

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

E.T., Appellant)
and) Docket No. 15-0687
DEPARTMENT OF HOMELAND SECURITY,) Issued: June 19, 2015
TRANSPORTATION SECURITY)
ADMINISTRATION, San Jose, CA, Employer)

)

Appearances:

Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On February 10, 2015 appellant, through counsel, filed a timely appeal from a January 9, 2015 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 this case.

ISSUE

The issue is whether appellant met her burden of proof to establish a back condition causally related to factors of her federal employment.

On appeal counsel contends that OWCP failed to properly consider the medical evidence.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case was previously before the Board. Appellant, a 55-year-old transportation security officer, filed an occupational disease claim (Form CA-2) alleging that she sustained a back strain as a result of lifting heavy bags in the performance of duty. In a decision dated December 4, 2013, the Board affirmed OWCP's May 28, 2013 decision, finding that appellant had not met her burden of proof to establish a back condition in the performance of duty causally related to factors of her federal employment.² The facts of the case, as set forth in the prior decision, are incorporated by reference.

On October 9, 2014 appellant, through counsel, requested reconsideration and submitted a July 30, 2009 report from Dr. Misty Navarro, a Board-certified emergency medicine physician, who diagnosed low back strain secondary to a work-related injury. Dr. Navarro indicated that appellant injured her back at work on July 30, 2009 and when she lifted luggage it caused more pain to her back, which radiated down to her foot and up into her shoulder on the right side.

A July 30, 2009 x-ray of the lumbar spine showed mild scoliosis and multilevel lumbar spondylosis which appeared to be most advanced at L4-5.

In a January 26, 2011 report, Dr. Joanna Oppenheim, a Board-certified family practitioner, indicated that appellant lifted luggage at work and sustained an employment-related injury two years ago. She diagnosed menometrorrhagia resulting in low hemoglobin, shoulder pain suspect due to bursitis, and lumbago long-standing with acute re-injury. On September 23, 2014 Dr. Oppenheim reiterated appellant's medical history. In a September 29, 2014 report, she diagnosed low back strain secondary to work-related injury due to picking up a heavy bag at work.

On April 11, 2011 Dr. Kathleen Tonti-Horne, a family medicine specialist, diagnosed back pain and indicated that the pain in appellant's lower lumbar spine radiated to the left and right foot. Appellant stated that her pain precipitated from lifting checked bags at work two years ago and was aggravated by twisting movements and long days at work.

In a November 26, 2013 report, Dr. Christopher Carver, a Board-certified neurosurgeon, diagnosed lumbar stenosis with bilateral lower extremity radiculopathy, L4-5 discopathy with axial back pain, and hypertension. He indicated that appellant presented with severe low back pain and bilateral leg pain with weakness and numbness present for a number of years. Dr. Carver performed surgery on appellant's back that same day. On December 3, 2013 he discharged appellant, indicating that she underwent uncomplicated decompression, stabilization, and fusion for instability and stenosis at L4-5 and had follow-up x-rays on November 30, 2013, which looked good.

By decision dated January 9, 2015, OWCP denied modification of its prior decision.

² Docket No. 13-1643 (issued December 4, 2013).

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 timely filed within the applicable time limitation period of FECA, and that an injury⁴ was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit 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.⁶

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. 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.⁷

ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish her claim that federal employment factors caused or aggravated her back condition. Appellant identified factors of employment she believed caused the condition, including lifting luggage at work. OWCP accepted the alleged factors of employment. However, in order to establish a claim that she sustained an employment-related injury, she must also submit rationalized medical evidence which explains how her medical condition was caused or aggravated by the implicated employment factors.⁸

³ 5 U.S.C. § 8101 *et seq.*

⁴ OWCP regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

⁵ See *O.W.*, Docket No. 09-2110 (issued April 22, 2010); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁶ See *D.R.*, Docket No. 09-1723 (issued May 20, 2010). See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ See *O.W.*, *supra* note 5.

⁸ See *A.C.*, Docket No. 08-1453 (issued November 18, 2008); *Donald W. Wenzel*, 56 ECAB 390 (2005); *Leslie C. Moore*, 52 ECAB 132 (2000).

In her reports, Dr. Oppenheim indicated that appellant lifted luggage at work and sustained an employment-related injury two years ago. She diagnosed menometrorrhagia resulting in low hemoglobin, shoulder pain suspect due to bursitis, and lumbago long-standing with acute reinjury. On September 29, 2014 Dr. Oppenheim diagnosed low back strain secondary to work-related injury due to picking up a heavy bag at work. She failed, however, to provide a rationalized opinion explaining how factors of appellant's federal employment, such as lifting luggage at work, caused or aggravated her back condition. Dr. Oppenheim noted that appellant's condition occurred while she was at work, but such generalized statements do not establish causal relationship. They merely repeat appellant's allegations and are unsupported by adequate medical rationale to explain how the physical activity at work actually caused or aggravated the diagnosed conditions.⁹

On July 30, 2009 Dr. Navarro diagnosed low back strain secondary to a work-related injury. She indicated that appellant injured her back at work on July 30, 2009 and when she lifted luggage it caused more pain to her back, which radiated down to her foot and up into her shoulder on the right side. The Board has held that the mere fact that appellant's symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between appellant's condition and her employment factors.¹⁰ Dr. Navarro failed to provide a rationalized opinion explaining how factors of appellant's federal employment, such as lifting luggage at work, caused or aggravated her back condition.

In his reports, Dr. Carver diagnosed lumbar stenosis with bilateral lower extremity radiculopathy and L4-5 discopathy with axial back pain. He performed back surgery on November 26, 2013 and indicated that appellant had presented with severe low back pain and bilateral leg pain with weakness and numbness present for a number of years. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹¹

On April 11, 2011 Dr. Tonti-Horne diagnosed back pain and indicated that the pain in appellant's lower lumbar spine radiated to the left and right foot. The Board finds that Dr. Tonti-Horne's diagnosis of back pain with radiating bilateral foot pain is a description of a symptom rather than a clear diagnosis of the medical condition.¹²

In support of her claim, appellant submitted diagnostic testing, including a July 30, 2009 x-ray of the lumbar spine. These documents do not constitute competent medical evidence as they do not contain rationale by a physician relating appellant's disability to her employment.¹³

⁹ See *K.W.*, Docket No. 10-98 (issued September 10, 2010).

¹⁰ See *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹¹ See *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹² The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. See *P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

¹³ See 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." See also *Paul Foster*, 56 ECAB 208, 212 n.12 (2004); *Joseph N. Fassi*, 42 ECAB 677 (1991); *Barbara J. Williams*, 40 ECAB 649 (1989).

As appellant has not submitted any rationalized medical evidence to support her allegation that she sustained an injury causally related to the accepted employment factors, she failed to meet her burden of proof to establish a claim.

On appeal, counsel contends that OWCP failed to properly consider the medical evidence. Based on the findings and reasons stated above, the Board finds counsel's argument unsubstantiated.

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 has not met her burden of proof to establish a back condition causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 19, 2015
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board