

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

T.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Oakland, CA, Employer**

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**Docket No. 16-0086
Issued: April 7, 2016**

Appearances:
Appellant, pro se
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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 19, 2015 appellant filed a timely appeal of a July 28, 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 an accepted April 7, 2014 employment incident.

FACTUAL HISTORY

On April 7, 2014 appellant, then a 44-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on that date at 6:20 p.m. she sustained back pain causally related to her federal employment duties. In an attached statement, she related arriving at 6:00 p.m. to work on the automated parcel and bundle sorter; she reported to Kirandip Dhalwal,

¹ 5 U.S.C. § 8101 *et seq.*

a supervisor, and handed her a limited-duty slip. In response to Ms. Dhalwal's question regarding what work she would be performing, appellant stated that she would be pulling mail. Ms. Dhalwal then instructed appellant to load the priority parcel mail onto the belt. The record indicates that appellant had filed a prior claim for a work-related back injury on January 16, 2014, which was denied. Appellant stopped work on April 7, 2014.

In an April 10, 2014 work excuse, Dr. Michael Hebrard, Board-certified in physical medicine and rehabilitation, indicated that appellant was totally disabled for the period April 10 to 17, 2014 and noted an injury date of April 7, 2014.

In a letter dated April 16, 2014, OWCP informed appellant that the evidence currently submitted was insufficient to establish her claim. It advised her as to the medical and factual evidence required to support her claim and afforded her 30 days to provide the information requested.

In response to OWCP's request appellant submitted additional medical evidence.

In an April 7, 2014 form report, Dr. Sarah P. Kennedy, a Board-certified emergency medicine physician, reported that appellant was seen in the emergency room that day for complaints of back pain. She diagnosed acute exacerbation of chronic low back pain. Appellant described the injury as occurring due to "loading the belt on the 2nd floor SPBS." (RD 5/7/2014)

Dr. Hebrard, in an April 21, 2014 work excuse note, indicated that appellant was under his care and that she was totally disabled for the period April 21 to May 22, 2014.

In a May 8, 2014 report, Dr. Hebrard noted an injury date of April 7, 2014 and that appellant continued to have complaints of low back pain which radiated into her left leg. He diagnosed lumbar sprains/strains. A physical examination revealed trigger points palpated in the iliolumbar region and bilateral quadratus lumborum, intact sensation to light touch bilaterally in the L3-S1 dermatomes, and positive sacroiliac compression test. Dr. Hebrard opined that appellant's back condition was causally related to the occupational event.

By decision dated May 22, 2014, OWCP denied appellant's claim. It found that the evidence of record was sufficient to establish that the incident occurred as alleged. However, the evidence of record was insufficient to establish a causal relationship between the April 7, 2014 incident and a diagnosed medical condition.

Subsequent to the denial of her claim, OWCP received reports by Dr. Hebrard covering the period April 10, 2014 to March 25, 2015. Dr. Hebrard, in these reports, noted an injury date of April 7, 2014 and diagnosed lumbar sprain/strain, and sacroiliac joint pain.

On April 10, 2014 Dr. Hebrard diagnosed sacroiliac joint pain and noted that appellant returned to work on April 7, 2014 with restrictions. He noted that appellant's back pain flared up after 20 minutes of loading a belt which involved pulling, pushing, bending at the waist, and twisting. Physical examination findings included limited lumbar range of motion due to pain, positive facet maneuver, and positive sacroiliac compression test. Dr. Hebrard concluded that appellant's lumbar back condition had been aggravated by the work-related twisting and bending at the waist. OWCP received progress notes dated May 8 and 28, 2014 from Dr. Hebrard wherein he reiterated appellant's diagnosis.

Dr. Hebrard, in a follow-up June 3, 2014 report, diagnosed lumbar sprain/strain and indicated that appellant could work with restrictions. Appellant related having ongoing pain radiating into her left leg. Physical findings and diagnoses were unchanged. Under assessment and treatment plan, Dr. Hebrard noted an initial injury as occurring when appellant reached up over head to pull a sack out of a container and that her later injury occurred due to bending at the waist while lifting bulk mail off of a container. In conclusion, he opined that the mechanism of the two injuries was consistent with causing lumbar spine stress from forward flexion and bending at the waist.

In a June 25, 2014 report, Dr. Hebrard diagnosed lumbar sprain/strain and noted that appellant continued to have back pain radiating into her left leg. Physical examination and test findings were unchanged from prior reports. Dr. Hebrard reiterated his opinion that appellant's act of bending and rotating at the waist on April 7, 2014 caused increased stress on her lower lumbar intervertebral discs. The increased pressure on the lower back caused the discs to bulge posteriorly as well as tearing of the intradiscal fibers which could lead to pain. Thus, Dr. Hebrard opined that appellant's subjective complaints were consistent with the objective findings and that there was a causal relationship between the April 7, 2014 incident and her condition.

Dr. Hebrard, in reports dated July 7 and September 2, 2014, related that appellant was seen for a follow-up for her injuries and complaints of back pain. Under assessment and treatment plan, he noted that appellant continued to have persistent low back pain and paresthesia with pain radiating into her leg. Dr. Hebrard reiterated his opinion that the back condition had been caused by the April 7, 2014 incident. He indicated that appellant was able to perform modified-duty work.

On November 3, 2014 Dr. Hebrard reiterated findings from his prior reports including the diagnosis of lumbar strain/sprain. Under assessment, appellant related that her back pain had been aggravated when she had to do additional work on October 20, 2014 which included nonsedentary activities.

Dr. Hebrard, in a March 25, 2015 report, diagnosed lumbar radiculitis, sciatica, and lumbosacral strain, noted an injury date of April 7, 2014, and reported that appellant was seen for back pain. He opined that appellant's back condition was causally related to "the occupational event and date of injury."

In a form dated May 2, 2015 and received by OWCP on May 8, 2015, appellant requested reconsideration.

By decision dated July 28, 2015, OWCP denied modification. It found that Dr. Hebrard's June 3, 2014 report was based upon an inaccurate history of injury as the work activity of lifting a sack above the head was the mechanism of injury in a prior claim, OWCP file number xxxxxx122. OWCP concluded that the medical evidence submitted subsequent to the original decision of May 22, 2014 did not provide medical rationale explaining the connection between the specific work injury of April 7, 2014 and the diagnosed conditions.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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; that an injury was sustained while 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.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a fact of injury has been established.⁵ First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.⁶ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁸ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.⁹ 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.¹⁰

ANALYSIS

Appellant alleged that her back pain and condition had been aggravated by her employment duties on April 7, 2014. OWCP accepted that the incident occurred as alleged, but denied the claim as it found the medical evidence insufficient to establish that the diagnosed

² *Id.*

³ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁴ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 3.

⁶ *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

⁷ *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 3.

⁸ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

⁹ *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

¹⁰ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

condition was causally related to the April 7, 2014 incident. The issue on appeal is whether appellant has established that her lumbar condition had been caused or aggravated by the April 7, 2014 incident. The Board finds appellant has failed to meet her burden.

The record contains multiple reports from Dr. Hebrard covering the period April 10, 2014 to March 25, 2015 diagnosing back pain, lumbar sprain/strain, sacroiliac joint pain, parasthesia, lumbar radiculitis, sciatica, and lumbosacral strain. In his April 10, 2014 report, Dr. Hebrard noted that appellant's back pain flared after 20 minutes of loading a belt which involved pulling, pushing, bending, and twisting. He concluded that her lumbar back condition had been aggravated by these work factors. Dr. Hebrard did not provide a rationalized opinion explaining, however, how any of appellant's diagnosed conditions were in fact caused by pulling, pushing, bending, or twisting. The Board has held that a conclusory statement, without supporting rationale is of limited probative value.¹¹

While, in his June 3, 2014 report, Dr. Hebrard related that appellant had an initial injury lifting sacks, and a later injury while lifting bulk mail off a container, he again did not explain, with supporting rationale, how the April 7, 2014 incident of lifting bulk mail off a container would have medically caused the diagnosed condition. Thereafter, in his June 25, 2014 report, he again attributed an aggravation of her back condition to the bending, rotating, and twisting she performed on April 7, 2014. Dr. Hebrard explained that the work activities appellant performed caused increased lower lumbar disc stress. While he provided an opinion as to the cause of appellant's condition, there was no supporting rationale explaining how the accepted April 7, 2014 employment incident caused or aggravated appellant's back condition beyond noting that the identified activities caused stress on appellant's back. Dr. Hebrard attributed appellant's diagnosed conditions to her work activities on April 7, 2014, but did not explain how working 20 minutes was sufficient to cause or aggravate appellant's lumbar condition or cause what he described as increased stress to the back. In his May 8, July 7, and September 2, 2014, and March 25, 2015 reports, Dr. Hebrard opined that appellant's back condition had been caused by her employment and identified the date of injury. Medical reports consisting solely of conclusory statements without supporting rationale are of little probative value.¹² In addition, medical reports not containing rationale on causal relationship are entitled to little probative value and are generally insufficient to meet an employee's burden of proof.¹³ In view of the lack of any rationale provided by Dr. Hebrard on the issue of causal relationship, the Board finds that his opinions fail to establish that appellant's back condition had been caused or aggravated by the April 7, 2014 employment incident.

The record also contains work excuse notes dated April 10 and 21, 2014 from Dr. Hebrard and an April 7, 2015 report from Dr. Kennedy diagnosing acute exacerbation of chronic low back pain. However, neither doctor provided any opinion as to cause of the diagnosed condition or disability or whether it was causally related to the April 7, 2014 incident.

¹¹ See *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *William C. Thomas*, 45 ECAB 591 (1994) (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).

¹² See *id.*

¹³ See *D.U.*, Docket No. 10-144 (issued July 27, 2010); *S.S.*, 59 ECAB 315 (2008); *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *William C. Thomas*, *supra* note 11.

The Board has held that medical evidence offering no opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁴ Thus, Dr. Hebrard's work excuse notes and Dr. Kennedy's form report are insufficient to support 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 has not met her burden of proof to establish a lumbar condition caused or aggravated by the accepted April 7, 2014 incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 28, 2015 is affirmed.

Issued: April 7, 2016
Washington, DC

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

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

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

¹⁴ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, *supra* note 8; *Jaja K. Asaramo*, 55 ECAB 200 (2004).