

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

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**R.J., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Melrose Park, IL, Employer**

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**Docket No. 16-1628  
Issued: February 17, 2017**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On August 10, 2016 appellant, through counsel, filed a timely appeal of a July 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 to consider the merits of this case.

**ISSUE**

The issue is whether appellant met her burden of proof to establish that her lumbar condition was caused or aggravated by her employment duties.

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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.*

On appeal counsel argues that the decision is contrary to fact and law.

### **FACTUAL HISTORY**

On August 8, 2014 appellant, then a 52-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that her employment duties of lifting, bending, carrying, pulling, and preparing mail over the past 25 years caused her back pain. She noted that she first became aware of the condition on June 23, 2014. In an attached July 25, 2014 statement, appellant attributed her back pain to repetitious work activities of daily mail preparation for delivery, standing, lifting, and bending.

On June 25, 2014 Dr. Krishna C. Chunduri, a treating Board-certified anesthesiologist, diagnosed lumbago with right radiculopathy.

By letter dated August 27, 2014, OWCP informed appellant that the evidence of record was insufficient to establish her claim. She was also advised as to the medical and factual evidence required to support her claim and afforded 30 days to provide the requested information.

A September 2, 2014 magnetic resonance imaging (MRI) scan, was interpreted by Dr. Djordje Boskov, a neuroradiologist, as revealing multilevel lumbar spondylosis with hypertrophy and disc bulging with L4-5 most prominent and diffuse disc bulge at L4-5.

On September 25, 2014 Dr. Tian Xia, an osteopathic physician specializing in pain management, provided a history of appellant's complaints, medical history, and physical examination findings. Examination findings included lumbar flexion, paravertebral muscle tenderness more on the right side, positive bilateral straight leg raising test, negative Babinski's sign and right side patellar jerk was 1/4. He diagnosed a herniated lumbar disc.

Dr. Xia, in an October 21, 2014 visit note, diagnosed a herniated lumbar disc, noted appellant's medical history, and provided examination findings, which were unchanged from the prior report. He reported that appellant's back and radicular pain were unchanged.

By decision dated November 12, 2014, OWCP denied the claim. It found the evidence insufficient to establish a causal relationship between the diagnosed condition and the identified employment factors.

In visit notes dated November 24, December 4 and 27, 2014, February 10, March 12, and May 28, 2015, Dr. Xia noted that appellant had been off work since July. Physical examination findings were unchanged from the September 25, 2014 report. Dr. Xia again diagnosed a herniated lumbar disc.

In a letter dated December 9, 2014, counsel requested a telephonic hearing before an OWCP hearing representative, which was held on June 10, 2015.

By decision dated July 21, 2015, OWCP's hearing representative affirmed the November 12, 2014 decision. She found the medical evidence of record was insufficient to establish that appellant's lower back condition was causally related to her employment.

On July 30, 2015 OWCP received a July 9, 2015 report wherein Dr. Xia related that appellant's knee and back problems began after she fell at work on February 4, 2011. Dr. Xia further noted that appellant had always had back pain and that her back pain worsened after her knee surgery. He also noted that she claimed back, knee, and right shoulder injuries due the February 2011 work incident. Dr. Xia diagnosed a lumbar herniated disc and opined that appellant's back pain was due to the February 2011 fall.

On April 25, 2016 OWCP received counsel's request for reconsideration.

In a December 15, 2015 report, Dr. Anatoly Rozman, Board-certified in physical medicine and rehabilitation, noted that he had treated appellant since June 2014. He described her primary complaint as severe lower back radiating into her lower extremities. A review of a September 2, 2015 MRI scan revealed multilevel lumbar spondylosis with most prominent L4-5 and L5-S1 disc bulging and hypertrophy. Dr. Rozman noted that appellant continued to have severe lower back pain which radiated into her lower extremity and caused difficulty walking. According to him her difficulty walking was due to her knee arthritis, lumbar disease/lower back pain, and decreased knee strength from the arthritis. Physical examination findings included decreased sensation and positive straight leg raising, which was not related to the knee arthritis. Diagnoses included lumbar disc disease, osteoarthritis, and lumbar spondylosis. Dr. Rozman referenced a medical journal entitled *Guides to the Evaluation of Disease and Injury*, to support his opinion that appellant's back condition had been caused by her work activity. Specifically he noted her work activities of pushing, lifting, carrying heavy objects, squatting, lifting above the shoulder, kneeling, bending, flexion, and twisting all have strong associations as the cause of appellant's back condition. Dr. Rozman opined there was a causal relationship between appellant's many years of city carrier work duties and the development of osteoarthritis and lumbar disc disease and lower back pain.

By decision dated July 12, 2016 OWCP denied modification. It found the evidence of record was insufficiently rationalized and failed to establish a causal relationship between her low back condition and her employment duties.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>4</sup> 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.<sup>5</sup>

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<sup>3</sup> *Id.*

<sup>4</sup> *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>5</sup> *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.<sup>6</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>7</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.<sup>9</sup>

### ANALYSIS

Appellant attributed her low back condition to the performance of her city carrier work duties, including lifting, bending, carrying, standing, walking, and preparing mail. OWCP accepted the occurrence of the claimed employment factors. The Board finds that the medical evidence is insufficiently rationalized to establish that appellant sustained a work-related lumbar condition, caused or aggravated by her alleged employment duties.

In his December 15, 2015 report, Dr. Rozman related that appellant had been his patient since June 2014, that she had worked many years as a city carrier, and noted the physical activities of the position. He diagnosed osteoarthritis and lumbar disc disease/lower back pain, which he attributed to her city carrier duties. Dr. Rozman noted findings from a September 2015 MRI scan and pertinent examination findings. He explained that according to a medical journal entitled *Guides to the Evaluation of Disease and Injury* there was a definite causal relationship between appellant's city carrier activities and her lumbar condition. Specifically, Dr. Rozman noted that he was basing his opinion on appellant's lengthy work history and activities of bending, twisting, flexion, pushing, lifting, carrying heavy objects, squatting, kneeling, and lifting above the shoulder.

While Dr. Rozman generally noted appellant's employment activities, he did not provide any discussion as to the relevance of the medical journal or provide any knowledge of the actual duties appellant performed or how often. He further did not explain how appellant's city carrier

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<sup>6</sup> *D.U.*, Docket No. 10-144 (issued July 27, 2010); *R.H.*, 59 ECAB 382 (2008); *Roy L. Humphrey*, 57 ECAB 238 (2005); *Donald W. Wenzel*, 56 ECAB 390 (2005).

<sup>7</sup> *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

<sup>8</sup> *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006)

<sup>9</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

activities would have caused or aggravated the specific diagnosed conditions, especially in light of her degenerative changes.<sup>10</sup> It is appellant's burden to establish through the production of competent and probative rationalized medical opinion evidence based on a complete factual and medical background, that her conditions were caused or aggravated by the alleged employment duties. As Dr. Rozman only generally discussed that duties similar to those in appellant's position have a strong association as the cause of back problems, his reports are insufficient to meet appellant's burden of proof.<sup>11</sup>

The record also contains reports from Dr. Chunduri and Dr. Boskov. Dr. Chunduri diagnosed lumbago with right radiculopathy, but offered no opinion as to the cause of the condition. Dr. Boskov also diagnosed multilevel lumbar spondylosis with hypertrophy, with disc bulging at L4-5. However he offered no opinion regarding the cause of these diagnosed conditions. The Board has held that medical reports that lack a rationalized opinion on causal relationship are of limited probative value.<sup>12</sup>

Similarly, Dr. Xia, in multiple reports, diagnosed a herniated lumbar disc without offering any opinion causally related this condition to the accepted work duties. Rather he related appellant's diagnosed conditions to her earlier February 2011 fall. Thus, these reports are insufficient to establish appellant's claim.

The medical evidence of record does not establish that appellant's diagnosed conditions were caused or aggravated by her alleged employment duties. Appellant has failed to submit a rationalized physician's report, based on an accurate history, which explains how her work activities caused or aggravated her lumbar conditions.

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 lumbar condition was caused or aggravated by her employment duties.

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<sup>10</sup> *N.M.*, Docket No. 16-0403 (issued June 6, 2016).

<sup>11</sup> *Id.*

<sup>12</sup> *See F.H.*, Docket No. 09-0255 (issued September 10, 2009).

**ORDER**

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

Issued: February 17, 2017  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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