

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

L.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Tampa, FL, Employer**

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**Docket No. 16-0368
Issued: May 11, 2016**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 22, 2015 appellant, through counsel, filed a timely appeal from a September 29, 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 lumbar injury causally related to her accepted October 29, 2014 employment incident.

FACTUAL HISTORY

On November 1, 2014 appellant, then a 42-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 29, 2014 she sustained a strain of her right lower back when she was delivering a heavy package weighing 30 to 40 pounds and a customer's dog brushed by her causing her to lose her balance. She noted a burning feeling and pain on her right

¹ 5 U.S.C. § 8101 *et seq.*

lower back, but she continued with her deliveries. Appellant stopped work on October 29, 2014 and first received medical care on November 2, 2014.

In a November 1, 2014 narrative statement, appellant's supervisor reported that on October 29, 2014 appellant called the office informing her that she had just delivered a package and her back was hurting. Appellant thought she may have pulled a muscle but wanted to wait and see if it would heal on its own.

The employing establishment issued appellant a properly completed Form CA-16, authorization for examination, dated November 1, 2014, which indicated that appellant was authorized to seek medical treatment with Lee Convenient Care related to the alleged October 29, 2014 injury. The employing establishment noted that there was doubt regarding whether the employee's condition was caused by an injury sustained in the performance of duty or otherwise related to employment.

In a November 2, 2014 diagnostic report, Dr. David S. Gerson, a Board-certified diagnostic radiologist, reported that an x-ray of the lumbar spine revealed moderate loss of disc space height L3-4 with no definite evidence of fracture or dislocation.

By letter dated December 1, 2014, OWCP notified appellant that her claim was initially administratively handled to allow medical payments, as her claim appeared to involve a minor injury resulting in minimal or no lost time from work. The merits of her claim had not been formally considered. Her claim was reopened because she had not returned to work in a full-time capacity. 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 asked to provide such evidence within 30 days.

In a November 2, 2014 medical report, Dr. Gustavo Prada, Board-certified in family medicine, reported that four days ago while working, appellant was picking up a package and a dog crossed her way causing her to become unstable. Appellant immediately felt low back pain radiating to the right leg with associated numbness and tingling in the right leg. She continued to work throughout the day, but the pain progressively worsened. The physician provided findings on physical examination and diagnosed backache and radiculopathy.

In a December 4, 2014 report, Carolyn Hoffman, a registered nurse (RN), reported that appellant sustained a low back injury on October 29, 2014 when she tripped over a client's dog. She noted a history of low back problems with surgery in 2004 for L3-4 fusion. Appellant also had residual numbness in the right leg that had resolved. She stated that she had not had problems with her back until this injury.

In a December 8, 2014 medical report, Dr. Paul Fortier, Board-certified in internal medicine, reported that appellant sustained an injury on October 29, 2014 when she was carrying a 40-pound package and stumbled over a dog as she was delivering the package to a home. When she stumbled, the package and her arms were flung forward away from her body, and the cantilevered weight of the package multiplied the force on her back as she awkwardly regained her footing, causing immediate pain in the right lower back radiating down her right buttock, thigh, and lower leg. Appellant complained of continued pain in the right low back radiating down the right buttock and thigh. A November 2, 2014 lumbar x-ray showed loss of disc space at L3. Dr. Fortier noted a history of lumbar fusion at L3-4 in 2003. Appellant reported that after

the lumbar fusion she had occasional self-limited back pain, but no pain radiating to her leg until this injury. Dr. Fortier reported that objective signs included lumbar soft tissue swelling, positive straight leg raise test, and loss of patellar reflex. He noted that additional objective testing, specifically a magnetic resonance imaging (MRI) scan of the lumbar spine, was necessary to treat her condition. Dr. Fortier diagnosed acute lumbar radiculopathy which started at the time of the injury and could be explained by mechanism of injury as noted in the history of his report.

In a December 17, 2014 narrative statement, appellant reported that, during the October 29, 2014 incident, she stumbled and fell to the ground. She further stated that she had no similar symptoms or disability prior to the injury.

By decision dated January 5, 2015, OWCP accepted the October 29, 2014 employment incident, but denied appellant's claim finding that the medical evidence of record failed to establish that her lumbar radiculopathy was causally related to the accepted incident.

On January 22, 2015 appellant, through counsel, requested a hearing before a hearing representative with the Branch of Hearings and Review.

In support of her claim, appellant submitted a January 28, 2015 medical report from Dr. Jaime Alvarez, Board-certified in neurological surgery. Dr. Alvarez reported that he had operated on appellant 10 years prior for a right L3-4 microdiscectomy. He provided treatment the prior spring for recurrent back pain radiating into the right lower extremity. At that time, appellant was found to have a right L4-5 disc herniation and a left L5-S1 disc herniation. Appellant improved on her own and was doing well until October 2014 when she fell forward while carrying a package at work. She complained of moderate central low back pain radiating across the lower back and pain radiating to the right buttock and anterolateral thigh and shin. Dr. Alvarez noted that her right leg pain was worse than her low back pain. He further noted that appellant was a rural carrier and had not worked since the October 2014 injury. Dr. Alvarez provided findings on physical examination and reviewed the results of a January 28, 2015 MRI scan of the lumbar spine. He diagnosed bilateral low back pain, noting that appellant continued to have neurocompression on the right side at L4-5 with a far lateral disc herniation compressing the right L4 nerve root. Dr. Alvarez further noted degenerative changes at L3-4.

A hearing was held on July 13, 2015. At the hearing, appellant testified that she sustained a work-related injury in 2003 when her postal truck was rear ended. The injury required back surgery at L3-4 and after two years of treatment, she had returned to work full duty without any problems until the most recent work incident in October 2014. Appellant was advised of the medical evidence needed in support of her claim and the record was held open for 30 days.

By decision dated September 29, 2015, OWCP's hearing representative affirmed the January 5, 2015 decision, finding that the medical evidence of record failed to establish that her current lumbar radiculopathy was causally related to the accepted October 29, 2014 employment incident.

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 or specific condition for which compensation is claimed are causally related to the employment injury.² 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.³

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.⁴ 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.⁵ 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 incident and must explain how the condition is related to the incident. The 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.⁶

ANALYSIS

OWCP accepted that the October 29, 2014 employment incident occurred as alleged. The issue is whether appellant established that the incident caused a lumbar injury. The Board finds that she failed to submit sufficient medical evidence to support that her current lumbar condition was causally related to the October 29, 2014 employment incident.⁷

² *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

³ *Michael E. Smith*, 50 ECAB 313 (1999).

⁴ *Elaine Pendleton*, *supra* note 2.

⁵ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁶ *James Mack*, 43 ECAB 321 (1991).

⁷ *See Robert Broome*, 55 ECAB 339 (2004).

In a December 8, 2014 medical report, Dr. Fortier reported that appellant sustained an injury on October 29, 2014 when she was carrying a 40-pound package and stumbled over a dog while delivering the package to a home. He explained that, when she stumbled, the package and her arms were flung forward away from her body, and the cantilevered weight of the package multiplied the force on her back as she awkwardly regained her footing, causing immediate pain in the right lower back radiating down her right buttock, thigh, and lower leg. Dr. Fortier diagnosed acute lumbar radiculopathy which started at the time of the injury and could be explained by the mechanism of injury noted in the history of his report.

The Board finds that the opinion of Dr. Fortier is not sufficiently rationalized. Dr. Fortier noted a history of lumbar fusion at L3-4 in 2003. Appellant reported that after the lumbar fusion she had occasional self-limited back pain, but no pain radiating to her leg until this injury. The Board notes that Dr. Fortier based his report on an inaccurate medical history as Dr. Alvarez' report claimed that appellant had continued complaints of right leg pain stemming back as early as spring 2014. The Board further notes that appellant has alleged that she had no prior right leg pain, but this allegation is inconsistent with the medical evidence of record.

Dr. Fortier did not address how appellant's current complaints could not have been caused by her preexisting injury nor did he discuss whether her preexisting injury had progressed beyond what might be expected from the natural progression of that condition.⁸ A well-rationalized opinion is particularly warranted when there is a history of preexisting condition.⁹ Moreover, while Dr. Fortier diagnosed acute lumbar radiculopathy, he indicated that a lumbar MRI would have been necessary to accurately assess appellant's injury. Thus, Dr. Fortier did not have a complete medical history to provide an opinion on appellant's injury and the cause of her condition. Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.¹⁰ The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record, and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.¹¹ Given this assessment, Dr. Fortier has failed to establish that appellant's symptoms and injury are causally related to the October 29, 2014 employment incident.¹²

Dr. Alvarez's January 28, 2015 medical report is also insufficient to establish appellant's claim. Dr. Alvarez reported performing the right L3-4 microdiscectomy 10 years prior. He further noted treating appellant in spring 2014 for recurrent back pain radiating into the right lower extremity where she was found to have a right L4-5 disc herniation and a left L5-S1 disc herniation. Dr. Alvarez' interpretation of the January 28, 2015 lumbar MRI scan indicated neurocompression on the right side at L4-5 with a far lateral disc herniation compressing the

⁸ *R.E.*, Docket No. 14-868 (issued September 24, 2014).

⁹ *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

¹⁰ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

¹¹ *See Lee R. Haywood*, 48 ECAB 145 (1996).

¹² The Board has held that an opinion that a condition is causally related because the employee was asymptomatic before the injury is insufficient, without adequate rationale, to establish causal relationship. *Supra* note 9.

right L4 nerve root and degenerative changes at L3-4. 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, in particular physiologically, caused or aggravated her lumbar injury.¹³ Dr. Alvarez' report supports that the current symptoms are related to appellant's preexisting condition and not the October 29, 2014 incident.¹⁴

The remaining medical evidence of record is also insufficient to establish causal relationship between appellant's lumbar injury and the October 29, 2014 employment incident. Dr. Prada's November 2, 2014 report provided a diagnosis of radiculopathy but failed to provide any opinion regarding the cause of appellant's injury. Dr. Gerson's November 2, 2014 report interpreted diagnostic imaging studies and provided no opinion on the cause of appellant's injury. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.¹⁵

The December 4, 2014 nursing notes are also insufficient to establish appellant's claim. Registered nurses, physical therapists, and physician assistants, are not considered physicians as defined under FECA. Their opinions are of no probative value regarding the medical issue of causal relationship.¹⁶ 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, in particular physiologically, caused or aggravated her lumbar condition.¹⁷

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.¹⁸ An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.¹⁹ Appellant's honest belief that the October 29, 2014 employment incident caused her medical injury is not in question, but that does not constitute the medical evidence necessary to establish causal relationship.²⁰

¹³ *T.G.*, Docket No. 14-751 (issued October 20, 2014).

¹⁴ *See L.M.*, Docket No. 14-973 (issued August 25, 2014); *R.G.*, Docket No. 14-113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-548 (issued November 16, 2012).

¹⁵ *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

¹⁶ 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. FECA provides that the term "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).

¹⁷ *Supra* note 15.

¹⁸ *Daniel O. Vasquez*, 57 ECAB 559 (2006).

¹⁹ *D.D.*, 57 ECAB 734 (2006).

²⁰ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

In the instant case, the record lacks rationalized medical evidence establishing causal relationship between the October 29, 2014 employment incident and appellant's lumbar radiculopathy. Thus, appellant has failed to meet her 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 10.607.²¹

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish a lumbar condition causally related to the October 29, 2014 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated September 29, 2015 is affirmed.

Issued: May 11, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

²¹ The record contains a Form CA-16 signed by the employing establishment official on November 1, 2014. When the employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the CA-16 form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. See 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608 (2003). The record is silent as to whether OWCP paid for the cost of appellant's examination or treatment for the period noted on the form.