

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

L.R., Appellant)	
)	
and)	Docket No. 16-0347
)	Issued: May 16, 2016
U.S. POSTAL SERVICE, POST OFFICE,)	
Willingboro, NJ, Employer)	
)	

Appearances:
Thomas R. Uliase, 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 December 15, 2015 appellant, through counsel, filed a timely appeal from an October 5, 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 merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish a lumbar injury causally related to factors of her federal employment.

FACTUAL HISTORY

On October 21, 2013 appellant, then a 50-year-old letter carrier, filed a recurrence claim (Form CA-2a) alleging that on October 18, 2013 she sustained a recurrence of her May 16, 2012 work injury.² She explained that she had returned to full-duty work on September 7, 2013 and

¹ 5 U.S.C. § 8101 *et seq.*

² Under claim number xxxxx813, appellant has an accepted May 16, 2012 claim for exacerbation of preexisting herniated lumbar discs. OWCP also authorized L4-S1 discectomy on April 15, 2013.

was lifting heavy trays and buckets and bending over into the hampers when she experienced pain to her lower back. Appellant continued to work until October 18, 2013 when she could no longer work. She noted that she had undergone back surgery in April 2013.

Along with her claim, appellant submitted three progress notes from Dr. Joan F. O'Shea, a Board-certified neurosurgeon, dated October 16, 2012, July 30, and September 3, 2013. These notes pertain to appellant's May 16, 2012 work injury under claim number xxxxx813 and indicate that a June 30, 2012 magnetic resonance imaging (MRI) scan showed preexisting degenerative disc disease at L4-5 and L5-S1, with a left-sided herniated disc at L4-5 and L5-S1. In her September 3, 2013 report, Dr. O'Shea noted that appellant was status post discectomies on April 15, 2013, with maximum medical improvement. She opined that appellant could return to full-duty work, but appellant wanted to return to work for two to three hours per day and gradually increase her work hours. Dr. O'Shea suggested a functional capacity evaluation.

By letter dated November 25, 2013, OWCP noted the filing of appellant's recurrence claim associated with her claim under File No. xxxxxx813. Given appellant's description of events, however, it treated the recurrence claim as a new occupational disease rather than a recurrence. OWCP notified appellant of the deficiencies of her claim and afforded her 30 days to submit additional factual and medical evidence. Appellant was asked to describe in detail her employment-related activities which she believed contributed to her condition and a well-rationalized medical report in which her physician explained how the diagnosed medical condition was caused or aggravated by her employment duties.

OWCP received appellant's January 9, 2014 signed statement of certification and two prescriptions scripts from Dr. O'Shea dated January 7, 2014.

In a January 8, 2014 note, Dr. Paul R. Lanzo, an osteopath, indicated that appellant was seen for recurrent back pain. He related that appellant's December 10, 2013 MRI scan showed recurrent herniated disc at L4-5 and L5-S1, and that she was unable to work.

By decision dated February 14, 2014, OWCP denied appellant's occupational disease claim as the medical component of fact of injury has not been established. It found that there was no medical evidence which substantiated that a medical condition had been diagnosed as causally related to the alleged employment factors.

On February 20, 2014 appellant's counsel requested an oral hearing before an OWCP hearing representative. A hearing was held on June 11, 2014 by video conference. Appellant stated that she returned to full duty on September 7, 2013 and by October 18, 2013, she woke up in severe pain and could barely walk. She claimed she did not want to return to full duty in September 2013, when Dr. O'Shea had released her, because she wanted to gradually work her way back and return to work two to three hours per day. Appellant indicated that her back pain was at the same level where she had her prior back surgery. She had not worked since January 2014 and indicated that she had no intervening injuries.

Appellant submitted an August 30, 2013 physical therapy note, a copy of a December 16, 2013 MRI scan, and treatment reports from Dr. O'Shea from April 2013 through January 2014.

In a November 5, 2013 report, Dr. O'Shea indicated that appellant returned to work on September 15, 2013. Appellant's postmaster put her on the street for three to four hours and she

started to have more back pain because she had wanted to work only two hours a day and work up to full duty over time. Dr. O'Shea indicated that appellant was status post a workers' compensation accident on May 16, 2012, which resulted in herniated discs at L4-5 and L5-S1 on the left and a discectomy on April 15, 2013. Appellant had continued to do well following surgery. Dr. O'Shea noted that appellant had been having problems at work with increased activity and that appellant felt that she could perform indoor work which would not require lifting greater than 30 pounds. She suggested that appellant be provided a stool or chair with a back when she was doing that work so she had the option of sitting or standing. Dr. O'Shea opined that appellant could return to full-time work with lifting restrictions. In her December 10, 2013 report, she suggested that appellant undergo a new MRI scan of the lumbosacral spine to rule out recurrent disc herniation. In her January 7, 2014 report, Dr. O'Shea noted that appellant did not provide her MRI scan films. She suggested lumbosacral epidural injections and opined that appellant could return to work with lifting no greater than 15 pounds and working in a chair with a back.

By decision dated August 26, 2014, an OWCP hearing representative affirmed the prior decision. She found that the medical reports lacked a history of the development of a new injury or a diagnosis in connection with the employment factors.

On July 31, 2015 OWCP received appellant's July 24, 2015 request for reconsideration in which appellant's counsel suggested that appellant had provided *prima facie* factual medical evidence or, in the alternative, provided sufficient medical evidence to require additional medical development.

In support of her reconsideration request, appellant submitted diagnostic testing from April 29, 2008 through May 3, 2011, patient visit update forms from April 29, 2008 through March 21, 2011, a January 21, 2010 prescription for medicine, a June 26, 2012 progress note, and a medical report dated March 21, 2011.

In a July 22, 2015 report, Dr. Lanza noted the history and medical course of appellant's original back injury. He noted that Dr. O'Shea had released appellant to return to work without any restrictions on September 15, 2013. Dr. Lanza examined appellant on October 18, 2013 for recurrent back pain since returning to work. Appellant claimed she was unable to work more than three hours. Dr. Lanza noted examination findings of restriction of motion in the lumbar region at 60 degrees with flexion and 30 degrees with extension. Appellant's pain was centered around the lumbar spine with radiation to the legs. Dr. Lanza opined that appellant's lumbar condition had been aggravated by her return to work. He gave her a note to return to work on a restricted schedule and to follow-up with Dr. O'Shea.

By decision dated October 5, 2015, OWCP denied modification of its 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, 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 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) 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 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 the claimant. The medical evidence required to establish causal relationship is usually rationalized medical 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.⁵

Appellant has the burden of establishing by the weight of the substantial, reliable, and probative evidence, a causal relationship between her current back condition and her federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁶

ANALYSIS

Under claim number xxxxx813, appellant has an accepted May 16, 2012 back injury for exacerbation of preexisting herniated lumbar disc, for which she underwent authorized L4-5, L5-S1 discectomy on April 15, 2013. She was released to return to full duty without restrictions on September 3, 2013. Appellant returned to full-duty work on September 7, 2013. She filed a recurrence claim on October 18, 2013. Due to the circumstances surrounding the claimed injury, OWCP developed the claim as a new occupational disease claim. It accepted that appellant's job duties required lifting heavy trays and buckets, as well as bending over into the hampers while working as a letter carrier. OWCP denied appellant's claim as the medical evidence failed to establish a medical diagnosis in connection with the established work factors. The Board affirms the denial of this claim.

Appellant submitted multiple diagnostic testing reports, patient visit forms, progress notes, and medical reports which predate the current alleged injury. Accordingly, this evidence

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 *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

is of no probative value to support the current claim. The narrative reports from Dr. O'Shea dated October 16, 2012, July 30, and September 3, 2013 provide a diagnosis of herniated disc of L4-5, L5-S1 which was given in connection with appellant's previous claim number xxxxx813 for her accepted May 16, 2012 back injury. The October 16, 2012 report clearly notes that appellant has preexisting degenerative disc disease at L4-5 and L5-S1.

Following appellant's current claim, in her November 5, 2013 report, Dr. O'Shea noted the medical course of appellant's May 16, 2012 work injury and that she had returned appellant to work on September 15, 2013. Appellant started to have back pain with increased activity. In her January 7, 2014 report, Dr. O'Shea opined that appellant could return to work with lifting restrictions and working with a chair with a back. She recommended lumbosacral epidural injections. While Dr. O'Shea opined in her reports that appellant could return to work with restrictions, she failed to provide a diagnosis in connection with the claimed employment factors or provide an opinion concerning the cause of appellant's increased back pain. These reports failed to provide an opinion that appellant's current back condition, recommended restrictions, and treatment were caused or aggravated by the established work factors.⁷

In his January 8, 2014 report, Dr. Lanza indicated that appellant was seen for recurrent back pain, the December 10, 2013 MRI scan showed recurrent herniated disc at L4-5 and L5-S1, and that she was unable to work. However, Dr. Lanza failed to provide an opinion as to how the recurrent herniated discs at L4-5 and L5-S1 occurred and he failed to address whether and how the established work factors were competent to cause or contribute to such a condition.⁸ Further, he did not address the fact that appellant had preexisting degenerative disc disease at L4-5 and L5-S1 or that she has sustained a previous traumatic injury which resulted in herniated discs of L4-5 and L5-S1 and surgery. In his July 22, 2015 report, Dr. Lanza opined that appellant's recurrent back pain had been aggravated by her return to work. While Dr. Lanza noted the history and medical course of appellant's original back injury in his July 22, 2015 report, he failed to indicate how her claimed occupational injury occurred, nor did he provide a diagnosis in connection with the established work factors. Dr. Lanza's reports fail to establish a history of the development of a new injury or diagnosis in connection with the claimed employment factors. Thus, his reports are insufficient to establish appellant's claim.

The December 16, 2013 MRI scan report is of limited probative value as it lacks a medical opinion that the diagnosed conditions were caused or aggravated by the accepted work factors.⁹

The Board finds that the evidence of record does not establish a medical diagnosis in connection with appellant's established work factors. Consequently, appellant failed to establish the medical component of fact of injury.

On appeal, appellant's counsel contends that the medical evidence supports the worsening of appellant's low back condition was work related and that there were no outside

⁷ See *R.C.*, Docket No. 15-315 (issued May 4, 2015); *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

⁸ *Id.*

⁹ See *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

injuries. He suggests that appellant has provided sufficient evidence to establish that she suffered an aggravation of her low back condition upon her return to work or, alternatively, that there is sufficient medical evidence to require further medical development by OWCP. As discussed above, the medical evidence submitted lacks a history of the development of a new injury or a diagnosis in connection with the claimed employment factors.

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 that she sustained a lumbar condition causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the October 5, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 16, 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