

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

---

C.M., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,  
Wauchula, FL, Employer

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 16-0241  
Issued: March 9, 2016**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
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  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On November 23, 2015 appellant, through counsel, filed a timely appeal from an October 13, 2015 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 a spinal nerve injury causally related to factors of her federal employment.

**FACTUAL HISTORY**

The case has previously been before the Board. On January 5, 2012 appellant, then a 37-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained a lumbar nerve injury causally related to her federal employment. Appellant identified

---

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

repetitive movements in delivering mail. As the Board noted in a July 3, 2013 decision,<sup>2</sup> appellant submitted reports from Dr. Darryl Miller, a Board-certified orthopedic surgeon, commencing on June 8, 2012. Dr. Miller diagnosed a right arm and left leg radiculopathy, C5-6 disc protrusion, disc bulges from C4-6, and straightening of lumbar lordosis. In the June 8, 2012 report, Dr. Miller indicated that appellant had symptoms approximately six months prior to December 2011.

By report dated July 12, 2012, Dr. Miller reported that appellant had indicated that she sustained an injury on or about December 28, 2011. He reported that he had reviewed the job requirements of a rural letter carrier and opined that the physical injuries sustained by appellant were directly caused by the requirements of her job. In a November 5, 2012 report, Dr. Miller indicated that a magnetic resonance imaging (MRI) scan on that date did not show a disc herniation, but there appeared to be central stenosis at C4-6. He opined that the physical requirements of her job “caused, contributed, aggravated, or exacerbated the central disc protrusion at CS-6, disc bulges at C4 through C6, and straightening of lumbar lordosis shown on [appellant’s] November 5, 2012 cervical MRI [scan], as [appellant] was asymptomatic prior to her date of injury.”

The Board found in its July 3, 2013 decision that Dr. Miller had not provided a rationalized medical opinion on causal relationship between a diagnosed condition and the identified employment factors. The Board noted a statement that the claimant was asymptomatic prior to an unexplained date of injury was of diminished probative value. It was also noted that Dr. Miller did not provide an adequate explanation as to how specific job duties as a rural carrier contributed to a diagnosed condition.

Appellant, through counsel, requested reconsideration and submitted a September 27, 2013 report from Dr. Miller. In his report Dr. Miller noted that he had seen appellant in November 2012, with MRI scans showing disc protrusion and bilateral foraminal stenosis at C5-6, and disc bulges at C7. He further noted that appellant was employed as a rural mail carrier that involved approximately 1,000 deliveries a day on her route, and the job involved entering and exiting the vehicle as well as rotation of body, torso, neck and upper extremities for the delivery of mail. Dr. Miller concluded, “I explained to [appellant] that due to the fact that she was asymptomatic before this event and with the type of work she does, this is certainly some type of injury that can be attributable to her work-related activities.”

By decision dated June 2, 2014, OWCP denied merit review of the claim, finding the evidence was substantially similar to previous evidence of record. Appellant appealed to the Board and the Board set aside the June 2, 2014 decision,<sup>3</sup> finding that the September 27, 2013 report from Dr. Miller was new and relevant evidence sufficient to require a merit review. The case was remanded to OWCP for a decision on the merits of the claim.

By decision dated October 13, 2015, OWCP reviewed the merits of the claim and denied modification. It found the evidence of record was insufficient to establish the claim for compensation.

---

<sup>2</sup> Docket No. 13-0908 (issued July 3, 2013).

<sup>3</sup> Docket No. 14-1507 (issued August 17, 2015).

## LEGAL PRECEDENT

A claimant seeking benefits under FECA has the burden to establish the essential elements of his claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.<sup>4</sup>

To establish that an injury was sustained in the performance of duty, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a 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 diagnosed condition is causally related to the employment factors identified by the claimant.<sup>5</sup>

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.<sup>6</sup> 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 must be based on a complete factual and medical background of the claimant.<sup>7</sup> Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.<sup>8</sup>

## ANALYSIS

In the present case, appellant has filed a claim alleging that she sustained spinal injuries causally related to her federal employment as a letter carrier. The Board reviewed medical evidence from Dr. Miller submitted prior to a July 3, 2013 OWCP decision, and found it was not sufficient to establish the claim for compensation. Appellant has also submitted a September 27, 2013 report from Dr. Miller, but the Board finds that this report lacks sufficient probative value to meet appellant's burden of proof.

Dr. Miller noted that appellant's job involves delivery of mail, with exiting and entering a vehicle multiple times. He wrote that this involves rotation of the torso, neck, and upper extremities. Dr. Miller did not, however, explain how this activity contributed to a diagnosed condition. He diagnosed C5-6 disc protrusion and foraminal stenosis, and multiple cervical disc bulges. It is important that the physician provide a reasoned explanation of the pathophysiologic mechanisms whereby the accepted work factors would cause the diagnosed conditions.<sup>9</sup> An

---

<sup>4</sup> 20 C.F.R. § 10.115(e), (f) (2005); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

<sup>5</sup> *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

<sup>6</sup> See *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>7</sup> *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>8</sup> *Id.*

<sup>9</sup> *H.B.*, Docket No. 14-1858 (issued February 5, 2015)

opinion that a condition is causally related to an employment injury because the employee was asymptomatic prior to an alleged injury is insufficient, without supporting rationale, to establish causal relationship.<sup>10</sup> Dr. Miller's conclusion that "with the type of work she does, this is certainly some type of injury that can be attributable to her work-related activities" is not sound medical rationale.

It is appellant's burden of proof to establish her claim. For the reasons discussed above, the Board finds appellant did not meet her burden of proof in this case.

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 established a spinal nerve injury casually related to factors of her federal employment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 13, 2015 is affirmed.

Issued: March 9, 2016  
Washington, DC

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

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

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

---

<sup>10</sup> See *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996) (because the employee is symptomatic after an incident is not sufficient to establish causal relationship without supporting rationale).