



## **FACTUAL HISTORY**

On February 4, 2013 appellant, then a 55-year-old city carrier, filed an occupational disease claim alleging that she began experiencing pain in her lower back while loading a truck during the performance of her federal duties intermittently for the period December 26, 2012, when she returned to work,<sup>2</sup> until February 29, 2013. She explained that the pain increased while walking and carrying a satchel weighing up to 35 pounds on her shoulder. Appellant alleged that, by the end of the workday, her right leg and knee were weak and her feet ached. She listed the nature of her disease as pinched nerve in the back/disc degenerative disease. The employing establishment controverted appellant's claim.

In a statement dated March 5, 2013, appellant indicated that she returned to work after being off her federal duties in excess of 11 years due to a prior accepted claim, and that this presented challenges. She alleged that she had a medical history of lumbar radiculopathy (pinched nerve in back) which was produced in the work environment and also had degenerative disc disease which was aggravated in the work environment. Appellant noted that during her absence from work she worked as a substitute teacher, and during that time never experienced any of the severe symptoms that were now revisiting her as a result of returning to work in a physically demanding environment. She described her work activities as lifting parcels, standing on a concrete floor, loading trucks, bending, stooping, twisting, and carry a satchel weighing up to 35 pounds on her shoulder while walking as many as six to seven miles per day, and climbing stairs to deliver mail. Appellant also noted that she must perform heavy lifting and bending to load the truck.

In support of her claim, appellant submitted multiple reports by her treating Board-certified orthopedic surgeon, Dr. Samuel J. Chmell. In a February 21, 2013 office note with regard to a follow-up visit, Dr. Chmell described appellant's duties after she returned to work without restrictions as a letter carrier. He diagnosed lumbar disc derangement with radiculopathy/pinched nerve; bilateral ankle and foot derangement; multiple tendinitis upper extremities/carpal tunnel syndrome; cervical derangement; right knee derangement; and left shoulder derangement.

In a March 25, 2013 letter, Dr. Chmell noted that he examined appellant on February 21, 2013 and her office visit immediately prior to that was June 28, 2012, at which point he released her back to work with restrictions. He stated that if she had been allowed to work and act within her restrictions and not forced to exceed her limitations and restrictions, her symptoms would be under control and she would be able to function at the restricted level. Dr. Chmell opined that appellant has had an aggravation of her accepted employment-related conditions and diagnoses.

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<sup>2</sup> The record reveals that appellant had filed a prior claim on April 5, 2000, assigned OWCP File No. xxxxxx487, alleging that her employment duties of casing and pulling mail required her to stand, stoop, and twist and placed stress on her lower back. Appellant also claimed that standing and walking on concrete resulted in the onset of a condition starting on March 1, 1999. OWCP accepted that these work activities resulted in lumbar radiculopathy radiating into appellant's right leg. Appellant also filed a claim alleging that her letter carrying duties resulted in the onset of lower extremity and lower back conditions. OWCP accepted this claim for a herniated disc at the L5-S1 level under OWCP File No. xxxxxx496. Appellant performed restricted-duty work before stopping work on January 22, 2001. On July 17, 2013 OWCP combined these cases together with current file, OWCP File No. xxxxxx487 serving as the master file.

He listed the specific activities that she had to perform that led to this aggravation as repetitive casing of mail, repetitive bending and lifting, loading trucks, carrying a mailbag weighing up to 35 pounds on her left shoulder and walking six to seven miles per day as well as climbing stairs and descending stairs to deliver mail. Dr. Chmell also noted that while loading a truck appellant had to do repetitive heavy lifting and bending. He opined that excessive walking with 35 pounds of weight injured her cervical and lumbar spine areas aggravated her underlying conditions. Dr. Chmell stated that the duties appellant had to perform, when she returned back to work without restrictions, as a letter carrier aggravated her underlying conditions, causing her additional injury. He noted that his opinion was based upon a reasonable degree of medical and orthopedic surgical certainty.

In a July 12, 2013 decision, OWCP denied appellant's claim as it found that the medical evidence did not demonstrate that the claimed medical condition was related to the established employment events.

On August 9, 2013 appellant requested review of the written record by an OWCP hearing representative. By decision dated January 24, 2014, the hearing representative affirmed the July 12, 2013 decision.

In a June 26, 2014 report, Dr. Chmell noted that he had reviewed an OWCP hearing representative's decision. He reported that appellant had been referred to him by her podiatrist. Dr. Chmell noted in his May 31, 2000 report that appellant had a nerve compression in her low back at L5-S1 and that magnetic resonance imaging scans demonstrated a bulging disc. He noted that his opinion as to a nerve compression was later confirmed by a computerized tomography/myelogram performed on February 29, 2002. Dr. Chmell stated that, based on these objective findings, his recommendation was for appellant to perform either work in the sedentary position, limited duty, change of craft, or for her to undergo vocational rehabilitation. He noted that following many failed attempts where appellant's employer failed to follow his recommendations, he had to take appellant off of work for medical reasons on January 21, 2001.

Dr. Chmell noted that appellant returned to work on December 26, 2012 and filed a claim for an occupational disease on February 25, 2013. He opined that appellant's condition of a bulging disc and her preexisting condition of degenerative disc disease were impacted by her work activities. Dr. Chmell described these work activities as repetitive movements of walking while carrying a mail satchel and climbing and descending stairs over extended periods of time. He noted that it was not natural to carry 25 to 35 pounds for four to eight hours a day, particularly for an individual who weighs less than 120 pounds. Dr. Chmell explained that appellant's work activities of walking while carrying a mail satchel and walking up and down stairs resulted in an increased dynamic loading on her musculoskeletal system, especially her spinal column. He further explained that extensive walking and/or climbing stairs with this significant weight produced shock waves generated by the heel strike and metatarsal strike as her feet connected with the surface. Dr. Chmell pointed out that, with the added weight of the mail satchel, the biomechanics of walking increased the intensity of shock waves which traveled through appellant's feet, legs, and especially her low back. Further, he pointed out that her loss of fluid in her discs reduced the ability of her lumbar spine discs to act as shock absorbers and left them less flexible and unable to absorb the shock from the mechanism of walking and especially climbing stairs, and that as a result the vertebrae in her back received less cushion.

Dr. Chmell further noted that this repetitive activity put stress on appellant's musculoskeletal system and spine while carrying simultaneously aggravated her bulging disc and degenerative disc disease. He concluded, "based upon a reasonable degree of medical and orthopedic surgical certainty," that appellant's bulging and/or herniated discs "are the direct result of carrying mail as described." Dr. Chmell further concluded that appellant's restrictions were permanent, and that she needed either a permanent limited- or light-duty job or a reasonable accommodation to return to work.

On July 10, 2014 appellant requested reconsideration.

By decision dated October 1, 2014, OWCP denied modification as it found that the medical evidence was not sufficient to support that appellant's employment duties intermittently from December 26, 2012 through February 9, 2013 either resulted in a new employment injury, a permanent aggravation of her back conditions, or materially changed the underlying condition.

### **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 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. 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.<sup>3</sup>

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 or exposure, which is alleged to have occurred.<sup>4</sup> In order to meet his or her burden of proof to establish the fact that he or she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he or she actually experienced the employment injury or exposure at the time, place, and in the manner alleged.<sup>5</sup>

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>6</sup> The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical

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<sup>3</sup> *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

<sup>4</sup> *See Elaine Pendleton*, 40 ECAB 1143 (1989); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2(a) (August 2012).

<sup>5</sup> *Linda S. Jackson*, 49 ECAB 486 (1998).

<sup>6</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

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.<sup>7</sup>

Under FECA, when employment factors cause an aggravation of an underlying condition, the employee is entitled to compensation for the periods of disability related to the aggravation.<sup>8</sup> Where the medical evidence supports an aggravation or acceleration of an underlying condition precipitated by working conditions or injuries, such disability is compensable.<sup>9</sup> However, the normal progression of untreated disease cannot be stated to constitute aggravation of a condition merely because the performance of normal work duties reveals the underlying condition.<sup>10</sup> For the conditions of employment to bring about an aggravation of preexisting disease, the employment must cause acceleration of the disease or precipitate disability. When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation ceased.<sup>11</sup>

### ANALYSIS

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

OWCP accepted that appellant intermittently engaged in repetitive employment activities as a letter carrier from December 26, 2012 through February 19, 2013. Appellant alleged an injury causally related to her return to her employment duties during this period of time. However, OWCP denied appellant's claim because it determined that appellant had not submitted a rationalized medical report sufficient to establish a causal relationship between appellant's diagnosed medical condition and the activities of her federal employment from December 26, 2012 through February 19, 2013.

The Board finds that the reports of Dr. Chmell are sufficiently rationalized to require further development of the record. The Board notes that an employee who claims benefits under FECA has the burden of establishing the essential elements of his or her claim. The claimant 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 to specific conditions of employment. As part of this burden, the claimant must present rationalized medical opinion evidence based upon a complete and accurate factual and medical

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<sup>7</sup> *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

<sup>8</sup> *Raymond W. Behrens*, 50 ECAB 221 (1999); *James L. Hearn*, 29 ECAB 278 (1978).

<sup>9</sup> A.S., Docket No. 16-614 (issued June 25, 2015).

<sup>10</sup> *Glenn C. Chasteen*, 42 ECAB 493 (1991).

<sup>11</sup> *Raymond W. Behrens*, *supra* note 8.

background establishing causal relationship.<sup>12</sup> However, it is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>13</sup>

In the instant case, Dr. Chmell, who has been appellant's treating Board-certified orthopedic surgeon since May 2000, clearly described appellant's employment duties from December 26, 2012 through February 19, 2013. He described in specific detail how the mechanism of walking four to eight hours a day and carrying her mail satchel, and ascending and descending the stairs resulted in pain from her back down to her right leg, ankle and foot. These activities, in combination with the fact that appellant weighed less than 120 pounds, put stress on her musculoskeletal system and spine while simultaneously aggravating her underlying conditions of bulging disc and degenerative disc disease. While appellant had only returned to work for approximately 43 days, the medical report is sufficiently rationalized to warrant further development of the evidence.

The Board finds that Dr. Chmell's opinion was sufficient to establish a *prima facie* case that there was a causal relationship between appellant's medical condition and her employment activities of December 26, 2012 through February 19, 2013.<sup>14</sup>

On remand, OWCP should submit a statement of accepted facts to a second opinion physician in order to obtain a rationalized opinion as to whether her current condition is causally related to factors of her federal employment from December 26, 2012 through February 19, 2013. Following this and any other development deemed necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds that this case is not in posture for decision as to whether appellant suffered a pinched nerve in her back and/or degenerative disc disease that was caused or aggravated by factors of her federal employment.

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<sup>12</sup> See *Virginia Richard, claiming as executrix of the estate of Lionel F. Richard*, 53 ECAB 430 (2002); see also *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

<sup>13</sup> See *Richard E. Simpson*, 55 ECAB 490 (2004).

<sup>14</sup> See *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 1, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision.

Issued: September 17, 2015  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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