

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

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G.T., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Oklahoma City, OK, Employer )

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**Docket No. 16-1776  
Issued: February 24, 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 September 7, 2016 appellant filed a timely appeal from an August 19, 2016 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 that she developed a lumbar injury in the performance of duty.

**FACTUAL HISTORY**

On December 22, 2015 appellant, then a 53-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she developed a lower back injury as a result of factors of her federal employment. She reported that she had been a rural carrier since July 1999. On

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

September 13, 2012 appellant was delivering a package while it was raining heavily. As she ran back to her long line vehicle (LLV) and stepped onto the instep, her foot slipped and jerked her backward, causing her to grab the door handles. Appellant further explained that she underwent left L4-5 lateral recess decompression, foraminotomy, and foraminal and lateral recess discectomy on June 11, 2014; however, she only learned that her back condition was caused by an occupational disease on September 10, 2015, when she was informed of the relationship by Dr. John W. Ellis, a family practitioner. On the reverse side of the claim form, appellant's supervisor indicated that he was notified of the injury on December 22, 2015 and that appellant stopped working on June 14, 2014. He explained that appellant had never reported to his work facility. The supervisor further controverted the claim stating that she sustained a traumatic injury and failed to report it.<sup>2</sup>

In a September 10, 2015 report, Dr. Ellis related appellant's history of injury on September 13, 2012, when her left foot caught on the instep of the LLV and caused her to jerk backward. He discussed appellant's prior workers' compensation claims pertaining to the bilateral elbow, left shoulder, right shoulder, left Achilles tendinitis, and back.

Dr. Ellis reviewed medical records from appellant's traumatic injury claim in OWCP File No. xxxxxx117 pertaining to the September 13, 2012 employment incident. He noted findings on physical examination and diagnosed lumbar sprain, lumbar disc disease with myelopathy, lumbar stenosis, and left L5-S1 spinal nerve impingement, which he opined were causally related to her federal employment. Dr. Ellis noted that the injury on September 13, 2012 was an acute injury which strained appellant's lumbar muscles and ligaments, and caused disc derangement. He opined that it would be medically reasonable to assign her back condition to the prior September 13, 2012 injury under OWCP File No. xxxxxx117. However, Dr. Ellis noted that the Board had previously denied the traumatic injury claim and thus, he recommended that appellant file a new Form CA-2.

Dr. Ellis further explained that following the September 13, 2012 employment incident appellant continued to work as a rural carrier until May 31, 2014. He opined that appellant's initial back strain and ligament injuries were aggravated by her continued work. Dr. Ellis explained that getting in and out of the LLV, sitting, standing and walking placed greater strain on the iliolumbar ligaments and discs in her back. As appellant would sit and rotate in the LLV, reaching back to get the mail and then delivering to rural boxes, this put even greater pressure on the lumbar discs. Due to these biomechanical factors, Dr. Ellis opined that appellant had a cumulative trauma injury on top of the acute injury.

By letter dated January 4, 2016, OWCP informed appellant that the evidence of record was insufficient to support her claim. It provided a questionnaire for completion and advised her to describe in detail the employment-related activities which she believed contributed to her condition, how often she performed the activities described, for how long on each occasion, and

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<sup>2</sup> The Board notes that the record reflects that appellant has prior traumatic injury claims: OWCP File No. xxxxxx699, date of injury November 7, 2005; OWCP File No. xxxxxx117, date of injury November 13, 2012; and OWCP File No. xxxxxx724, date of injury April 24, 2013. Appellant also has prior occupational disease claims: OWCP File No. xxxxxx800, date of injury July 10, 2007; and OWCP File No. xxxxxx328 date of injury September 1, 2007. These claims are not currently before the Board.

all activities and hobbies outside of her federal employment. Appellant was informed of the medical and factual evidence needed and was afforded 30 days to submit this additional evidence. In another letter of that same date, OWCP requested the employing establishment provide additional information pertaining to appellant's injury and occupational duties.

In support of her claim, appellant submitted an official rural carrier position description. OWCP also received its questionnaire signed by appellant; however, the questionnaire was not completed.

In a January 20, 2015 e-mail correspondence, appellant's supervisor reported that appellant bid into his work location in June 2014 but never reported to work. As such, he had no additional information pertaining to appellant.

By decision dated February 8, 2016, OWCP denied appellant's claim, finding that the evidence of record failed to establish that the occupational exposure occurred as alleged. It noted that she provided no further statement or factual evidence as to how her federal employment duties caused or contributed to her condition.

On March 24, 2016 appellant requested reconsideration of OWCP's decision. The only evidence received was a denial of authorization for therapeutic exercise.

By decision dated August 19, 2016, OWCP denied modification of the February 8, 2016 decision, finding that the evidence of record failed to establish that the occupational exposure occurred as alleged to establish fact of injury.

### **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 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 or specific condition for which compensation is claimed is causally related to the employment injury.<sup>3</sup> These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>4</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>5</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

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<sup>3</sup> Gary J. Watling, 52 ECAB 278 (2001); Elaine Pendleton, 40 ECAB 1143, 1154 (1989).

<sup>4</sup> Michael E. Smith, 50 ECAB 313 (1999).

<sup>5</sup> Elaine Pendleton, *supra* note 3.

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>

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

The Board finds that appellant failed to meet her burden of proof to establish that she developed a lumbar injury in the performance of duty.

Appellant has not provided adequate detail to establish that an occupational exposure occurred as alleged.<sup>7</sup> On her Form CA-2, appellant failed to provide a sufficient explanation pertaining to the employment duties which she attributes to the cause of her injury. Rather, she described the circumstances of an alleged traumatic injury which occurred on September 13, 2012. The record reflects that appellant has previously filed a claim pertaining to this September 13, 2012 employment incident in OWCP File No. xxxxxx117.

With regard to this occupational disease claim, appellant failed to describe her employment duties to which she is attributing her injury.<sup>8</sup> By letter dated January 4, 2016, OWCP requested that she describe the factual circumstances of injury and provided her with a questionnaire for completion. Appellant did not respond to the development questionnaire and only submitted a rural carrier position description. The record contains no explanation provided by appellant pertaining to the occupational exposure she has alleged caused her injury. The only explanation provided pertaining to her employment duties was the generalized and vague statement noted in her Form CA-2 which described a traumatic incident. By failing to describe her employment duties and circumstances surrounding the alleged injury, appellant has not established that the occupational disease occurred as alleged.<sup>9</sup>

The Board notes that appellant submitted a September 10, 2015 medical report from Dr. Ellis. However Dr. Ellis' report does not explain the employment duties to which appellant is attributing her alleged injury as he does not describe how often she performed specific tasks, and the frequency and duration of each task. The factual and medical evidence of record fails to establish the factual element of appellant's claim, namely, that a claimed occupational exposure caused her medical injury or disease.<sup>10</sup>

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<sup>6</sup> See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

<sup>7</sup> A.S., Docket No. 16-944 (issued November 2, 2016).

<sup>8</sup> A traumatic injury means a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

<sup>9</sup> *Supra* note 7; see also *P.T.*, Docket No. 14-598 (issued August 5, 2014).

<sup>10</sup> See *B.S.*, Docket No. 13-405 (issued July 18, 2013).

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relationship.<sup>11</sup> An award of compensation may not be based on surmise, conjecture, or speculation. Appellant has not submitted an adequately detailed description of her specific employment duties which she believed caused or aggravated her condition. She failed to provide evidence to prove the fact of injury, its time, place, and manner, and that the injury was causally related to her federal employment. Because appellant did not submit sufficient evidence demonstrating the alleged occupational exposure occurred as alleged, she has failed to meet her burden of proof.<sup>12</sup>

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

### **CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that she sustained a lumbar injury in the performance of duty.

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<sup>11</sup> *Daniel O. Vasquez*, 57 ECAB 559 (2006).

<sup>12</sup> Given that appellant did not establish an employment incident, further consideration of the medical evidence is unnecessary. See *Bonnie A. Contreas*, 57 ECAB 364, 368 n.10 (2006).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 19, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 24, 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