

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

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L.C., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Melville, NY, Employer )

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**Docket No. 16-0869  
Issued: October 13, 2016**

*Appearances:*  
*Appellant, pro se*  
*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 22, 2016 appellant filed a timely appeal from a December 9, 2015 merit decision and a February 8, 2016 nonmerit 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.

**ISSUES**

The issues are: (1) whether appellant met her burden of proof to establish a lower back injury causally related to the accepted October 20, 2015 employment incident; and (2) whether OWCP abused its discretion in denying appellant's request for a review of the written record.

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

## **FACTUAL HISTORY**

On October 20, 2015 appellant, a 52-year-old mail clerk, filed a traumatic injury claim (Form CA-1) alleging that she injured her lower back when she bent over to pick up a parcel of mail. She stopped work on October 20, 2015.

In a report dated October 20, 2015, Dr. Bhanumathy Vinayagasundaram, Board-certified in family practice, opined that appellant should remain out of work until being reevaluated on October 27, 2015.

By letter to appellant dated November 4, 2015, OWCP advised appellant that while it had initially handled her claim administratively and authorized payment of a limited amount of medical expenses, it was reopening her claim because her medical bills had exceeded \$1,500.00. It noted that the merits of the claim now needed to be formally considered and advised that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. OWCP asked appellant to submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition, and an opinion as to whether her claimed condition was causally related to her federal employment. Appellant was afforded 30 days to submit the additional evidence.

In an October 20, 2015 report, received by OWCP on November 25, 2015, Dr. Vinayagasundaram advised that appellant was experiencing low back pain which started that morning at work when she lifted up a parcel from the floor. He reported that appellant had left-sided low back pain without sciatica, as shown by x-ray.

In a separate October 20, 2015 report, received by OWCP on November 25, 2015, Dr. Vinayagasundaram noted that appellant had left-sided low back pain *with* sciatica. (Emphasis added).

In an October 20, 2015 report, received by OWCP on November 25, 2015, Dr. Andresito Pacis, a specialist in diagnostic radiology, noted that appellant had findings consistent with mild-to-moderate degree of degenerative osteoarthropathy of the left hip, and mild facet joint arthropathy at L5-S1. He recommended that appellant undergo a magnetic resonance imaging (MRI) scan if her symptoms persisted or progressed.

An October 21, 2015 radiology report, received by OWCP on November 25, 2015, revealed that appellant had left-sided low back pain with left-sided sciatica and had evidence of minimal facet joint sclerosis with narrowing at L5-S1. The test results showed no evidence of blastic or lytic lesions. The report noted that appellant had mild facet joint arthropathy at L5-S1.

In an October 27, 2015 report, Dr. Vinayagasundaram essentially reiterated his previous findings and conclusions. He noted that appellant continued to experience low back pain and left hip pain which started after an injury at work on October 20, 2015. Appellant rated her pain as a 3 on a scale of 1 to 10 and the pain radiated to the left foot. Dr. Vinayagasundaram reiterated that appellant had left-sided low back pain without sciatica and referred her for physical therapy.

In a duty status report (Form CA-17) dated November 2, 2015, Dr. Vinayagasundaram advised that appellant was experiencing lower back and left hip pain and checked a box marked

“yes” indicating that appellant’s account of the October 20, 2015 work incident was consistent with the injury.

In form reports dated November 3 and 18, 2015, Dr. Vinayagasundaram essentially reiterated his previous findings and conclusions. In his November 18, 2015 State of New York Doctor’s Progress Report, however, he checked a box marked “no” indicating that the incident that appellant described was not the competent medical cause of the injury/illness; and checked a box marked “no” indicating that appellant’s complaints were inconsistent with the history of the injury/illness.

By decision dated December 9, 2015, OWCP denied the claim, finding that she had failed to provide medical evidence sufficient to establish a low back injury causally related to the accepted October 20, 2015 work incident.

On January 19, 2016 OWCP received appellant’s request for a review of the written record before an OWCP hearing representative. The request was postmarked January 17, 2016.

In a decision dated February 8, 2016, OWCP denied appellant’s request for review of the written record as untimely filed pursuant to 5 U.S.C. § 8124. It informed appellant that her case had been considered in relation to the issues involved and that the request was further denied as the issue in this case could be addressed by requesting reconsideration from the district office and submitting evidence not previously considered.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> has the burden of proof to establish that 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, that an injury was sustained 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.<sup>3</sup> These are the essential elements of each and every 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

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<sup>2</sup> *Id.*

<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

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>

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>7</sup>

An award of compensation may not be based on surmise, conjecture, or speculation. Neither, the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated, or aggravated by her employment is sufficient to establish causal relationship.<sup>8</sup> Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

### **ANALYSIS -- ISSUE 1**

It is uncontested that appellant experienced pain in her lower back when she bent over to pick up a parcel of mail on October 20, 2015. The question of whether an employment incident caused a personal injury can only be established by probative medical evidence.<sup>9</sup> The Board finds that appellant has failed to submit rationalized, probative medical evidence to establish that the October 20, 2015 employment incident caused a personal injury and that the work accident would have been competent to cause the claimed injury.

Appellant submitted several reports from Dr. Vinayagasundaram who noted her complaints of low back and low hip pain and found, based on his examination and diagnostic tests, that she did not have sciatica.<sup>10</sup> In a October 20, 2015 report, Dr. Vinayagasundaram opined that appellant should remain out of work until being reevaluated on October 27, 2015, but did not attribute her absence to any work-related injury or condition. In another October 20, 2015 report, Dr. Vinayagasundaram advised that appellant was experiencing low back pain and opined that she had left-sided low back pain without sciatica, as shown by x-ray. In reports dated October 27, November 3, and 18, 2015, Dr. Vinayagasundaram essentially reiterated his previous findings and conclusions and advised that appellant continued to experience low back pain and left hip pain which started after an injury at work on October 20, 2015. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.<sup>11</sup> While Dr. Vinayagasundaram noted complaints of low back and left hip pain

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<sup>6</sup> *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(ee).

<sup>7</sup> *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

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

<sup>9</sup> *Supra* note 5.

<sup>10</sup> The record contains conflicting opinions and documentation as to whether or not appellant had sciatica. As noted in several reports Dr. Vinayagasundaram asserted that appellant had low back pain without sciatica; however, he noted in one of his October 20, 2015 reports that appellant did in fact have sciatica. In addition, Dr. Pacis also asserted in his October 21, 2015 report noted that appellant had left-sided low back pain with left-sided sciatica.

<sup>11</sup> *See Anna C. Leanza*, 48 ECAB 115 (1996).

which he generally attributed to the October 20, 2015 work incident, his reports did not contain a probative, rationalized opinion regarding whether the October 20, 2015 work incident caused a personal injury. They did not sufficiently explain how medically appellant would have sustained a lower back injury because she tripped and fell to the ground on October 20, 2015.<sup>12</sup>

In a Form CA-17 dated November 2, 2015, Dr. Vinayagasundaram checked a box marked “yes” indicating that appellant’s work incident was consistent with her back injury. The Board has held that form reports checking a box to denote causal relationship, without more by way of medical rationale, are of little probative value.<sup>13</sup>

In fact, in his November 18, 2015 form report, Dr. Vinayagasundaram indicated that he did not believe appellant’s low back complaints were causally related by checking boxes marked “no” which queried whether the incident that appellant described was the competent medical cause of the injury/illness and whether her complaints were consistent with the history of the injury/illness. The Board thus finds that Dr. Vinayagasundaram’s opinion regarding causal relationship is equivocal in nature, and insufficient to establish causal relationship.<sup>14</sup>

In his October 20, 2015 report, Dr. Pacis noted findings consistent with mild-to-moderate degree of degenerative osteoarthropathy of the left hip and mild facet joint arthropathy at L5-S1. He recommended that appellant undergo a lumbar spine MRI scan in the event her symptoms continued or worsened. Dr. Pacis failed to adequately describe the accepted incident or to provide a medical explanation as to how the incident would have been competent to cause the claimed condition. His reports failed to demonstrate a causal connection between appellant’s October 20, 2015 work incident and appellant’s claimed lower back injury.<sup>15</sup>

In the October 21, 2015 radiology report it was noted that appellant had left-sided low back pain with left-sided sciatica and had evidence of minimal facet joint sclerosis with narrowing at L5-S1. OWCP also received test results which indicated that appellant had mild facet joint arthropathy at L5-S1, with no evidence of deistic or lytic lesions. Diagnostic test reports, however, do not discuss the cause of the diagnosed condition and are therefore of limited probative value regarding causal relationship.<sup>16</sup>

OWCP advised appellant of the evidence required to establish her claim; however, appellant failed to submit such evidence. Causal relationship must be established by rationalized medical opinion evidence. Appellant did not provide a medical opinion which describes or explains the medical process through which the October 20, 2015 work incident would have

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<sup>12</sup> *Id.*

<sup>13</sup> *F.R.*, Docket No. 16-1029 (issued August 11, 2016).

<sup>14</sup> *See L.S.*, Docket No. 16-0036 (issued May 23, 2016).

<sup>15</sup> Furthermore, the October 20, 2015 form report which supported causal relationship with a check mark is insufficient to establish the claim, as the Board has held that without further explanation or rationale, a checked box is not sufficient to establish causation. *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

<sup>16</sup> *L.B.*, Docket No. 16-0486 (issued June 28, 2016).

caused the claimed injury. Accordingly, she has failed to meet her burden of proof to establish a lower back injury causally related to an October 20, 2015 employment incident.

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.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8124(b)(1) of FECA provides that a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary.<sup>17</sup> Section 10.615 of the federal regulations implementing this section of FECA provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.<sup>18</sup> The request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.<sup>19</sup> A claimant is not entitled to a hearing if the request is not made within 30 days of the date of the decision.<sup>20</sup> OWCP has discretion, however, to grant or deny a request that is made after this 30-day period.<sup>21</sup> In such a case, it will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.<sup>22</sup>

### **ANALYSIS -- ISSUE 2**

On January 19, 2016 OWCP received appellant's request for review of the written record before an OWCP hearing representative of the December 9, 2015 decision. The request was postmarked January 17, 2016. Because appellant did not request review within 30 days of the December 9, 2015 decision, she was not entitled to a hearing as a matter of right under section 8124(b)(1). OWCP considered whether to grant a discretionary review and correctly advised appellant that her case had been considered in relation to the issue involved and that the request was further denied for the reason that the issue in the case could be addressed by requesting reconsideration from the district office and submitting evidence not previously considered.

### **CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that she sustained a low back injury causally related to her accepted October 20, 2015 employment

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<sup>17</sup> 5 U.S.C. § 8124(b)(1).

<sup>18</sup> 20 C.F.R. § 10.615.

<sup>19</sup> *Id.* at § 10.616(a).

<sup>20</sup> *James Smith*, 53 ECAB 188 (2001).

<sup>21</sup> 20 C.F.R. § 10.616(b).

<sup>22</sup> *Supra* note 8.

incident. The Board also finds that OWCP did not abuse its discretion by denying appellant's request for review of the written record.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated February 8, 2016 and December 9, 2015 are affirmed.

Issued: October 13, 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