

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

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**R.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Lancaster, TX, Employer**

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**Docket No. 17-0881  
Issued: August 7, 2017**

*Appearances:*

*Debra Hauser, Esq., for the appellant<sup>1</sup>  
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 March 13, 2017 appellant, through counsel, filed a timely appeal from a September 12, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from OWCP's September 12, 2016 decision was Saturday, March 11, 2017. Because the last day of the 180-day filing period fell on a Saturday, the filing period is extended until the close of the next business day, which was Monday, March 13, 2017. Accordingly, the appeal is timely filed pursuant to 20 C.F.R. § 501.3(f)(2).

## ISSUE

The issue is whether appellant met her burden of proof to establish that her claimed lumbar condition is causally related to her accepted factors of federal employment.

## FACTUAL HISTORY

On September 8, 2015 appellant, then a 43-year-old city carrier, filed an occupational disease claim (Form CA-2) for a back condition that she attributed to having been required to work outside her medical restrictions. Specifically, she noted that the employing establishment required her to walk more than what was medically defined. Appellant identified July 8, 2015 as the date she first became aware of her disease/illness, and also the date when she first realized her disease/illness was caused or aggravated by her federal employment. She stopped work on July 17, 2015. The employing establishment controverted appellant's occupational disease claim.

In a narrative statement accompanying her claim, appellant asserted that, on July 8, 2015, she advised a manager that her back hurt because she was required to work outside her medical restrictions, but management continued to assign her work outside of her medical restrictions. She claimed that she was required to walk more than one hour per day in contravention of the work restrictions contained in a June 30, 2015 medical report.

In a September 7, 2015 letter, appellant's postmaster indicated that the employing establishment controverted her occupational disease claim. He advised that, prior to her July 7, 2015 return to work, appellant had been off work for more than three and a half years due to a nonwork-related injury. The postmaster asserted that appellant was never assigned work that exceeded the work restrictions outlined by her attending physician on June 30, 2015. He indicated that on July 7, 2015 appellant was assigned mail delivery duties on two streets that would require 45 minutes of walking to perform. The postmaster noted that, after being on duty on July 7, 2015 for less than 90 minutes, appellant informed him that her back hurt and that she had nearly exhausted her one-hour walking restriction. He told her that she had only been walking on her delivery route for only 20 minutes. Appellant responded that, including her walking at work prior to starting her delivery route, she had been walking for approximately one hour. The postmaster indicated that the unfinished portion of the mail delivery route for that day was assigned to another employee. When appellant returned on July 8, 2015, appellant's supervisor assigned her the same delivery route that she had been assigned the previous day, but appellant reported she was close to exhausting her one-hour walking restriction after completing a smaller portion of the route than she had completed on July 7, 2015. The postmaster noted that appellant's supervisor assigned the remainder of the route to another employee. He indicated that on July 9, 2015 appellant advised him that her one-hour walking restriction had been exhausted after she had completed even less of the delivery route than she had completed the prior two days, and that she also reported she could not perform mounted delivery duties without violating her three-hour sitting restriction. The postmaster indicated that he then ended appellant's work shift for that day.

After being off work for three days, appellant returned to work on July 13, 2015 and was assigned mounted delivery duties for that date through July 16, 2015 which required sitting for two hours per day. The postmaster indicated that appellant did not complete her mounted delivery duties on any of the four days she worked between July 13 and 16, 2015. He noted that

on July 17, 2015 appellant was given a letter indicating that light-duty work was no longer available and she stopped work on that date. The postmaster indicated that appellant never worked a full eight-hour day during the seven days she worked in July 2015. He also noted that she had not submitted any medical evidence establishing a work-related injury.

In a September 10, 2015 letter, OWCP requested that appellant submit additional factual and medical evidence in support of her occupational disease claim. On September 10, 2015 it also requested additional information from the employing establishment.

Appellant submitted a June 30, 2015 report from Dr. Oladele Olusanya, an attending Board-certified family practitioner, who provided various work restrictions. Dr. Olusanya noted that appellant could work eight hours per day utilizing her back brace. He indicated that appellant could walk for up to one hour per day (not including the walking required prior to starting her shift), stand for up to three hours, and sit for up to eight hours. Appellant was capable of twisting, bending, reaching above her shoulders, lifting 15 pounds intermittently and 10 pounds continuously, and using her hands for repetitive simple grasping, fine manipulation, and pushing. Dr. Olusanya indicated that appellant could not crawl, climb, or kneel.

In a September 21, 2015 report, Dr. Naheed Shahid, an attending Board-certified internist, indicated that appellant presented on that date and reported suffering an aggravation of preexisting lumbar conditions “per her previous [magnetic resonance imaging (MRI) scan] findings of a herniated disc.” He noted that appellant reported that she returned to work on July 7, 2015 with light-duty restrictions and that she woke up on July 8, 2015 with acute back spasms and pain, which she attributed to excessive walking of 30 minutes over her restrictions, prolonged sitting while driving, and climbing stairs. Appellant advised that she continued to work on July 8, 9, 10 and 13, 2015, that she was unable to return to work as of July 17, 2015, and that her light-duty restrictions of not walking over one hour were pushed over the limit by 30 minutes each day she worked in July 2015. Dr. Shahid noted that appellant would be referred for an MRI scan and electromyogram (EMG) testing of her lumbar spine, that she would participate in physical therapy for six to eight weeks, and that she would receive follow-up treatment from other physicians for lumbar radiculopathy. He indicated that August 28, 2015 lumbar x-rays showed good disc space height maintained and lordosis within normal limits and he diagnosed herniated disc, back injury, and lower back pain. Dr. Shahid advised that it was his professional opinion that appellant sustained an injury in the performance of her duties as a city carrier which had been “diagnosed as an aggravation of preexisting conditions of lumbar injury which required [30] minutes of excessive walking beyond her restrictions while delivering mail.”

In a November 20, 2015 decision, OWCP denied appellant’s claim for an employment-related lumbar condition. It found that she established the existence of alleged employment factors, *i.e.*, carrying out her duties of delivering mail as a city carrier for several days in July 2015. OWCP determined, however, that appellant failed to submit sufficient medical evidence to establish that her claimed lumbar condition was causally related to her employment factors, noting that Dr. Shahid’s September 21, 2015 report did not contain a rationalized opinion on causal relationship.

On February 5, 2016 appellant, through counsel, requested reconsideration of OWCP’s November 20, 2015 decision. Counsel indicated that appellant would be submitting an additional report from Dr. Shahid that would establish her claim for a work-related lumbar condition.

In a January 26, 2016 report, Dr. Shahid indicated that, on or about July 8, 2015, appellant became aware of an aggravation to her lower back condition while she was performing her duties as a city carrier. He further indicated that appellant's physical duties as a city carrier including inspecting her postal vehicle, retrieving mail weighing 10 pounds or more from a distribution case, lifting and transporting the mail to a case for sorting, and loading the mail on a case ledge. Appellant had to bend and lift trays and tubs of mail weighing 30 pounds or more while casing mail, and that performing the task of case routing took up to three hours of continuous standing, twisting, turning, and reaching above the shoulders. Dr. Shahid indicated that appellant had to move a wheeled container weighing up to 70 pounds and load it into her postal vehicle. Appellant then spent six hours or more delivering mail on her route carrying a satchel over her shoulder weighing up to 35 pounds and walking over varied terrain. These actions required continuous twisting, turning, bending, lifting, and stooping. Dr. Shahid provided a recitation of appellant's history of work activities in July 2015 and her reported back symptoms. He indicated that appellant's work activities caused shortening and weakening of the muscles, which in turn caused increased pressure on her lumbar spine. Dr. Shahid noted that appellant's job duties over time put substantial pressure on the lumbar discs and the flexion, compression, and axial loading forces from these activities placed great stress on the spine and contributed to the failing of the annulus. He indicated that appellant's continued lifting and carrying of mail for extended periods caused extensive stress on the discs and facet joints and resulted in protrusion or herniation of a disc. Dr. Shahid indicated that August 28, 2015 lumbar x-rays showed good disc space height maintained and lordosis within normal limits, but noted that even with preserved disc space height and lordosis appellant did have herniated discs with significant pain and findings on physical examination. He advised that it was his professional opinion that appellant sustained an aggravation of the preexisting conditions of herniated disc, back injury, and lower back pain due to her city carrier job which required 30 minutes of excessive walking beyond her restrictions while delivering mail, prolonged sitting while driving, and climbing stairs. Dr. Shahid opined that there was nothing else in appellant's history to suggest any other contributing factor.

In a March 31, 2016 decision, OWCP denied modification of its November 20, 2015 decision denying appellant's claim for an employment-related lumbar condition. It found that Dr. Shahid's latest report did not contain a rationalized opinion on causal relationship between appellant's employment factors and the diagnosed back conditions. OWCP also indicated that Dr. Shahid did not provide a complete history of appellant's preexisting back condition.

On June 15, 2016 appellant, through counsel, again requested reconsideration of the merits of her claim and submitted a May 20, 2016 report from Dr. Shahid.

In his May 20, 2016 report, Dr. Shahid provided a recitation of appellant's reported July 2015 work duties and back symptoms, which was similar to that provided in his prior report. He also provided a similar description of his belief that appellant's work duties placed stress on her lumbar discs and aggravated a disc herniation. Dr. Shahid provided a description of the work restrictions that Dr. Olusanya recommended in his June 30, 2015 report. He noted that it was his professional opinion that appellant sustained an aggravation of the preexisting condition of her lumbar spine in the performance of her duties as a city carrier which required 30 minutes of excessive walking beyond her one-hour restriction while delivering the mail, prolonged sitting while driving in violation of her three-hour sitting restriction, and climbing stairs in violation of her restriction against climbing. Dr. Shahid asserted that there was nothing else in appellant's

history to suggest any other contributing factors. He indicated that he was enclosing medical record which would show that the exacerbation of appellant's preexisting lumbar condition was present even three years ago. However, Dr. Shahid did not enclose any medical records.

In a September 12, 2016 decision, OWCP denied modification of its March 31, 2016 decision denying appellant's claim for an employment-related lumbar condition. It found that the Dr. Shahid's May 20, 2016 report did not contain a rationalized opinion on the causal relationship between appellant's employment factors and the diagnosed back conditions.

### **LEGAL PRECEDENT**

A claimant seeking benefits under FECA<sup>4</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.<sup>5</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (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 diagnosed condition is causally related to the identified employment factors.<sup>6</sup>

A physician's opinion on causal relationship must be based on a complete factual and medical background, 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 established employment factors.<sup>7</sup>

### **ANALYSIS**

On September 8, 2015 appellant filed an occupational disease claim for a lumbar condition that allegedly arose on or about July 8, 2015. She had returned to work on July 7, 2015 after being absent for several years due to a nonwork-related medical condition. Appellant worked in a limited-duty capacity from July 8, 2015 until she stopped work on July 17, 2015. OWCP denied her occupational disease claim in decisions dated November 20, 2015, March 31, and September 12, 2016.

The Board finds that appellant failed to submit sufficient medical evidence to establish that her claimed lumbar condition was causally related to factors of her employment. Appellant established that for several days between July 7 and 16, 2015 she performed city carrier duties

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<sup>4</sup> *Supra* note 2.

<sup>5</sup> 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996).

<sup>6</sup> *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>7</sup> *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *John W. Montoya*, 54 ECAB 306 (2003).

that included walking while delivering mail, sitting in her postal vehicle while performing mounted mail delivery duties, and lifting, handling, and carrying mail while performing sorting and delivery duties.<sup>8</sup> The Board finds that appellant did not submit rationalized medical evidence establishing causal relationship between these employment factors and a specific diagnosed back condition.

In a September 21, 2015 report, Dr. Shahid, an attending physician, indicated that appellant presented on that date and reported suffering an aggravation of preexisting lumbar conditions “per her previous MRI scan findings of a herniated disc.” Dr. Shahid discussed the work duties that appellant reported performing for several days between July 7 and 16, 2015 and detailed the back symptoms that she reported. He indicated that August 28, 2015 lumbar x-rays showed good disc space height maintained and lordosis within normal limits and he diagnosed herniated disc, back injury, and lower back pain. Dr. Shahid advised that it was his professional opinion that appellant sustained an injury in the performance of her duties as a city carrier which had been “diagnosed as an aggravation of preexisting conditions of lumbar injury which required [30] minutes of excessive walking beyond her restrictions while delivering mail.”

The Board notes that Dr. Shahid’s September 21, 2015 report is of limited probative value in establishing appellant’s claim for a work-related lumbar condition because he did not provide adequate medical rationale in support of his conclusive opinion on causal relationship. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.<sup>9</sup> Although Dr. Shahid posited that appellant’s work duties, including walking her delivery route, aggravated her preexisting lumbar condition, he did not adequately identify what particular condition he felt had been aggravated. He diagnosed a herniated disc, but did not identify the particular disc. Moreover, Dr. Shahid did not detail the objective medical evidence supporting his diagnosis of a herniated disc. He did not explain how his diagnosis comported with August 28, 2015 lumbar x-rays which showed good disc space height maintained and lordosis within normal limits.<sup>10</sup> Dr. Shahid’s opinion is not based on a complete factual and medical history because he did not provide any notable discussion of the preexisting lumbar condition which he felt had been aggravated by work activities in July 2015. The Board has held that an opinion on a given medical question is of limited probative value if it is not based on a complete and accurate factual and medical history.<sup>11</sup> Dr. Shahid did not explain the medical process through which appellant could have sustained a work-related aggravation of a preexisting lumbar condition by working several days in July 2015, nor did he explain why appellant’s back problems were not solely due to the natural progression of her underlying preexisting condition.

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<sup>8</sup> The Board notes that there is some discrepancy between the accounts of appellant and her postmaster regarding the precise days that appellant performed her work duties in July 2015 and the amount of time she performed each work task. Appellant alleged that she was forced to violate the June 30, 2015 work restrictions provided by Dr. Olusanya and the postmaster disputed this assertion. The Board notes that the differences between the two accounts are not significant and that the above-noted work factors have been established.

<sup>9</sup> *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

<sup>10</sup> The Board notes that appellant did not submit any diagnostic testing reports.

<sup>11</sup> *E.R.*, Docket No. 15-1046 (issued November 12, 2015).

In a January 26, 2016 report, Dr. Shahid provided a more extensive discussion of appellant's reported work duties in July 2015 and her reported symptoms around that time. He indicated that August 28, 2015 lumbar x-rays showed good disc space height maintained and lordosis within normal limits, but noted that even with preserved disc space height and lordosis appellant did have herniated discs with significant pain and findings on physical examination. However, this statement does not provide any notable clarification of why Dr. Shahid felt that appellant sustained a herniated disc, which was reportedly aggravated by work duties. He provided only a general discussion of how certain activities can place pressure on lumbar discs and cause damage. For example, Dr. Shahid indicated that appellant's job duties in July 2015 put substantial pressure on the lumbar discs and that the flexion, compression, and axial loading forces from these activities placed great stress on the spine and contributed to the failing of the annulus. However, he did not identify any specific objective findings to support this assertion and, in fact, the record does not contain the detailed findings of any particular physical examination conducted by him or any other attending physician. Dr. Shahid indicated that appellant aggravated her preexisting lumbar herniated disc due to her city carrier job which required 30 minutes of excessive walking beyond her restrictions while delivering mail, prolonged sitting while driving, and climbing stairs.<sup>12</sup> However, he did not provide any additional explanation of this opinion. Dr. Shahid posited that there was nothing else in appellant's history to suggest any other contributing factor, but he did not discuss appellant's history prior to July 2015 in any detail.<sup>13</sup> He also produced a May 20, 2016 report that contained a discussion on causal relationship similar to that contained in his January 26, 2016 report. However, this latter report is also of limited probative value on the relevant issue of this case because it failed to provide a rationalized opinion that appellant sustained an employment-related lumbar condition.<sup>14</sup>

On appeal, counsel argued that Dr. Shahid's reports establish appellant's claim for a work-related lumbar condition, but the Board has explained why Dr. Shahid's reports are of limited probative value with respect to this matter.

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 that her claimed lumbar condition was causally related to her accepted factors of her federal employment.

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<sup>12</sup> As noted above, appellant's postmaster disputed that appellant's work restrictions were violated. *See supra* note 8.

<sup>13</sup> *See supra* note 11.

<sup>14</sup> *See Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 12, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 7, 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