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

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| **J.S., Appellant** | ) | |
| **and** | ) | **Docket No. 15-1618** |
| | ) | **Issued: March 7, 2016** |
| **U.S. POSTAL SERVICE, POST OFFICE, Minneapolis, MN, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

### ***JURISDICTION***

On July 23, 2015 appellant filed a timely appeal from a July 16, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

### ***ISSUE***

The issue is whether appellant met her burden of proof to establish an injury in the performance of duty on December 8, 2014.

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant filed a timely request for oral argument in this case. By order dated December 29, 2015, the Board denied her request for oral argument as the Board does not have jurisdiction over the merits of the case and oral argument would further delay issuance of a Board decision and not serve a useful purpose. *Order Denying Request* for Oral Argument, Docket No. 15-1618 (issued December 29, 2015).

## ***FACTUAL HISTORY***

On May 30, 2015 appellant, then a 51-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 8, 2014 she sustained a strain of the right hip and buttock when she slipped on ice while carrying a package. She first received medical care on the date of injury and did not stop work. Appellant notified her supervisor on June 1, 2015. On the reverse side of the form, the employing establishment challenged the claim arguing that it was not filed within 30 days.

By letter dated June 11, 2015, OWCP notified appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the medical and factual evidence needed and was afforded 30 days to respond.

By letters dated June 5 and 23, 2015, the employing establishment controverted the claim arguing that appellant did not file a timely claim and failed to establish fact of injury and causal relationship. It further argued that the medical evidence of record indicated that her injury was not work related.

In a December 8, 2014 CentraCare Health medical report, Dr. Bruce W. Kuhlmann, a doctor of osteopathic medicine, reported that appellant complained of pain in the right sacroiliac and right buttocks region which occurred when she was carrying packages and slipped. He noted that she worked as a rural carrier and as of December 1, 2014 had begun parcel delivery which entailed pushing large wheeled flats to load the truck which she would then drive around and deliver. Dr. Kuhlmann provided findings on physical examination noting tenderness to palpation over the gluteal muscles on the right side and anterior cecum on the right side. He reported that appellant suffered a new injury to the lumbar and pelvis region.

In a December 12, 2014 medical report, Dr. Kuhlmann reported that appellant's original date of injury was May 6, 2009 when she worked as a rural carrier. Appellant recently returned after a long hiatus and reported that her duties required a lot of lifting and arm work to deliver parcel packages. She believed that she had reached maximum medical improvement, but then had significant deterioration since returning back to work. Dr. Kuhlmann noted pain in the upper back and neck.

In a February 13, 2015 medical report, Dr. Kuhlmann provided appellant work restrictions due to pain in the lateral epicondyles bilaterally given that her work involved the use of her hands.

Progress notes dated December 9, 2014 through May 5, 2015 from CentraCare Health were also submitted from certified medical assistants and registered nurses. In a December 22, 2014 progress note, Joanna Myers, a certified medical assistant, reported that appellant called complaining of back pain. Ms. Myers noted a history of back surgery one and a half years prior. She noted that appellant slipped at work and was seen on December 8, 2014 for this injury with complaints of difficulty sitting, walking, and standing. In a December 29, 2014 note, Ms. Myers reported that Dr. Kuhlmann did not believe the back issue to be work related.

In a July 6, 2015 medical report, Dr. Joel C. Shobe, a Board-certified orthopedic surgeon, reported that appellant returned for a follow-up due to left hip and leg symptoms with difficulty sitting. He noted a history of laminectomy surgery at L4-5 with left L4-5 discectomy and facet joint cyst excision in March 2014. Review of a May 11, 2015 magnetic resonance imaging (MRI) scan of the lumbar spine revealed evidence to suggest recurrent disc herniation on the left at L4-5 with some facet hypertrophy contributing to subarticular recess stenosis. Dr. Shobe further noted collapse of the L2-3 and L4-5 disc. He recommended surgical intervention by redoing the left L4-5 laminectomy and discectomy. Dr. Shobe provided appellant work restrictions.

By decision dated July 16, 2015, OWCP denied appellant's claim finding that the evidence of record failed to establish that her diagnosed condition of recurrent disc herniation on the left at L4-5 was causally related to the accepted December 8, 2014 employment incident.

## ***LEGAL PRECEDENT***

An employee seeking benefits under FECA has the burden to establish 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 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]

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 which is alleged to have occurred.[5] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such a causal relationship.[6] 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The

[3] *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

[4] *Michael E. Smith*, 50 ECAB 313 (1999).

[5] *Elaine Pendleton*, *supra* note 3 at 1143.

[6] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[7]

## ***ANALYSIS***

OWCP accepted that the December 8, 2014 employment incident occurred as alleged and that the claim was timely filed. While the employing establishment controverted appellant's claim alleging that it was untimely filed, there is no requirement that a claim be filed on the date of injury. In cases of injury on or after September 7, 1974, section 8122(a) of FECA provides that an original claim for compensation for disability or death must be filed within three years after the injury or death.[8] The issue is whether appellant established that the incident caused an injury. The Board finds that she did not submit sufficient medical evidence to support that she sustained an injury causally related to the December 8, 2014 employment incident.[9]

In a December 8, 2014 medical report, Dr. Kuhlmann reported that appellant complained of pain in the right sacroiliac and buttocks region which occurred when she was carrying packages as a rural carrier and her feet slipped. He provided findings on physical examination noting tenderness to palpation over the gluteal muscles on the right side and anterior cecum on the right side. Dr. Kuhlmann reported that appellant suffered a new injury to the lumbar and pelvis region. Pain and tenderness upon examination are, however, symptoms and not diagnoses of a verifiable condition.[10] In a December 12, 2014 medical report, Dr. Kuhlmann reported that appellant's original date of injury was May 6, 2009 when she worked as a rural carrier, noting complaints of pain in the upper back and neck. On February 13, 2015 he provided her work restrictions due to pain in the lateral epicondyles bilaterally.

The Board finds that the opinion of Dr. Kuhlmann is not well rationalized. While Dr. Kuhlmann had some understanding of the December 8, 2014 employment incident, he failed to establish a firm medical diagnosis and did not provide a rationalized opinion on causal relationship. He failed to provide a detailed medical history, only briefly noting an original May 6, 2009 injury. A well-rationalized opinion is particularly warranted when there is a history of a preexisting condition.[11]

Subsequent to his December 8, 2014 report, Dr. Kaufmann noted complaints to the upper neck, back, and elbows. The findings in these reports are of no probative value as appellant has

[7] *James Mack*, 43 ECAB 321 (1991).

[8] 5 U.S.C. § 8122(a); section 10.100(b) of OWCP regulations also provides that for injuries sustained on or after September 7, 1974, a notice of injury must be filed within three years of the injury. 20 C.F.R. § 10.100(b). *See also A.D.*, Docket No. 15-0732 (issued September 29, 2015).

[9] *See Robert Broome*, 55 ECAB 339 (2004).

[10] *See P.O.*, Docket No. 14-1675 (issued December 3, 2015) hip tenderness is a report of a symptom without a diagnosis of a verifiable medical condition. *See D.N.*, Docket No. 15-1587 (issued December 23, 2015) pain is a symptom not a diagnosis.

[11] *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

alleged a right hip and buttock injury in this claim. Thus, Dr. Kaufmann's medical reports do not constitute probative medical evidence because he failed to provide a clear diagnosis and does not adequately explain the cause of appellant's injury.[12]

The remaining medical evidence of record is also insufficient to establish that appellant sustained an injury causally related to the December 8, 2014 employment incident. Dr. Shobe's July 6, 2015 report is of limited probative value as he failed to provide findings pertaining to the right hip and buttock as alleged by appellant in this traumatic injury claim.[13] Rather, he referenced a history of left L4-5 laminectomy and discectomy in March 2014 and recommended redoing the surgery after a May 11, 2015 MRI scan of the lumbar spine revealed recurrent disc herniation on the left at L4-5. Dr. Shobe's report provides support for a preexisting condition unrelated to the December 8, 2014 employment incident as he submitted no findings related to the right hip and buttock injury as alleged by appellant in this claim. It is appellant's burden to specify the nature of her claim.[14]

The progress notes dated December 9, 2014 through May 5, 2015 from CentraCare Health are also insufficient to establish appellant's claim as the reports were submitted by certified medical assistants and registered nurses. Registered nurses, physical therapists, and physician assistants, are not considered physicians as defined under FECA and their opinions are of no probative value.[15] Any medical opinion evidence appellant may submit to support her claim should reflect a correct history and offer a medically sound explanation by the physician of how the specific employment incident pathophysiologically caused or aggravated her right hip and buttock injury.[16]

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.[17] An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.[18] Appellant's honest belief that the December 8, 2014 employment incident caused her medical injury is not in question, but that belief, however, sincerely held, does not constitute the medical evidence necessary to establish causal relationship. To establish a firm medical

[12] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

[13] The Board notes that appellant has a November 22, 2006 occupational disease Claim No. xxxxxx223 and a May 6, 2009 occupational disease Claim No. xxxxxx517. The record before the Board contains no other information pertaining to these claims.

[14] *O.S.*, Docket No. 13-438 (issued July 15, 2014).

[15] 5 U.S.C. § 8102(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 Roy L. Humphrey*, 57 ECAB 238 (2005) wherein the Board noted that as registered nurses, licensed practical nurses, and physician assistants were not physicians as defined by FECA, their opinions were of no probative value.

[16] *T.G.*, Docket No. 14-751 (issued October 20, 2014).

[17] *Daniel O. Vasquez*, 57 ECAB 559 (2006).

[18] *D.D.*, 57 ECAB 734 (2006).

diagnosis and causal relationship, she must submit a physician's report in which the physician reviews those factors of employment alleged to have caused her condition and, taking these factors into consideration, as well as findings upon examination and her medical history, explain how these employment factors caused or aggravated any diagnosed condition, and present medical rationale in support of his opinion.[19]

In the instant case, the record lacks rationalized medical evidence establishing a causal relationship between the December 8, 2014 employment incident and a medical condition. Thus, appellant has failed to meet her burden of proof.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

## ***CONCLUSION***

The Board finds that appellant did not meet her burden of proof to establish an injury causally related to the December 8, 2014 employment incident.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated July 16, 2015 is affirmed.

Issued: March 7, 2016
Washington, DC

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

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

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

[19] *Supra* note 10.