

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

J.S., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Jackson, MS, Employer**

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**Docket No. 17-0507
Issued: August 11, 2017**

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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 6, 2017 appellant filed a timely appeal of a December 9, 2016 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 to consider the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a back injury causally related to the factors of her federal employment.

FACTUAL HISTORY

On February 25, 2015 appellant, then a 63-year-old librarian, filed an occupational disease claim (Form CA-2) alleging that, commencing January 20, 2015, she managed the library

¹ 5 U.S.C. § 8101 *et seq.*

in the absence of the library technician, who was on leave for 96 hours. She noted that she performed all the tasks in the library including cleaning tables and computer keyboards, opening large boxes of incoming books, shelving books, moving heavy mail containers, sorting mail, checking serials, and opening large journal archive shelves. Appellant claimed that she injured her back as a result of performing these duties.

By letter dated March 5, 2016, OWCP informed appellant that further medical evidence was necessary to support her claim, and afforded her 30 days to submit this evidence.

OWCP thereafter received medical evidence, including a February 2, 2015 report of Dr. Ashley Pullen, a Board-certified family practitioner. Dr. Pullen related that on February 2, 2015 appellant visited Baptist Medical Clinic at which time she complained of pain, onset two weeks prior, severity level mild to moderate, but worsening. She noted that appellant's symptoms were aggravated by daily activities and relieved by heat and over the counter medications. Dr. Pullen assessed appellant with back pain, onset two weeks prior. She also diagnosed osteoporosis, pleurisy, and lower urinary tract infection. In a report detailing a February 19, 2015 visit, Dr. Pullen noted that appellant's pain worsened at work when pushing a heavy cart. She reiterated appellant's diagnoses. Dr. Pullen also noted that appellant had thoracic as well as lumbar back pain and a history of osteoporosis. She indicated that appellant needed a magnetic resonance imaging (MRI) scan to rule out possible vertebral fractures.

Dr. Darin J. Hildoer, a diagnostic radiologist, interpreted a February 24, 2015 MRI scan of appellant's thoracic spine as showing acute to subacute mild-to-moderate compression fracture of the T5 vertebral body; acute mild compression fracture of the T6 vertebral body; minimal retropulsion of bone into the spinal canal; and minimal, if any, significant impingement of the cord. He also noted multilevel degenerative changes in the thoracic spine and small left-sided pleura effusion.

In a March 13, 2015 note, Dr. Joseph Traina a Board-certified neurosurgeon, indicated that appellant could not work until April 13, 2015 and at that time she could perform light duty with lifting limited to 10 pounds and occasional bending with frequent changes of position. In a report of the same date, he noted that she had an employment injury on January 20, 2015 and a second injury of lifting heavy books on February 17, 2015. Dr. Traina noted that appellant had an MRI scan which demonstrated a thoracic five and six fracture with no retropulsion of bone. He noted that she had been wearing a brace. Dr. Traina related that appellant had no prior history of injury in that area. He opined that she could not currently return to work, but could resume work on April 13, 2015 if her pain resolved and if she was no longer wearing the brace. Dr. Traina noted that, when appellant resumed work, she should be restricted to occasional bending and lifting no more than 10 pounds.

In a letter dated March 31, 2015, Ann Demrow, a training administrator for the employing establishment, stated that on February 17, 2015 appellant reported that she had injured her back while removing 40 books off the library shelf, placing them onto a cart, and pushing the cart of books to the circulation desk where the library technician worked. She noted that appellant also indicated that she suffered back strain on January 20, 2015 while the library technician was on scheduled leave. Ms. Demrow stated that appellant had mentioned this to her in passing in early February 2015, but Ms. Demrow had no recollection of the conversation. She

noted that occupational health placed appellant on bed rest and gave her a brace to wear. Ms. Demrow stated that, when and if appellant resumed work on April 13, 2015, she was restricted to occasional bending only and lifting no more than 10 pounds.

By decision dated April 29, 2015, OWCP denied appellant's claim. It determined that, although she had established the employment factors and a medical diagnosis, her claim was denied as she failed to establish that the diagnosed medical conditions were causally related to the accepted employment factors.

On June 5, 2015 appellant requested review of the written record by an OWCP hearing representative. By decision dated June 24, 2015, OWCP denied her hearing request as it was untimely filed. It also reviewed the request and determined that the issue could equally well be addressed by requesting reconsideration and submitting new evidence.

On January 4, 2016 appellant requested reconsideration. She alleged that her preexisting condition of osteoporosis was worsened by her employment-related injuries of January 20 and February 17, 2015. Appellant noted that she was in constant musculoskeletal discomfort in her thoracic and lumbar spine, which caused her to be in physical therapy to relieve aggravation.

Following OWCP's last merit review on April 29, 2015, appellant submitted an April 27, 2015 report wherein Dr. Traina indicated that he saw her on March 13, 2015 and that she reported a January 20, 2015 back injury at work. Dr. Traina indicated that she recuperated from that incident, but that, on February 17, 2015 while she was moving heavy books, she felt a sharp pain in her mid-back. He noted that he reviewed appellant's thoracic MRI scan which showed an acute fracture with no retropulsion of T5 and T6, and that he advised her to wear a brace for the next three months. In a June 26, 2015 progress report, Dr. Traina diagnosed fracture of thoracic vertebra, closed, with osteoporosis. He noted that appellant could continue working light duty.

In a March 26, 2015 report, Dr. David Melvin Walker noted that appellant was seen for follow-up of an employment-related injury to her thoracic spine. He noted that she reported that she was still experiencing a lot of pain in her thoracic spine as well with a new complaint of pain in her left subscapular region. Dr. Walker diagnosed compression fracture of thoracic spine T5-6. He prescribed rest and was off work until her next appointment with a neurosurgeon on March 13, 2015.

In duty status reports dated March 13 and April 2, 2015, Dr. Traina indicated that appellant sustained fractures to her back causally related to extra work she performed in the library on January 20, 2015 and a subsequent February 17, 2015 injury that she sustained during heavy pushing of a library cart. He noted limitations on her ability to work.

In a June 15, 2015 note, Dr. Pullen noted that appellant had a history of osteoporosis. She noted that appellant was seen on February 19, 2015 for back and side pain that began after moving heavy books in the library. Dr. Pullen noted that appellant was seen by the employing establishment's health center the prior day and was diagnosed with pleurisy. She noted that, due to appellant's history of osteoporosis, she recommended an MRI scan of the spine to rule out compression fractures as the heavy lifting could have resulted in a compression fracture of the

spine. Dr. Pullen noted that appellant had an MRI scan of the spine that did confirm acute compression fractures of the spine. She concluded that appellant has been referred to and followed by specialists since the diagnosis of vertebral compression fractures.

Appellant also submitted additional diagnostic tests. In a February 25, 2015 MRI scan of the cervical spine, Dr. Hildoer found degenerative changes in the spine. He noted disc desiccation at T11-12, mild disc desiccation at L2-3 with minimal broad-based disc protrusion and mild ligamentous flavus hypertrophy, but no significant central canal or neuroforaminal narrowing; at L3-4 he found disc desiccation with minimal broad-based disc protrusion and ligamentum flavum hypertrophy, but no significant central canal narrowing; at L4-5 he found mild disc desiccation with mild ligamentum flavum hypertrophy; and at L5-S1 he found disc desiccation with mild degenerative changes of the posterior facet joint and mild-to-moderate narrowing of the bilateral neural foramina. Dr. Walker also cosigned nursing notes and an MRI scan from February 24 and 25, 2015, which found status post fracture of thoracic spine and back pain.

Finally, appellant submitted a December 18, 2015 report by Dr. Jeffrey S. Ritter, a Board-certified rheumatologist, who noted that she was considered osteoporotic therefore he explained that her risk of fracture was high. He recommended a follow-up bone density test.

By decision dated February 3, 2016, OWCP denied modification of its April 29, 2015 decision as it determined that the evidence submitted on reconsideration continued to lack a physician's affirmative opinion, based on an accurate history of injury or work factors and based on objective findings on examination, supporting a cause and effect relationship between the work factors and any diagnosed condition.

On September 27, 2016 appellant again requested reconsideration. She argued that her preexisting condition of osteoporosis was worsened by her employment duties. Appellant also contended that her supervisor's description of her job duties was inaccurate. She discussed the medical evidence of record, and argued, *inter alia* that the medical reports from February 2015 showed fresh fractures. Appellant noted that physical therapy was prescribed, and that she continued to work under restrictions. She also described the work conditions in February 2015.

OWCP continued to receive medical evidence. In a March 4, 2015 report, Dr. Walker noted that appellant was still experiencing a lot of pain in the thoracic spine as well as a new complaint of pain in her left subscapular region. He diagnosed compression fracture of the thoracic spine T5-6. Dr. Walker recommended continued conservative management and noted that her prognosis was good.

In a June 11, 2015 report Dr. Emma Marie Bisson, a Board-certified radiologist, interpreted an MRI scan of the cervical spine as showing multilevel degenerative changes within the cervical spine and abnormal signal within the T5 and T6 vertebra bodies.

In a September 23, 2016 report, Dr. Pullen indicated that appellant was employed as a librarian and was known to lift and push heavy objects and loads of papers/books. She stated that appellant began to notice pain in her mid and lower back after lifting heavy objects, and was evaluated in the employee health office and was diagnosed with pleurisy. Dr. Pullen noted that,

after appellant failed therapy with nonsteroidal anti-inflammatory drugs, she was evaluated for worsening of the same complaints. Appellant had x-rays that were within normal limits, but the back pain continued. She was referred for an MRI scan of her back for continued discomfort in her back and history of osteoporosis of the spine. Dr. Pullen noted that appellant was diagnosed with vertebral fractures. She explained that appellant had also been evaluated by a specialist, and that the specialist agreed that appellant's osteoporosis potentially increased her risk for vertebral fractures with acute injuries or heavy lifting.

By decision dated December 9, 2016, OWCP determined that the evidence of record was not of sufficient probative value to modify the February 3, 2015 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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 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.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or on 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 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

² *Id.*

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

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Id.*

ANALYSIS

The Board finds that appellant has failed to submit any medical opinion containing a rationalized, probative report which relates appellant's diagnosed conditions to the accepted factors of her federal employment. For this reason, she has not discharged her burden of proof.

Dr. Pullen did not provide a definitive opinion indicating that appellant's back condition was causally related to factors of her federal employment. In her February 19, 2015 report, she noted that appellant's pain worsened at work when pushing a heavy cart. Dr. Pullen noted back pain and diagnosed osteoporosis. At that time she indicated the "if the injury related to heavy lifting at work, appellant may benefit from being followed though her [employing establishment]." In a September 23, 2016 report, Dr. Pullen indicated that appellant was known to lift and push heavy objects and books, and began to notice pain when lifting heavy objects. She noted that appellant was diagnosed with vertebral fractures and that osteoporosis increased her risks for vertebral fractures with heavy lifting. Dr. Pullen's opinions are speculative and equivocal in nature. She never definitively stated that either appellant's osteoporosis or her vertebral fractures were caused by her federal employment. The Board has held that medical opinions which are speculative or equivocal in character have little probative value.⁶

Dr. Traina opined that appellant sustained fractures to her back causally related to extra work she performed in the library on January 20, 2015 and subsequently on February 17, 2015 when she was pushing a heavy library cart. However, a mere conclusion without the necessary rationale explaining how and why the physician believes that the accepted factors of appellant's employment resulted in the diagnosed condition is insufficient to meet her burden of proof.⁷

Neither the fact that a disease or condition manifested itself during a period of employment nor the belief that the disease or condition was caused or aggravated by an employment factor or incident is sufficient to establish causal relationship.⁸

Similarly, Dr. Walker merely noted that appellant indicated that she hurt herself during an employment-related injury; he did not provide any independent explanation as to causation. Generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how physical activity actually caused the diagnosed conditions.⁹

Dr. Ritter noted that appellant was at an increased risk for fractures due to osteoarthritis; he did not address appellant's specific employment factors or explain any causal relationship.

⁶ *S.S.*, Docket No. 14-0272 (issued July 8, 2014).

⁷ *G.M.*, Docket No. 14-2057 (issued May 12, 2015).

⁸ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁹ *A.M.*, Docket No. 14-1399 (issued September 23, 2014).

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 on the issue of causal relationship.¹⁰

Similarly, appellant submitted the results of various diagnostic studies, including images interpreted by Dr. Hildoer, Dr. Bisson, and Dr. Walker. However, these studies are of limited probative value as they do not address whether appellant's employment activities caused the diagnosed conditions.¹¹

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.¹² Appellant's honest belief that her employment activities caused her medical injury is not in question, but that belief, however sincerely held, does not constitute medical evidence to establish causal relationship.¹³ She 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.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a back injury causally related to the factors of her federal employment.

¹⁰ See *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹¹ *Supra* note 7.

¹² *D.D.*, 57 ECAB 734 (2006).

¹³ *H.H.*, Docket No. 16-0509 (issued September 16, 2016).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 9, 2016 is affirmed.

Issued: August 11, 2017
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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