

preexisting pinched nerve developed into five herniated discs as a result of performing her letter carrier duties. She first became aware of her condition and realized it was causally related to her employment on December 19, 2006. Appellant did not stop work.

Appellant submitted a July 27, 2007 magnetic resonance imaging (MRI) scan of the lumbar spine which revealed minimal disc bulging at L4-5, tiny central disc protrusions at L5-S1, and no disc herniation or nerve root impingement. On August 29, 2007 she was treated by Dr. Chandler Mann, a Board-certified anesthesiologist, for chronic back pain since 1995. Appellant reported to Dr. Mann that she was working as a letter carrier and in December she bent over and felt an acute searing pain in her low back with radiation into her right buttock. Dr. Mann noted an essentially normal examination and diagnosed lumbar facet dysfunction. In an October 25, 2007 report, he noted that appellant had right L3-4, L4-5, and L5-S1 facet blocks and had complete remittance of her pain for two weeks. Dr. Mann noted findings on examination and diagnosed lumbar facet syndrome and degenerative disc disease of the right L3-4, L4-5, and L5-S1 facets.

Dr. Leonard Trahan, a Board-certified orthopedic surgeon, administered facet blocks on November 1, 2007, and diagnosed low back syndrome, facet joint dysfunction. On November 28 and December 10, 2007 he diagnosed lower back syndrome and facet joint dysfunction and recommended steroid and local injection of the right L3-4, L4-5 and L5-S1 facet joints. A July 10, 2008 computerized tomography (CT) scan of the of the lumbar spine revealed status post discogram from L3-S1, no contrast extravasation at L3-4 and L4-5, and probable disc herniation at L5-S1.

On July 29, 2008 Dr. Stefan Pribil, a Board-certified neurosurgeon, noted that appellant was status post lumbar surgery and was partially disabled.

On August 22, 2008 OWCP advised appellant of the type of factual and medical evidence needed to establish her claim.

In a decision dated September 29, 2008, OWCP denied appellant's claim finding that the evidence was insufficient to establish which employment factors caused an injury.

On October 6, 2008 appellant requested a review of the written record. She submitted a September 5, 2007 operative report from Dr. Trahan who performed a diagnostic block for right L3-4, L4-5, and L5-S1 and diagnosed lower back syndrome with spondylosis and facet joint dysfunction. On March 20, 2008 Dr. Trahan noted the CT scan showed degenerative disc disease at L5-S1. On March 21, 2008 he performed radiofrequency ablation of the right L5-S1 facet joint and diagnosed lumbar spondylosis with lower back syndrome. Appellant submitted a June 2, 2008 report from Dr. Mann who noted appellant's long history of lumbar degenerative disc disease, spondylosis, and low back syndrome. Dr. Mann noted that appellant underwent several diagnostic medical branch blocks at L3-4, L4-5, L5-S1 and radiofrequency ablation of the right L5-S1, but her pain recurred. He recommended a diagnostic lumbar discogram at L3-4, L4-5, and L5-S1.

An August 7, 2008 report from Dr. Pribil noted appellant was status post-surgery³ with minimal pain and spasm in the right leg. In an undated addendum, Dr. Pribil noted that the discogram CT showed disruption at L5-S1 and L4-5, along with delamination and fragmentation of the disc at L5-S1 with central extravasation. He recommended a microdiscectomy.

In a decision dated April 8, 2009, an OWCP hearing representative found that appellant had established the factual element of her claim, but denied the claim because she had not submitted sufficient medical evidence to establish causal relationship.

On July 13, 2009 appellant requested reconsideration. In a decision dated July 27, 2009, OWCP denied modification of the prior decision dated April 8, 2009.

On November 7, 2009 appellant again requested reconsideration. She submitted a June 25, 2009 report from Dr. Curtis Fandrich, an osteopath, who noted her treatment for a medical condition directly related to her work duties. Appellant reported that her work duties consisted of repetitive bending, twisting, lifting, and carrying more than 10 pounds daily. Dr. Fandrich noted that the National Institute of Health and Occupational Safety and Health Administration studies revealed that these daily activities can result in work-related injuries. A September 9, 2009 MRI scan of the lumbar spine showed evidence of posterior annular tear at the L4-5 level, which could result in discogenic pain, a left lateral disc protrusion at this site in contact with the exiting left L4 dorsal ganglia, postoperative changes at L5-S1, and a disc bulge, resulting in mild-to-moderate right-sided neural foraminal encroachment.

In a decision dated November 27, 2009, OWCP denied modification of the prior decision finding the medical evidence insufficient to establish causal relationship to appellant's employment duties. On December 9, 2009 appellant requested reconsideration. In a decision dated December 29, 2009, OWCP denied her request for reconsideration finding that the evidence submitted was insufficient to warrant a merit review.

On November 22, 2010 appellant requested reconsideration. She submitted a July 7, 2010 report from Dr. Fandrich who first treated her on November 11, 2008 for bilateral lower back pain radiating down the right leg with numbness, tingling, and weakness. Dr. Fandrich noted that appellant was status post L5-S1 discectomy in July 2008. Appellant reported working for the employing establishment for 12 years and that she had been hired with a pinched nerve in her lower back from a prior lifting injury. Dr. Fandrich diagnosed right low back pain, right lower extremity radiculopathy, right sciatica, and hamstring somatic dysfunction. Appellant submitted a December 6, 2010 duty status report from Dr. Michael J. Leahy, a Board-certified orthopedic surgeon, who diagnosed spinal stenosis and returned appellant to work with restrictions.

On February 14, 2011 OWCP denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant a merit review.

³ The record does not contain an operative report regarding the referenced surgery.

On July 26, 2011 appellant appealed her claim to the Board.⁴ In an order dated April 12, 2012, the Board set aside OWCP's February 14, 2011 decision. The Board noted that it failed to review Dr. Leahy's December 6, 2010 report, prior to issuing its February 14, 2011 decision. The Board remanded the matter so that OWCP could properly consider all evidence submitted at the time of the February 14, 2011 decision.

In a decision dated August 7, 2012, OWCP noted reviewing the December 6, 2010 report from Dr. Leahy and denied modification of the decision dated November 27, 2009.

On July 24, 2013 appellant requested reconsideration. She submitted a June 26, 2013 report from Dr. Frank L. Barnes, a Board-certified orthopedic surgeon, who treated her for radiating lumbar pain. Dr. Barnes noted that appellant was a letter carrier and initially injured her back in 1996 when she lifted an obese patient. He noted that she was treated with medications, physical therapy, and a two-level lumbar fusion surgery in 2008. Dr. Barnes noted that despite surgery appellant's pain persisted with numbness of her feet. He diagnosed herniated lumbar disc at L4-5 and L5-S1 and a L2-3 herniated disc. Dr. Barnes noted appellant's work as a letter carrier required repeated lifting which placed stress on her lumbar spine and caused the herniated discs and current symptoms. He opined that she could perform sedentary work with lifting restrictions.

In a decision dated October 2, 2013, OWCP denied modification of the prior decision.

On June 16, 2014 appellant, through counsel, requested reconsideration. In an April 10, 2014 report, Dr. Barnes noted treating her for lumbar pain that radiated to her feet. Appellant reported working as a letter carrier and initially injuring her back in 1996 when she lifted an obese patient. She reported reinjuring her back at work December 19, 2006 when she bent over and got a "pinch in the back." Dr. Barnes opined that appellant's work injury aggravated the 1996 injury. He treated her on September 12, 2013 for pain over her entire right lower extremity and numbness in both feet. Dr. Barnes diagnosed herniated lumbar disc at L4-5, L5-S1, and L2-3. He opined that appellant's work as a letter carrier required repeated lifting of 70-pound objects which placed stress on her lumbar spine and caused a herniated disc and her current symptoms. Dr. Barnes advised that she could return to sedentary work. He opined that the 2006 injury caused a permanent aggravation and resulted in permanent impairment of appellant's lumbar spine.

Appellant also submitted a February 4, 2013 report from Dr. Randolph Evans, a Board-certified neurologist, who performed an electromyogram (EMG) and nerve conduction studies which revealed no abnormalities and no evidence of lumbosacral radiculopathy.

In a decision dated August 25, 2014, OWCP denied modification of the prior decision.

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 that he or she sustained an

⁴ See *supra* note 2.

injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific 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.⁵

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 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.⁶

ANALYSIS

It is undisputed that appellant's work duties as a letter carrier included repetitive bending, twisting, turning, walking, and lifting. However, she has not submitted sufficient medical evidence to establish that her diagnosed conditions are causally related to specific employment factors.

Appellant submitted reports from Dr. Barnes dated June 26 and September 12, 2013 who noted she was a letter carrier who initially injured her back in 1996 when lifting an obese patient. She underwent a two-level lumbar fusion surgery in 2008, but continued to be symptomatic. Dr. Barnes noted appellant's work as a carrier which required repeated lifting of up to 70 pounds which placed stress on her lumbar spine and caused herniated discs and her current symptoms. He diagnosed herniated lumbar discs at L2-3, L4-5, and L5-S1. Similarly, on April 10, 2014 Dr. Barnes opined that appellant's 2006 work injury permanently aggravated the original 1996 injury and resulted in permanent impairment of her lumbar spine. The Board finds that, although he supports causal relationship, he has not provided sufficient medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant's lumbar

⁵ See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *Solomon Polen*, 51 ECAB 341 (2000).

condition and the factors of employment.⁷ Dr. Barnes has not explained the process by which bending or lifting would have caused the diagnosed disc herniation or other conditions.

Appellant submitted a June 25, 2009 report from Dr. Fandrich who noted treating her for a medical condition directly related to her work duties. She reported that her work duties consisted of repetitive bending, twisting, lifting, and carrying more than 10 pounds on a daily basis. Dr. Fandrich noted that these activities could result in similar injuries to what appellant experienced. Similarly, in a July 7, 2010 report, he noted appellant's history of working for the employing establishment for 12 years. Dr. Fandrich diagnosed right low back pain, right lower extremity radiculopathy, right sciatica, and hamstring somatic dysfunction. The Board finds that, although he supported causal relationship, he has not provided medical rationale explaining the basis of his opinion regarding the causal relationship between appellant's diagnosed conditions and factors of employment.⁸ Dr. Fandrich did not explain how the accepted work activities would cause or aggravate her diagnosed conditions. Therefore, these reports are insufficient to meet appellant's burden to establish appellant's claim.

Appellant was treated by Dr. Mann on October 25, 2007 and June 2, 2008 for a long history of lumbar degenerative disc disease, spondylosis, and low back syndrome. She reported working as a letter carrier and bending over and experiencing acute searing pain in her low back with radiation into her right buttock. Dr. Mann relates the history of injury reported by appellant instead of providing his own opinion on causal relationship. He did not otherwise address why or how particular work activities would cause or aggravate a diagnosed condition. Consequently, these reports are of limited probative value.

The remainder of the medical evidence, including reports from Drs. Trahan, Pribil, and Leahy, is also of limited probative value as it does not offer a specific opinion on the causal relationship between appellant's job duties and her diagnosed conditions.⁹

On appeal appellant, through counsel, provides a detailed summary of her injury, subsequent medical treatment and the procedural process of her claim. She asserts that she submitted reports from Dr. Barnes dated June 26, 2013 and April 10, 2014 which support that her work duties permanently aggravated her preexisting condition and caused her disability. Appellant asserts that Dr. Barnes' reports provide reliable detail as to appellant's diagnosed conditions, her work duties, and how those work duties permanently aggravated her preexisting 1996 disc herniation. As noted above, although Dr. Barnes supported causal relationship, he did not provide a sufficiently rationalized medical opinion explaining the basis of his conclusory

⁷ See *T.M.*, 60 ECAB Docket No. 08-975 (issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

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

⁹ *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).

opinion regarding the causal relationship between appellant's lumbar condition and the factors of employment.¹⁰ Therefore, these reports are insufficient to meet appellant's burden of proof.

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 August 25, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 22, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁰ See *T.M.*, *supra* note 7.