

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

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**K.G., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Louisville, KY, Employer**

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**Docket No. 15-1139  
Issued: September 28, 2016**

*Appearances:*  
*Appellant, pro se*  
*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 April 23, 2015 appellant filed a timely appeal from a March 3, 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 met her burden of proof to establish an injury causally related to factors of her federal employment.

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

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>2</sup> In an August 28, 2012 decision, the Board found that the case was not in posture for decision with regard to whether appellant sustained injuries to her lower back and upper right arm/shoulder on January 31, 2011 during her automation job assignments. The Board noted that the record contained reports from Dr. David L. Jackson, a treating Board-certified physiatrist, which attributed appellant's condition to being placed on automation machines at work.<sup>3</sup> The Board remanded the case to OWCP for referral of appellant to an appropriate Board-certified specialist to determine whether appellant's work activities caused or aggravated her claimed condition. The facts and circumstances outlined in the prior appeal are incorporated herein by reference.

The relevant medical reports upon which the Board based its remand were the May 10 and June 13, 2011 reports from Dr. Jackson. In a May 10, 2011 report, Dr. Jackson noted that appellant presented earlier in the year with complaints of back and shoulder pain related to work activities. He indicated that appellant was doing some lifting at work and had increased lower back and right shoulder pain. The physician examined appellant and found muscle tightness and loss of mobility in the lower spine and findings consistent with rotator cuff impingement of the right shoulder and evidence of degenerative changes in the lumbar spine appeared to have been aggravated by her work conditions. Dr. Jackson opined that appellant had severe lower back and right shoulder pain related to work activities and advised that she could "not return to work at this time."

In a June 13, 2011 report, Dr. Jackson noted that on February 1, 2011 appellant had low back and right shoulder pain complaints. He explained that appellant returned to work on January 1, 2011 after she had not worked the previous eight months. Dr. Jackson related that she was placed on "machines" that required lifting and loading mail weighing up to 70 pounds. He advised that she had to lift, twist, and place it into the machine. Dr. Jackson explained that, while doing this work, she developed acute lower back and right shoulder pain which worsened and was aggravated by sweeping the mail out of the machine. He advised that when he saw appellant on February 1, 2011, he diagnosed right rotator cuff tendinitis secondary to impingement and overuse from the described work activity. Dr. Jackson indicated that appellant

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<sup>2</sup> Docket No. 11-1832 (issued August 28, 2012). Appellant filed a traumatic injury claim alleging that she sustained injuries on January 31, 2011 to her lower back and upper right arm and shoulder in her capacity as an automation clerk. OWCP adjudicated the claim as an occupational claim and initially denied it on May 4, 2011 as the medical evidence was insufficient to establish a causal relationship between the claimed conditions and employment factors.

<sup>3</sup> In a September 27, 2010 report, Dr. Jackson noted seeing appellant for chronic skin ulceration related to allergic reactions at work. He found her disabled from work. On February 1, 2011 he treated her for chronic skin ulcerations and explained that appellant had returned to work in January 2011 and, since that time, her eruptions had recurred. She also had increasing low back and right arm pain. Dr. Jackson diagnosed chronic allergic reactions with subsequent skin ulcerations to lower extremities, chronic low back pain with possible degenerative spinal abnormalities, and right shoulder pain with evidence of rotator cuff impingement. A February 23, 2011 magnetic resonance imaging (MRI) scan of the lumbar spine revealed degenerative changes at L5-S1 that included a broad-based posterior disc bulge which was more prominent on the left, bilateral facet arthropathy, and mild bilateral neural foraminal narrowing. In a February 28, 2011 report, Dr. Jackson indicated that appellant had low back pain and right shoulder pain due to working on a machine at work.

had low back pain with diagnostic tests revealing evidence of an L5-S1 bulging disc herniation with degenerative discs at multiple levels. The physician opined that appellant's low back pain was related to the bulging disc that was inflamed and created discomfort secondary to work activities of lifting and twisting while loading machines. Dr. Jackson explained that he "assumed that her right rotator cuff tendinitis was caused by the activity at work which required her to do lifting and twisting which resulted in injury to her right rotator cuff tendon." He concluded that appellant had L5-S1 bulging disc causing low back pain that was caused by lifting twisting and loading machines at work, and that she also had right rotator cuff tendinitis secondary to impingement from lifting and twisting and loading mail at work.

Following the Board's prior decision,<sup>4</sup> on September 12, 2012, OWCP referred appellant to Dr. Stanley W. Collis, a Board-certified orthopedic surgeon, for a second opinion.

In an October 2, 2012 report, Dr. Collis noted appellant's history and provided results on examination. He found the right shoulder normal, the right elbow, right wrist, and right hand examination was negative, and the lumbar spine revealed normal curvature and reasonably good motion. Dr. Collis indicated that x-rays of the right shoulder were normal and revealed nothing remarkable. Lumbar spine x-rays revealed good mineralization and a degenerative disc lesion at L5-S1. Dr. Collis diagnosed mild synovitis of the right shoulder and noted some discomfort on extreme abduction and flexion of the shoulder. He also diagnosed degenerative disc lesion of L5-S1. Dr. Collis explained that appellant's mild synovitis of the right shoulder was not bad and she could use her shoulder. He indicated that appellant had a degenerative disc lesion at L5-S1 which was preexisting the incident at work. Dr. Collis opined that her back pain was primarily due to degenerative disc at L5-S1, which was aggravated by her obesity. He further explained that he did not believe that her symptoms were severe enough to prevent her from work. Dr. Collis opined that appellant did not have any work-related problems with regard to the right shoulder and lumbar spine. He recommended injections to the right shoulder with cortisone and weight loss. Dr. Collis opined that he did not believe that the shoulder or back conditions caused disability from work.

In September 24, 2012 treatment notes, Dr. Jackson diagnosed chronic right shoulder pain, chronic low back pain, left leg pain, obesity, and hypertension.

By decision dated November 14, 2012, OWCP denied appellant's claim. It found that the medical evidence of record failed to demonstrate that the claimed medical conditions were causally related to work.

On May 8, 2013 appellant requested reconsideration. In an August 13, 2012 treatment note, Dr. Jackson diagnosed chronic low back pain, chronic right shoulder pain, right knee pain, and obesity. He indicated that appellant was unable to work.

By decision dated June 13, 2013, OWCP denied modification of the prior decision. It found that Dr. Collis was entitled to the weight of the medical evidence. It also found that the reports from Dr. Jackson were insufficiently rationalized as he failed to provide objective findings to support his opinion.

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<sup>4</sup> See *supra* note 2.

On June 17, 2013 appellant again requested reconsideration. She requested that she be sent for a referee examination.

OWCP received treatment notes from Dr. Jackson dating from June 13, 2011 to January 30, 2012, some of which were previously of record. Dr. Jackson indicated that her chronic low back pain and right shoulder pain were work related. He advised that appellant had pain, stiffness, and difficulty getting out of bed. She was not working. Dr. Jackson's notes were partially illegible but he noted that she was overweight, had full range of motion of the right shoulder, had "give way" weakness, had tenderness in the low back region, and had an antalgic gait. He diagnosed chronic low back pain, right shoulder and right knee pain. Dr. Jackson advised keeping appellant off work, and recommended additional treatment.

By decision dated August 6, 2013, OWCP denied appellant's request as insufficient to require reopening the case for merit review.

On May 27, 2014 appellant again requested reconsideration.<sup>5</sup> In a September 2, 2014 treatment note, Dr. Jackson advised that appellant had chronic right shoulder and lower back pain for which she continued to receive treatment. He indicated that she was unable to stand or walk for any period of time and she had difficulty using her right arm secondary to right shoulder pain. Dr. Jackson determined that she had limited use of the right arm with reaching, lifting, pushing and pulling. He related that she believed that her back pain had worsened over the past 12 months. Findings included that appellant was obese and had limited motion of the right shoulder. Appellant had pain with range of motion and pain with impingement testing. There was no evidence of pelvic obliquity. Appellant was tender to palpation over the left lumbar region and had limited lumbar range of motion. Motor examination was intact. Appellant walked with a slow wide base. Dr. Jackson diagnosed chronic low back pain, arthritis with degenerative disc disease, and chronic right shoulder pain with rotator cuff impingement and arthritis. He indicated that appellant was totally disabled. Dr. Jackson opined that appellant had a work-related injury resulting in chronic lower back and right shoulder pain. He indicated that it was not a preexisting condition and it was permanent and stationary. Dr. Jackson opined that her condition was progressive and worsening and "no therapy or treatment will allow her to return to work."

In a February 13, 2015 letter, appellant and her representative requested reconsideration. They argued that a conflict existed between the second opinion physician and the treating physician and that an impartial medical examination should be provided. They also noted that appellant was approved by the Office of Personnel Management (OPM) for disability retirement and Social Security Administration (SSA) disability benefits. OWCP also received copies of previously received reports.

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<sup>5</sup> In a June 10, 2014 letter addressed to OWCP, appellant requested a hearing before the Board. On June 26, 2014 OWCP advised appellant that her appeal should be made to the Board if she would like review by the Board. On July 2, 2014 appellant appealed the August 6, 2013 OWCP decision to the Board. On September 24, 2014 the Board issued an order dismissing appeal. It found that appellant's appeal was untimely filed. Docket No. 14-1563 (issued September 24, 2014). Appellant also filed a second appeal on July 2, 2014 of the August 6, 2013 decision. The Board issued an order dismissing that appeal on February 3, 2015, finding that the duplicate appeal had been inadvertently docketed. Docket No. 14-1731 (issued February 3, 2015).

By decision dated March 3, 2015, OWCP denied modification of the prior decision. It found that the medical evidence of record was insufficient to establish that her diagnosed condition was caused or aggravated by the accepted work factors.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning 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>6</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>7</sup>

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, generally, is rationalized medical opinion 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.<sup>8</sup>

### **ANALYSIS**

Appellant alleged that she developed injuries to her lower back and upper right arm and shoulder while performing her work duties as an automation clerk. The evidence supports that appellant engaged in automation duties, but she has submitted insufficient medical evidence to establish that her conditions were caused or aggravated by these work duties or any other specific factors of her federal employment.

In a prior appeal, the Board remanded the case for further medical development. OWCP referred appellant to Dr. Collis who, in an October 2, 2012 report, noted appellant’s history and

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<sup>6</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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

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

provided results on examination. He found her right shoulder normal and the lumbar spine revealed normal curvature and reasonably good motion. Dr. Collis also explained that the right shoulder x-rays were normal while lumbar spine x-rays showed a degenerative disc lesion at L5-S1. He diagnosed mild synovitis of the right shoulder and degenerative disc lesion of L5-S1. Dr. Collis indicated that her mild right shoulder synovitis did not preclude her from using the shoulder and, furthermore, her degenerative disc lesion at L5-S1 preexisted the work incident. Dr. Collis explained that appellant's back pain was primarily due to degenerative arthritis at L5-S1, which was aggravated by her obesity. He further explained that he did not believe that her symptoms were severe enough to stop her from working. Dr. Collis opined that appellant was not disabled for work because of work-related problems in the shoulder or back. He explained that his examination of appellant was essentially normal, that x-rays showed a preexisting degenerative low back condition, and there was no basis to attribute any condition to work factors. The Board finds that Dr. Collis' report is sufficiently detailed and well-reasoned to constitute the weight of the medical evidence. Dr. Collis' report establishes that appellant has no employment-related low back or right shoulder condition. He explained that his examination of appellant was essentially normal and advised that she had a preexisting degenerative low back condition which was aggravated by her obesity. The Board finds that Dr. Collis based his report upon an accurate history and adequately attributed her current disability to nonwork-related conditions.

Appellant continued to submit evidence from Dr. Jackson. On September 2, 2014 Dr. Jackson noted treating appellant for chronic right shoulder and lower back pain. He indicated that she was unable to stand or walk for any period and had difficulty using her right arm due to right shoulder pain. Dr. Jackson reported findings and diagnoses that included chronic low back pain, arthritis with degenerative disc disease, chronic right shoulder pain with rotator cuff impingement and arthritis. He opined that appellant had a work-related injury resulting in chronic lower back and right shoulder pain. Dr. Jackson indicated that it was not preexisting and it was permanent and stationary. He opined that her condition was progressive and that "no therapy or treatment will allow her to return to work."

The Board finds that this opinion is not rationalized as he fails to explain how he attributed appellant's degenerative disc disease and low back and shoulder arthritis as related to the accepted condition. 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>9</sup> Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>10</sup> Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit. The Board finds that this report is insufficiently rationalized and is of limited probative

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<sup>9</sup> See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

<sup>10</sup> *Id.*

value with regard to causal relationship. The Board also notes that this report is not sufficiently rationalized to create a conflict with the opinion of Dr. Collis.<sup>11</sup>

In his June 13, 2011 to January 30, 2012 notes, Dr. Jackson opined that appellant's chronic low back pain and right shoulder pain were work related. However, he did not explain how particular work duties would cause or contribute to a diagnosed medical condition. As noted, part of appellant's burden of proof includes the submission of rationalized medical opinion addressing whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Other medical evidence from Dr. Jackson does not offer an opinion on causal relationship. These reports are of limited probative value.<sup>12</sup>

As there is no reasoned medical evidence explaining how appellant's employment duties caused or aggravated a medical condition involving her shoulders or low back, appellant has not met her burden of proof in establishing that she sustained a medical condition causally related to factors of her employment.

On appeal appellant requested that she be allowed 30 days for further legal arguments. The Board notes that no further legal arguments were received.<sup>13</sup> 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 met her burden of proof to establish an injury causally related to factors of her federal employment.

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<sup>11</sup> See *John D. Jackson*, 55 ECAB 465 (2004) (a simple disagreement between two physicians does not, of itself, establish a conflict; to constitute a conflict of medical opinion, the opposing physicians' reports must be of virtually equal weight and rationale).

<sup>12</sup> *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

<sup>13</sup> Before OWCP, appellant argued that her claim should be accepted noting that she was approved for OPM and SSA disability benefits. However, the Board has long held that entitlement to benefits under statutes administered by other federal agencies does not establish entitlement to benefits under FECA. *Joseph R. Santos*, 57 ECAB 554, 558 (2006).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 3, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 28, 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