her work duties.

OWCP referred appellant to Dr. Curcin who, in a November 18, 2013 report, found no evidence of causal relationship between appellant's work duties and the diagnosed L2-3 herniated disc. Dr. Curcin advised that there were no orthopedic diagnoses connected to appellant's work activities either by cause or aggravation. He noted that his review of the record showed diagnostic testing indicating resolution of the disc herniation. Dr. Curcin reported findings on examination noting that appellant had normal gait and that her range of motion of the lumbar spine was substantially self-restricted. He found no basis to attribute any orthopedic condition to appellant's work. Dr. Curcin noted that appellant was at maximum medical improvement without expectation for further improvement and she was capable of returning to full-time, full-duty work without restrictions. He noted no further treatment was necessary. In a work capacity evaluation dated November 18, 2013, Dr. Curcin noted that appellant was capable of returning to her usual job, full time, eight hours per day without restrictions.

The Board finds that the weight of the medical evidence rests with the well-rationalized opinion of Dr. Curcin to whom appellant was referred for a second opinion examination and who reviewed the statement of accepted facts prepared by OWCP. The Board has noted that in assessing medical evidence the weight of such evidence is determined by its reliability, its probative value and its convincing quality and the factors which enter in such an evaluation include the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.⁹ The Board has carefully reviewed Dr. Curcin's November 18, 2013 report and notes that it has such reliability, probative value and convincing quality. Prior to reaching his conclusions, Dr. Curcin reviewed appellant's factual and medical history and reported the findings of his examination of appellant.

Appellant previously submitted a February 9, 2011 report from Dr. Young who indicated that on November 30, 2010, appellant reported a gradual onset of low back pain through the workday with repetitive lifting. Dr. Young noted appellant's history is of onset of pain with fairly strenuous activities on the job and noted that she had a discrete lesion on the MRI scan and

⁷ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁸ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

⁹ *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1959).

opined that this was work related. Similarly, on February 17, 2011, Dr. Seymour noted appellant's history was of onset of pain with fairly strenuous activities on the job with discrete lesion on MRI scan and opined that this was a work-related condition. The Board finds that, although Drs. Young and Seymour supported causal relationship, they did not provide medical rationale explaining the basis of their opinion regarding the causal relationship between appellant's herniated disc and the factors of employment.¹⁰ For example, the physicians did not explain the process by which heavy exertion would cause the diagnosed condition and why such condition would not be due to any nonwork factors. Therefore, these reports are insufficient to establish appellant's claim or to create a conflict with the report of Dr. Curcin.

Appellant did not submit any additional medical evidence following the Board's prior decision. The Board finds that the medical evidence does not establish that appellant has a L2-3 herniated disc condition causally related to her employment.

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated, or aggravated by her employment is sufficient to establish causal relationship.¹¹ Causal relationships must be established by rationalized medical opinion evidence. As noted the medical evidence is insufficient to establish appellant's claim. Consequently, OWCP therefore properly found that appellant did not meet her burden of proof in establishing her claim.

On appeal appellant disagrees with OWCP's decision denying her claim for compensation and noted that she submitted sufficient evidence to establish her claim. As noted above, the medical evidence does not establish that appellant's diagnosed conditions were causally related to her employment. Reports from appellant's physicians failed to provide medical rationale explaining how appellant's diagnosed medical conditions were caused or aggravated by her employment duties. As noted above, the Board finds that the weight of the medical evidence rests with the well-rationalized opinion of Dr. Curcin to whom appellant was referred for a second opinion examination and opined that appellant's herniated disc condition was not work related.

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 therefore finds that appellant has not met her burden of proof in establishing that she developed a low back condition while in the performance of duty.

¹⁰ *Jimmie H. Duckett, supra* note 8.

¹¹ *See Dennis M. Mascarenas, 49 ECAB 215 (1997).*

ORDER

IT IS HEREBY ORDERED THAT the November 26, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 18, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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