

related to a January 14, 2009 work injury. OWCP determined that based on her description of her condition she was actually claiming a new occupational disease attributed to repetitive work and exposure over the course of more than one work shift. It developed appellant's claim as a new occupational disease.² Appellant did not stop work but continued in a limited-duty position.

Appellant was treated by Dr. Lisa Affatato, a Board-certified internist, on March 21, 2013 for back and leg pain. She noted findings of perillumbar tenderness, no knee effusion but slight pain medially and back pain with flexion. Dr. Affatato diagnosed lumbar disc disease and knee pain. In a return to work slip dated May 3, 2013, she noted that appellant was treated for a right leg and back injury and could not determine when she could return to work.

On June 13, 2013 OWCP advised appellant of the type of evidence needed to establish her claim. It particularly requested that she submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific work factors. OWCP also requested the employing establishment provide comments from a knowledgeable supervisor on the accuracy of appellant's statements relative to her claim with a description of her tasks.

In a statement dated July 9, 2013, appellant noted that on January 14, 2009 she was struck in the right leg by an employee riding a powered riding jack. She noted that she was unable to stand, walk, or sit for long periods of time because of swelling in her foot and she believed that these conditions were directly related to her work injury.

Appellant submitted reports from Dr. Affatato dated July 16 and December 19, 2008, who treated her for back and leg pain. She reported that her job required her to stand on concrete all day and lift up to 60 pounds, which caused leg pain. Dr. Affatato opined that appellant's current job description was most likely aggravating her condition of leg and back pain. In a February 2, 2009 duty status report, she diagnosed right leg and ankle contusion and returned appellant to work full time with restrictions. In an August 20, 2010 duty status report, Dr. Affatato diagnosed right leg and ankle contusion and returned appellant to work 20 hours a week with restrictions. On February 22, 2011 she treated appellant for back pain and swollen legs. Appellant reported that she was lifting mail sacks weighing up to 50 pounds and was on her feet all day. Dr. Affatato diagnosed lumbar disc herniation and returned appellant to light duty. On February 22, 2011 she noted that appellant remained on light duty with a lifting restriction of 10 pounds and standing limited to 30 minutes.

In an April 25, 2012 report, Dr. Affatato stated that appellant presented with worsening disc disease over the past three months. She noted an essentially normal physical examination and diagnosed lumbar disc herniation and leg edema due to medication. In return to work slips dated April 4 and June 12, 2013, Dr. Affatato noted treating appellant for arthritis of the spine and advised that she could not work. On June 12, 2013 she treated appellant for back pain and noted that she had been out of work since April 13, 2013. A 2009 lumbar magnetic resonance imaging (MRI) scan noted minimal disease and a more recent lumbar MRI scan revealed dramatic changes due to arthritis. Dr. Affatato diagnosed lumbar disc disease.

² Appellant had previously filed a claim for an injury sustained on January 14, 2009 which was accepted for contusion of the lower right leg and contusion of the back, claim number xxxxxx313. The present appeal pertains only to the claim for a new occupational disease.

Dr. Affatato opined in a July 8, 2013 report that these changes “may partly be explained by repeated lifting of 30 [to] 50 [pounds] over multiple years but are arthritic in nature may be related to the aging process itself.” Similarly, on March 2013 she treated appellant for back and leg pain and swelling in the legs. Dr. Affatato took appellant off work. She opined that “it is difficult to determine how much of [appellant’s] symptoms are related to what occurred in 2009 since there were significant gaps between visits, diagnostic study recommendations and treatment.” An October 22, 2012 lumbar spine MRI scan showed minimal grade retrolisthesis of L5 on S1 that is on a degenerative basis and small disc herniation’s at L4-5 and L5-S1.

In July 12, 2013 decision, OWCP denied the claim as the medical evidence was insufficient to establish that the claimed medical condition was causally related to the work factors.

On August 8, 2013 appellant requested an oral hearing, which was held on January 23, 2014. She submitted an October 2, 2013 return to work slip from Dr. Affatato finding that appellant could work light duty as of October 5, 2013. In an undated statement Dr. Affatato noted that as a result of the work accident of January 2009 appellant sustained leg and back pain. She indicated that appellant’s back pain started in 2002 and her leg pain began after the accident in 2009. In a report dated February 4, 2014, Dr. Affatato indicated that the injury of January 2009 resulted in ongoing weakness and pain of the right leg and presumed nerve injury based on the radicular nature of her symptoms. She noted that the injury also caused tenosynovitis of the right ankle with chronic pain and swelling. A December 26, 2013 right ankle MRI scan revealed mild subcutaneous edema, mild fluid within the posterior tibia, flexor digitorum longus, and absence of fat within the sinus tarsi. Appellant submitted a January 27, 2014 report from Dr. Robert Rajczy, a podiatrist, who treated her for pain on the inside of her foot and ankle. She reported sustaining an injury at work in 2009 where she was hit with a powerjack and was treated for back and leg pain. Dr. Rajczy diagnosed tendinitis, nerve entrapment of the foot and pain in the limb. He noted that right foot and ankle x-rays revealed no arthritic or degenerative changes, and no fractures or dislocations. There was evidence of pes planus foot type. Dr. Rajczy dispensed an ankle brace.

In a March 24, 2014 decision, an OWCP hearing representative affirmed OWCP’s denial of the claim. The hearing representative instructed OWCP, however, to combine claim number xxxxxx313 and claim number xxxxxx808 and issue a decision on whether appellant had established recurrence of disability in claim number xxxxxx313.³

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific

³ See *id.*

event, incident, or exposure occurring at the time, place, and in the manner alleged. Appellant must also establish that such event, incident, or exposure caused an injury.⁴

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) 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 is generally 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 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.⁵

ANALYSIS

Appellant asserts that she sustained an occupational disease in the performance of her work duties. Her work duties included sitting and standing while performing her mail handler duties. On June 13, 2013 OWCP advised appellant of the type of medical evidence needed to establish her claim. Appellant has not submitted sufficient medical evidence to establish that her diagnosed conditions are causally related to these employment factors.

Appellant submitted reports from Dr. Affatato dated July 16 and December 19, 2008, who treated her for back and leg pain. She reported that she worked standing on concrete all day and was required to lift up to 60 pounds which caused leg pain. Dr. Affatato opined that appellant's current job description was "most likely" aggravating her condition of leg and back pain. In reports dated June 12 and July 8, 2013, she noted that appellant sustained an injury in January 2009 and a March 2009 MRI scan revealed L5-S1 degenerative disc disease. Dr. Affatato treated appellant in October 2012 for back pain and significant arthritic changes with retrolisthesis at L5-S1 and facet hypertrophy. She opined that these changes "may partly be explained by repeated lifting of 30 [to] 50 [pounds] over multiple years but are arthritic in nature may be related to the aging process itself." Dr. Affatato further opined that "it is difficult to determine how much of [appellant's] symptoms are related to what occurred in 2009 since there were significant gaps between visits, diagnostic study recommendations and treatment."

⁴ See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989). See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury).

⁵ *Solomon Polen*, 51 ECAB 341 (2000).

The Board notes that Dr. Affatato's reports provide some support for causal relationship but is insufficient to establish the claimed back and leg conditions are causally related to appellant's employment duties. In those reports, Dr. Affatato opined that her current job "was most likely" aggravating her condition and the changes on the MRI scan "may partly" be due to repetitively lifting. However, at best, these reports provide speculative support for causal relationship. Dr. Affatato qualifies her support by noting that appellant's employment "most likely" or "may partly" have caused her condition. She provided no medical reasoning to support her opinion on causal relationship. Therefore, these reports are insufficient to meet appellant's burden of proof.⁶

On February 22, 2011 Dr. Affatato treated appellant for back pain and swollen legs. Appellant reported lifting mail sacks weighing up to 50 pounds and that she was on her feet all day. Dr. Affatato diagnosed lumbar disc herniation and returned appellant to light duty. Similarly, in reports dated April 25, 2012 and March 21, 2013, she treated appellant for back and leg pain. Appellant reported that her back hurt after sitting for any brief period of time and her legs would swell and "give out." Dr. Affatato diagnosed lumbar disc disease and knee and back pain. However, she appears to merely be repeating the history of injury as reported by appellant without providing her own opinion as to whether her condition was work related. To the extent that Dr. Affatato is providing her own opinion, she failed to provide a rationalized opinion explaining the causal relationship between appellant's diagnosed conditions and the employment factors believed to have caused or contributed to such condition.⁷ Therefore, these reports are insufficient to meet appellant's burden of proof.

In various reports, Dr. Affatato noted that as a result of the work accident of January 2009 appellant sustained ongoing weakness and pain of the right leg, a nerve injury based on the radicular nature of her symptoms, tenosynovitis of the right ankle with chronic pain, and swelling. Similarly, a January 27, 2014 report from Dr. Rajczyk diagnosed tendinitis, nerve entrapment of the foot and pain in the limb. Appellant reported sustaining an injury at work in 2009 where she was hit with a powerjack and was treated for back and leg pain. However, Drs. Affatato and Rajczyk find the conditions relate appellant's original work injury of 2009. Therefore, these reports are insufficient to meet appellant's burden of proof to establish this claim of an occupational disease due to work factors.

Other medical reports from Dr. Affatato and medical evidence from other providers, including reports of diagnostic testing, are insufficient to establish the claim as they fail to provide an opinion on the causal relationship between appellant's job and her diagnosed conditions.⁸

⁶ Medical opinions that are speculative or equivocal in character are of diminished probative value. *D.D.*, 57 ECAB 734 (2006).

⁷ *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).

⁸ *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

On appeal, appellant disagrees with OWCP's decision denying her claim for compensation and believes that she has submitted sufficient evidence to establish her claim. As noted above, however, the Board finds that the medical evidence fails to establish that the diagnosed conditions were causally related to her employment.

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 she sustained an occupational disease in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the March 24, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 26, 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