

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

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<b>J.L., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 15-0830</b>
	)	<b>Issued: January 15, 2016</b>
<b>U.S. POSTAL SERVICE, POST OFFICE, Jamaica, NY, Employer</b>	)	
	)	

*Appearances:*  
 Thomas S. Harkins, Esq., for the appellant  
 Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
 CHRISTOPHER J. GODFREY, Chief Judge  
 COLLEEN DUFFY KIKO, Judge  
 VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On March 3, 2015 appellant, through counsel, filed a timely appeal from a December 12, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 has met her burden of proof to establish an injury causally related to a November 26, 2011 employment incident.

**FACTUAL HISTORY**

On November 27, 2011 appellant, then a 53-year-old Express Mail clerk, filed a traumatic injury claim (Form CA-1) alleging that on November 26, 2011 while in the

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

performance of duty she was carrying heavy bags and pulling them into a postal container when she felt pain in her left leg and hip.

Appellant submitted several reports dating from November 27 to December 27, 2011 from Dr. Demetrios Mikelis, a physiatrist. In his November 27, 2011 report, Dr. Mikelis noted that appellant was lifting bags and felt a sharp pain in her left leg. He diagnosed strain and sprain of left quadriceps and reported that she could not return to work. In the November 29, 2011 report, Dr. Mikelis noted that appellant was lifting heavy bags into a postal container and felt a sharp pain in her left leg radiating to her left hip. He diagnosed left hip pain, left thigh pain, and ruled out muscle strain. Dr. Mikelis checked a box marked "yes" as to whether the condition was caused or aggravated by an employment activity. For period of disability, he filled in "undetermined." Likewise, in his December 27, 2011 report, Dr. Mikelis noted the history above, and diagnosed left hip and left thigh pain. He again checked a box marked "yes" as to whether the condition was caused or aggravated by an employment activity. Dr. Mikelis noted that appellant was experiencing lower back pain and was unable to work from November 29 to December 27, 2011. He opined that, if the history was true, then her conditions were caused by her work injury.

By letter dated February 3, 2012, OWCP informed appellant of the type of evidence needed to support her claim.

In reports dated December 27, 2011 and January 31, 2012, Dr. Mikelis noted that appellant had traumatic lumbar spine pain syndrome, left hip pain, rule out sprain and strain, left thigh pain, rule out muscle strain. He noted that x-rays of the lumbosacral spine revealed multilevel degenerative changes, and x-rays of the left hip revealed arthritic changes, showing possible old trauma.

By decision dated March 14, 2012, OWCP denied appellant's claim. It found that the medical evidence did not establish a firm medical diagnosis in connection with the November 26, 2011 employment incident.

On March 29, 2012 appellant requested a review of the written record by an OWCP hearing representative. OWCP received statements from appellant dated March 29 and May 14, 2012. Appellant argued that she had worked 23 years for the employing establishment and sustained her injuries at work lifting heavy bags on hard floors. She noted that her injury began on November 26, 2011 while lifting 30- to 50-pound bags and she felt a sharp pain in her left leg radiating straight to her left hip. Appellant indicated that she could hardly walk, could not sit for a long time, used a cane, and needed physical therapy.

Appellant also submitted additional medical reports from Dr. Mikelis dating from January 31 to April 24, 2012. In his reports, Dr. Mikelis continued to indicate that appellant was status post work-related accident who had returned for a follow-up and remained totally disabled due to left hip, thigh, and lumbar spine pain. He noted arthritic changes on a magnetic resonance imaging (MRI) scan. Dr. Mikelis checked a box marked "yes" as to whether the condition was caused or aggravated by an employment activity and recommended physical therapy. OWCP also received copies of previously submitted reports.

A March 12, 2012 MRI scan of the left hip read by Dr. Robert D. Solomon, a Board-certified diagnostic radiologist, revealed arthritic changes and no muscular soft tissue mass and no evidence of a strain.

By decision dated July 11, 2012, an OWCP hearing representative affirmed that March 14, 2012 decision.

By letter dated March 13, 2013, counsel for appellant requested reconsideration. On March 19, 2013 OWCP received a December 7, 2011 report in which Dr. Mikelis noted appellant's history, diagnosed traumatic sprain of the left hip, left thigh pain, bronchial asthma, by history, under treatment, and allergies to Penicillin. Dr. Mikelis opined that, with a degree of medical certainty, the work incident was the competent producing cause of appellant's injuries and that there was a causal relationship between the accident and the injuries. He further opined that she was partially disabled from her employment as a postal clerk. OWCP also received copies of previously submitted reports.

By decision dated June 14, 2013, OWCP denied the claim finding that appellant had failed to establish a causal relationship between the employment incident of November 26, 2011 and a firm medical diagnosis.

On October 21 and November 17, 2013 appellant requested reconsideration. In a July 11, 2013 report, Dr. Andrew Brown, a Board-certified internist, noted that appellant had reported that on November 26, 2011 she was lifting 30- to 50-pound bags into a postal container when she felt a sharp pain in her left hip and thigh. Thereafter, appellant was limping and unable to walk. She related that her pain was a 9 on a scale of 1 to 10 and was constant. Appellant indicated that it had increased since the accident and affected her sleep. The pain radiated down to the left knee and then to the foot. Appellant reported symptoms of buckling and giving way. She related that the pain was worsened by standing, sitting, walking, and bending. It limited her ability to lift, stand, carry, walk, run, climb stairs, and exercise. The pain was reduced by lying down. Appellant reported that she needed assistance with cleaning, cooking, and shopping. Dr. Brown noted that appellant's mobility on and off the examining table was moderately to maximally impaired. Appellant was able to squat fully and rise without assistance. She used a cane to ambulate. Going from a sitting to standing position was difficult. Appellant was able to dress slowly with pain. Her gait was slow, guarded, and deliberate. Dr. Brown found that heel to toe walking was absent secondary to pain. Appellant's tandem gait was normal. Dr. Brown opined that "I feel that there is a direct causal relationship between the accident described and the patient's current injuries. The patient's symptoms and clinical findings are consistent with musculoskeletal injuries to the described areas." Dr. Brown diagnosed a left hip strain, with trochanteric bursitis, iliotibial band syndrome, and aggravation of degenerative joint disease. In a separate July 11, 2013 report, he found decreased motion and muscle strength.

In a September 12, 2013 report, Dr. Brown again noted appellant's history of injury and diagnosed a strain of the left hip, with trochanteric bursitis, iliotibial band syndrome, and aggravation of degenerative joint disease. He opined that the incident described by appellant was "a competent producing cause for the patient's clinical presentation." Dr. Brown noted that appellant's complaints were consistent with the history of injury and objective findings.

By decision dated February 19, 2014, OWCP denied modification of its prior decision.

On May 15, 2014 counsel for appellant requested reconsideration. In support of the request, appellant submitted an April 3, 2014 report from Dr. Brown. Dr. Brown explained that appellant reported left leg pain which she rated as a 10 out of 10. Appellant noted being unable to take public transportation and related limitations in her ability to ambulate, stand, lift, carry, kneel, squat, negotiate stairs and ladders, and perform repetitive-type activities with the left leg. She reported that her sleep was disrupted and difficulty maintaining one position. Dr. Brown noted appellant's past medical history that included hypertension, asthma, bronchitis, and "fatty liver." On examination, appellant was in obvious pain with significantly impaired mobility. Dr. Brown determined that she had difficulty rising from a sitting to a standing position as well as getting on and off the examining table. He noted that appellant had an antalgic gait which favored the left side and she ambulated with a cane. Dr. Brown examined her range of motion and provided findings which included pain with movement. He also found that palpation revealed tenderness along the iliotibial band, over the trochanteric bursa, and in the anterior aspect of the hip. Dr. Brown conducted muscle, grip, and vascular examination which revealed no acute pathology for the left leg. He diagnosed a strain of the left hip, with trochanteric bursitis, iliotibial band syndrome, aggravation of degenerative joint disease, and possible lateral femoral cutaneous nerve (LFCN) compression. Dr. Brown opined that the incident that appellant described was a competent producing cause of her clinical presentation. He explained that her complaints are consistent with appellant's history of injury and her objective findings. Dr. Brown opined that appellant was totally disabled. OWCP also received copies of previous reports.

By decision dated July 8, 2014, OWCP denied modification of its prior decision.

On September 30, 2014 counsel for appellant requested reconsideration. He submitted new medical evidence and argued that appellant established causal relationship.

The medical evidence included a July 11, 2014 report from Dr. Brown. Dr. Brown indicated that appellant was considering a possible left total hip replacement with another physician. Appellant reported residual left hip pain and greater radiation into the left leg along the lateral aspect to the ankle. Dr. Brown noted accounts of numbness and tingling and functional limitations as noted in his prior reports. He advised that her past surgical history included right and left knee surgery. Dr. Brown examined appellant and noted that she was in obvious pain, had impaired mobility, and exhibited difficulty rising from a seated to a standing position and from the examining table. He found that she had an antalgic gait favoring the left side and she ambulated with a cane. Dr. Brown provided range of motion measurements and found pain with movement, palpation that revealed tenderness over the iliotibial band, over the trochanteric bursa, and in the anterior aspect of the hip. He diagnosed a left hip strain, with trochanteric bursitis, iliotibial band syndrome, and aggravation of degenerative joint disease. Dr. Brown opined that the incident that appellant described was a competent producing cause for her clinical presentation. He advised that her complaints were consistent with the history of injury. Dr. Brown noted the history of injury was consistent with the objective findings. He opined that appellant was totally disabled.

In a July 14, 2014 attending physician's report, Dr. Brown checked a box "yes" to indicate that appellant's condition was employment related. He indicated the period of disability began on November 26, 2011 and was ongoing.

On October 17, 2014 OWCP received an undated statement from appellant. Appellant noted that on November 26, 2011 she had an injury to her left hip while in the performance of duty. She argued that it was almost three years and she "had not gotten any better."

In a decision dated December 12, 2014, OWCP denied modification of its prior decision.

### **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,<sup>2</sup> and that an injury was sustained in the performance of duty.<sup>3</sup> These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

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. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.<sup>5</sup> 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.<sup>6</sup>

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's 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, 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>

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<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>3</sup> *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>4</sup> *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>6</sup> *Id.*

<sup>7</sup> *I.J.*, 59 ECAB 408 (2008).

## ANALYSIS

Appellant alleged that she sustained a traumatic left leg and hip injury while carrying heavy bags and pulling them at work on November 26, 2011. OWCP accepted the incident but denied the claim because the medical evidence was insufficient to establish that the employment incident caused an injury. The medical reports of record do not establish that the carrying heavy bags and pulling them at work caused a personal injury on November 26, 2011.

Appellant submitted several reports from Dr. Mikelis. In his December 7, 2011 report, Dr. Mikelis noted appellant's history and offered diagnoses that included traumatic sprain of the left hip and left thigh pain. He opined that, to a degree of medical certainty, the work incident was the competent producing cause of appellant's injuries and that there was a causal relationship between the accident and the diagnosed condition. However, Dr. Mikelis did not explain the medical reasoning, or provide rationale, to support his opinion on causal relationship.<sup>8</sup> On January 31, 2012 he noted findings, including x-ray findings of left hip arthritic changes and possible old trauma. Dr. Mikelis opined that "if" appellant's history was true, then her conditions were caused by her employment injury. The Board notes that this opinion is speculative in nature.<sup>9</sup> Dr. Mikelis did not explain how a specific activity at work on November 26, 2011 caused or aggravated an injury. The need for reasoning is especially important as the evidence indicates that diagnostic tests of the left hip showed preexisting arthritis.

Reports from Dr. Mikelis also included several attending physician's reports in which he supported causal relationship simply by checking a box marked "yes" that appellant's condition was work related. However, the Board has held that an opinion on causal relationship which consists only of a physician checking "yes" on a medical form report without further explanation or rationale is of little probative value.<sup>10</sup> Dr. Mikelis did not explain the medical reasoning providing the basis for his opinion. In his November 27, 2011 report, he noted that appellant was lifting bags and felt a sharp pain in her left leg. Although, Dr. Mikelis diagnosed a strain, he did not offer any reasoning to support how the work activity caused or contributed to the strain.

The record contains several reports from Dr. Brown. They include reports dated July 11 and September 12, 2013 in which he noted appellant's history and findings on examination. Dr. Brown diagnosed a left hip strain, with trochanteric bursitis, iliotibial band syndrome, and aggravation of degenerative joint disease. Dr. Brown opined that the incident described by appellant was "a competent producing cause for the patient's clinical presentation" and noted that appellant's complaints were consistent with the history of injury and objective findings. He opined that "I feel that there is a direct causal relationship between the accident described and the

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<sup>8</sup> See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

<sup>9</sup> *Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

<sup>10</sup> *Alberta S. Williamson*, 47 ECAB 569 (1996).

patient's current injuries. The patient's symptoms and clinical findings are consistent with musculoskeletal injuries to the described areas." In reports dated April 3 and July 11, 2014, Dr. Brown also opined that the work incident was a competent producing cause of appellant's condition. He explained that her complaints are consistent with her history of injury and her objective findings. Dr. Brown opined that appellant was totally disabled. In a July 14, 2014 form report, he checked a box marked "yes" to indicate that appellant's condition was employment related. However, Dr. Brown has failed to explain the medical processes by which this particular employment incident caused appellant's condition. He did not explain how carrying heavy bags and pushing and pulling them at work caused or contributed to the diagnosed conditions. Without sufficient reasoning to support the conclusion, these reports are insufficient to meet appellant's burden of proof.<sup>11</sup> Moreover, the July 14, 2014 form report is of limited probative value as it provides support for causal relationship by checking a box "yes" without further reasoning or rationale.<sup>12</sup>

Other evidence provided by appellant is insufficient to establish the claim as it does not address the crucial issue of the causal relationship between appellant's hip and back conditions and her federal employment.<sup>13</sup>

An award of compensation may not be based on surmise, conjecture, or speculation.<sup>14</sup> As there is no reasoned medical evidence in the record explaining how the accepted employment incident caused or aggravated a medically diagnosed condition, appellant has not met her burden of proof.

On appeal, counsel for appellant argues that the submitted medical additional evidence was sufficient to establish her claim. However, as found above, the Board has found that evidence lacking.

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 failed to meet her burden of proof to establish an injury causally related to a November 26, 2011 employment incident.

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<sup>11</sup> See *supra* note 8.

<sup>12</sup> See *supra* note 10.

<sup>13</sup> *Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

<sup>14</sup> *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 12, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 15, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board