



## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances of the case as set forth in the Board's prior decision and order are incorporated herein by reference. The relevant facts are included below.

On May 20, 2013 appellant, then a 61-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained injury to her back and both legs due to performing her job duties over time. Regarding the relationship of the claimed injury to her work, she noted, "This is an ongoing injury. By working in the mail case & the window makes me hurt. I'm not doing anything out of the ordinary. It just keep getting worse." [sic] Appellant noted that on February 13, 2013 she first became aware of her claimed condition and its relationship to her work. She stopped work on January 15, 2013.

In an accompanying May 20, 2013 statement, appellant advised that her work required her to engage in stooping and kneeling, and that she was required to move around to process mail that fluctuated in weight. She noted that, when she cased mail, she had to reach for and lift packages and that, when she lifted a package, she might be required to turn her back to the left or right. Appellant indicated that she worked 40 hours a week.

Under a separate claim (File No. xxxxxx968), OWCP had previously accepted a lumbosacral strain on January 29, 1999 due to lifting and throwing mail sacks on that date. Appellant filed claim forms alleging disability commencing January 15, 2013 in connection with her January 29, 1999 injury. In a May 9, 2013 decision issued under that OWCP file number, OWCP denied appellant's claim because she failed to submit sufficient medical evidence to establish that the claimed disability was related to her January 29, 1999 injury. It found that the medical evidence of record, including a February 13, 2013 report of Dr. Michael E. Hebrard, an attending Board-certified physiatrist, suggested that she might have a potential claim for a new work-related occupational disease. After the issuance of this decision, appellant filed the present occupational disease claim.<sup>4</sup>

Appellant resubmitted the February 13, 2013 report of Dr. Hebrard in connection with the present claim. Dr. Hebrard noted that appellant reported constant and significant "achy, stinging, numbing, cramping, and throbbing pain going down to both her legs." The pain was reported as being worse with prolonged sitting, standing, walking, stooping, crouching, bending, twisting at the waist, pushing, pulling, reaching, and lifting. Dr. Hebrard indicated that on physical examination appellant had hypesthesias along the medial aspect of her feet and legs. He diagnosed lumbosacral strain and noted, "Beyond the OWCP accepted diagnosis of lumbosacral strain, the patient does have anatomic disc and spinal pathology, which was aggravated in the course of [appellant's] employment with the long prolonged periods of standing, twisting, bending, reaching, pushing, pulling, lifting activities over the 30+ years of service within the [employing establishment]." Dr. Hebrard indicated that these activities led to ongoing

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<sup>3</sup> Docket No. 14-1496 (issued November 7, 2014).

<sup>4</sup> The issue of whether appellant sustained any periods of disability due to her January 29, 1999 traumatic work injury is not currently before the Board.

cumulative trauma which caused significant aggravation of appellant's underlying and preexisting condition.

In a June 17, 2013 report, Dr. Hebrard noted that it was his opinion to a reasonable degree of medical certainty, and on a more-probable-than-not basis, that appellant's medical condition was aggravated as a result of the "natural history of her industrially-related injury which was a traumatic injury to the back in 1999." He opined that, based on the work-related mechanisms, including a more than 30-year history of twisting, bending, reaching, pushing, and pulling, there had been increased intradiscal pressure that ultimately led to inflammation and irritation to the circumferential fibers of the annulus, pressuring the adjacent nerve roots and sending radicular pain down the leg.

The findings of electromyogram (EMG) and nerve conduction velocity (NCV) testing obtained by Dr. Hebrard on June 26, 2013 showed evidence of right sciatic neuropathy affecting the peroneal branch of that nerve. There was no electrodiagnostic evidence for a peripheral neuropathy.

By letter dated July 26, 2013, OWCP requested that Dr. Hebrard provide clarification of his June 17, 2013 report. Dr. Hebrard was asked to further explain how appellant's specific work duties caused or contributed to any diagnosed medical condition.

In an August 23, 2013 supplemental report, Dr. Hebrard indicated that he had submitted medical evidence to support to a reasonable degree of medical certainty, and on a more-probable-than-not basis, that the condition of appellant's lumbar spine had deteriorated and was causally related to the 1999 industrial injury which continued to worsen overtime. He noted that sitting caused five times more interdiscal pressure of the lumbosacral spine than did standing and walking, resulting in damage to the circumferential fibers of the intervertebral discs of the annulus. Dr. Hebrard indicated, "There is microscopic tearing and thereby posterior bulging of the disc resulting in compressive forces along the adjustment nerve roots, sending pain, paresthesias, and weakness down through the lower extremities. There is MRI scan evidence to substantiate this which is consistent with clinical evaluation."

By decision dated September 6, 2013, OWCP denied appellant's claim finding that appellant failed to submit sufficient medical evidence to establish an occupational disease in the performance of duty. It found that Dr. Hebrard had failed to adequately explain how any condition had been caused or changed by appellant's specific work duties. OWCP also noted that Dr. Hebrard was essentially asserting that all of appellant's activities caused a worsening in the underlying condition and indicated that it was unclear how her employment had actually caused or contributed to the worsening of any condition.

Appellant requested a hearing with an OWCP hearing representative regarding the denial of her claim. She submitted a December 9, 2013 report of Dr. Hebrard in support of her claim. Dr. Hebrard detailed examination findings and indicated that appellant's underlying lumbar stenosis and spondylosis were aggravated during the course of her employment due to engaging in prolonged standing, sitting, bending, and lifting over the years. He noted, "It is the opinion of the undersigned there is a causal relationship between the patient's functional deficits and

impairment and her job due to the twisting, bending, prolonged standing, sitting, and standing activities.”

At the February 27, 2014 hearing, appellant testified that she was not working and had retired on January 31, 2014. She advised that, after her January 29, 1999 work injury, she was provided limited-duty work, including logging in trucks and doing paperwork at the computer. Appellant testified that approximately five years before retiring in January 2014 she had returned to performing her regular duties which included a great deal of lifting, twisting, bending, and stooping.<sup>5</sup> She noted that in January 2013 she began having excruciating pain and stopped work.

In a May 14, 2014 decision, OWCP’s hearing representative affirmed OWCP’s September 6, 2013 decision finding that appellant had not met her burden of proof to establish an occupational disease in the performance of duty. She noted that the reports of Dr. Hebrard did not contain a rationalized medical opinion explaining how specific work duties over time contributed to the claimed medical conditions.

In a November 7, 2014 decision, the Board affirmed OWCP’s May 14, 2014 decision finding that appellant did not establish an occupational disease in the performance of duty. The Board found that the reports of Dr. Hebrard were of limited probative value in establishing a work-related occupational condition because he did not adequately explain what specific duties appellant performed or how the specific work duties caused an aggravation of her preexisting back condition.

In a letter dated April 20, 2015, appellant, through counsel, requested reconsideration of her claim for a work-related occupational disease. Counsel asserted that an attached March 20, 2015 report of Dr. Hebrard established appellant’s claim.

In his March 20, 2015 report, Dr. Hebrard discussed his previously submitted December 9, 2013 report. He noted that appellant had preexisting spinal disc disease and that twisting and bending at the waist aggravated that injury. Dr. Hebrard generally indicated that repetitive bending and twisting at the waist caused increased axial loading and sheering along the intervertebral discs and that spinal disc disease simply meant that there were circumferential tears along the discs. He indicated that bending forward, twisting, or lifting caused tilting of the pelvis and bulging of the discs posteriorly, resulting in pressure along the nerve endings with pain, paresthesias, and weakness in the legs. Dr. Hebrard opined that appellant’s spinal disc condition was a permanent aggravation of an underlying, preexisting condition. He noted that her job duties of twisting and bending resulted in cumulative trauma which contributed to postural changes, forcing the discs into a posterior position where they permanently compressed the adjacent nerve endings with the subsequent weakness, numbness, and pain in her legs. Dr. Hebrard indicated that appellant’s ongoing performance of her job duties including twisting, bending, pushing, pulling, and reaching continued to aggravate her spinal condition permanently.

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<sup>5</sup> Appellant asserted that she returned to performing her old duties because someone had bid on the limited-duty position she had been performing.

By decision dated July 16, 2015, OWCP denied appellant's claim for a work-related occupational disease. It found that the March 20, 2015 report of Dr. Hebrard was not sufficiently well rationalized to establish her claim.

In a letter dated April 15, 2016, appellant, through counsel, requested reconsideration of OWCP's July 16, 2015 decision denying her claim for a work-related occupational disease. Counsel argued that an attached February 3, 2016 report of Dr. Hebrard established appellant's claim.

In his February 3, 2016 report, Dr. Hebrard noted that appellant worked for the employing establishment for 35 years as a mail processing clerk and that her job duties required prolonged standing, walking, stooping, crouching, twisting, bending, grasping, fingering, pinching, pushing, pulling, lifting, and reaching below and above shoulder level. He indicated that he had previously indicated that appellant had anatomic disc and spinal pathology which were aggravated in the course of her employment due to prolonged periods of standing, twisting, bending, reaching, pushing, pulling, and lifting over the course of more than 30 years of service with the employing establishment. Dr. Hebrard advised that he based his opinion on the documents of record, his clinical examination, and his knowledge, training, and experience as a Board-certified physical medicine physician with specialization in spinal disorders affecting the nervous system, discs, and joints of the lumbar spine. He noted that it was his opinion, with a reasonable degree of medical certainty, more probable than not, that appellant's accepted condition of the lumbar spine had materially worsened and that she had a permanent and irreversible disabling aggravation of the original 1999 injury. Dr. Hebrard indicated that appellant had a documented degenerative lumbar spinal disc disease which was accelerated by the performance of her job duties that required her to twist and bend repetitively as well as push, pull, and lift. He opined that appellant's spinal disc disease was aggravated by the 1999 injury and was further aggravated by the job duties at the employing establishment. Dr. Hebrard discussed EMG and NCV testing from February 2014 and MRI scan testing from January 2015 and noted:

“Due to progression of pathology and the disease natural history as well as the requirements of her job since her 1999 injury, I find that the patient's condition has materially worsened in terms of increased lower extremity weakness, significantly affecting sitting, standing, and walking tolerance; stiffness in the lumbar spine affecting her bending and twisting; and increased muscle spasms along the lumbar paraspinal muscles, also restricting movement and diminishing her independence with self-care, grooming, toileting, and hygiene.... The current diagnoses are: permanent aggravation of lumbar spine radiculopathy ...; permanent aggravation of lumbar spinal stenosis ...; and permanent aggravation of lumbar region spondylolisthesis....”

In a decision dated July 14, 2016, OWCP denied modification of its July 16, 2015 decision denying appellant's occupational disease claim. It found that the February 3, 2016 report of Dr. Hebrard was not sufficiently well rationalized to establish her claim.

## LEGAL PRECEDENT

An employee seeking benefits under FECA 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 the 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>6</sup> To establish fact of injury, an employee must submit sufficient evidence to establish that he or she experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged.<sup>7</sup> An employee must also establish that such event, incident, or exposure caused an injury.<sup>8</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>9</sup>

OWCP regulations define the term “[o]ccupational disease or illness” as a condition produced by the work environment over a period longer than a single workday or shift.<sup>10</sup> To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee 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 diagnosed condition is causally related to the employment factors identified by the employee.<sup>11</sup>

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence.<sup>12</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 established employment factors.<sup>13</sup>

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<sup>6</sup> 5 U.S.C. § 8101(1); *B.B.*, 59 ECAB 234 (2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>7</sup> *J.C.*, Docket No. 16-0057 (issued February 10, 2016); *E.A.*, 58 ECAB 677 (2007).

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

<sup>9</sup> *R.H.*, 59 ECAB 382 (2008); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>10</sup> 20 C.F.R. § 10.5(q); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.2b (June 2011).

<sup>11</sup> *D.H.*, Docket No. 15-1876 (issued January 29, 2016); *D.I.*, 59 ECAB 158 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>12</sup> *F.S.*, Docket No. 15-1052 (issued July 17, 2015); *Tomas Martinez*, 54 ECAB 623 (2003).

<sup>13</sup> *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *John W. Montoya*, 54 ECAB 306 (2003).

## ANALYSIS

On May 20, 2013 appellant filed an occupational disease claim alleging that she sustained injury to her back and legs due to performing her job duties over time.<sup>14</sup> She indicated that her job since approximately early 2009 required her to case mail which involved reaching, lifting, twisting, bending, kneeling, stooping, and moving around. In several decisions, including a decision dated May 14, 2014, OWCP denied appellant's claim because she failed to submit sufficient medical evidence to establish a work-related occupational disease. It found that the reports of Dr. Hebrard, an attending physician, did not contain a rationalized medical opinion explaining how specific work duties contributed to the claimed medical conditions. In a November 7, 2014 decision, the Board affirmed OWCP's May 14, 2014 decision finding that appellant did not establish an occupational disease in the performance of duty. The Board determined that the reports of Dr. Hebrard, including those dated February 13, June 17, August 23, and December 9, 2013, did not contain adequate medical rationale in support of the doctor's opinion on causal relationship.

The Board finds that appellant failed to establish an occupational disease in the performance of duty.

After the Board issued its November 7, 2014 decision affirming OWCP's denial of appellant's occupational disease claim, appellant submitted additional reports of Dr. Hebrard, including those dated March 20, 2015 and February 3, 2016. The Board finds that these reports are of limited probative value in establishing appellant's claim for a work-related occupational disease because they do not contain adequate medical rationale. 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>15</sup> These reports of Dr. Hebrard are strikingly similar to his earlier reports from 2013 which the Board, in its November 7, 2014 decision, found to be lacking adequate medical rationale.

In his March 20, 2015 report, Dr. Hebrard opined that appellant's spinal disc condition was a permanent aggravation of an underlying, preexisting condition. He noted that her job duties of twisting and bending resulted in cumulative trauma which contributed to postural changes, forcing the discs into a posterior position where they permanently compressed the adjacent nerve endings with the subsequent weakness, numbness, and pain in the legs. Dr. Hebrard indicated that appellant's ongoing performance of her job duties, including twisting, bending, pushing, pulling, and reaching, continued to aggravate her spinal condition permanently.

The submission of the March 20, 2015 report of Dr. Hebrard is insufficient to establish appellant's claim because the report is not based on a complete factual history and Dr. Hebrard

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<sup>14</sup> Appellant stopped work on January 15, 2013. OWCP had previously accepted that she sustained a traumatic injury in the form of a lumbosacral strain on January 29, 1999 due to lifting and throwing mail sacks on that date. The issue of whether appellant sustained any periods of disability due to her January 29, 1999 traumatic work injury is not currently before the Board.

<sup>15</sup> *C.M.*, Docket No. 14-88 (issued April 18, 2014).

did not provide adequate medical rationale in support of his opinion on causal relationship.<sup>16</sup> Dr. Hebrard generally made reference to appellant engaging in periods of twisting, bending, pushing, pulling, and reaching, but he did not provide any detailed account of her work duties over time. He did not indicate how often she engaged in each of these activities. Dr. Hebrard provided a general discussion about how lumbar radiculopathy occurs, but he did not explain how such a process might have occurred given appellant's particular work duties. He indicated that her work duties aggravated her preexisting degenerative back condition, but he did not describe the mechanism through which her work duties could have caused such an aggravation. Dr. Hebrard did not explain why appellant's continuing complaints were not due to the natural progression of her preexisting nonwork-related degenerative back condition.

In his February 3, 2016 report, Dr. Hebrard noted that he had previously indicated that appellant had anatomic disc and spinal pathology which were aggravated in the course of her employment due to prolonged periods of standing, twisting, bending, reaching, pushing, pulling, and lifting over more than 30 years of service with the employing establishment. He indicated that it was his opinion, with a reasonable degree of medical certainty, more probable than not, that appellant's accepted condition of the lumbar spine had materially worsened and that she had a permanent and irreversible disabling aggravation of the condition of the January 29, 1999 injury. Dr. Hebrard opined that appellant had a documented degenerative lumbar spinal disc disease which was accelerated by the performance of her job duties that required her to twist and bend repetitively as well as push, pull, and lift. He opined that appellant's spinal disc disease was aggravated by the 1999 injury and was further aggravated by the job duties at the employing establishment.

The submission of the February 3, 2016 report of Dr. Hebrard does not establish appellant's occupational disease claim as it continues to lack the type of medical rationale based on an accurate history on the matter of causal relationship. Dr. Hebrard again provided a general and incomplete account of appellant's work duties and therefore the opinion on causal relationship in this report is also based on an incomplete and inaccurate factual history. He provided an equivocal opinion regarding the cause of appellant's medical condition in that he appears to relate her condition to both the earlier January 29, 1999 work injury and the performance of work duties over time without adequately detailing the nature of these ostensible contributions to her condition.<sup>17</sup> Dr. Hebrard noted that appellant's underlying lumbar stenosis and spondylosis were aggravated during the course of her employment due to the duties she performed, including prolonged standing, twisting, bending, reaching, pushing, pulling, and lifting, but he did not adequately explain how specific work duties caused such an aggravation of her underlying condition.

For these reasons, appellant did not establish an occupational disease on the performance of duty and OWCP properly denied her claim.

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<sup>16</sup> See *supra* notes 12 and 13.

<sup>17</sup> See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956) (finding that an opinion which is equivocal in nature is of limited probative value regarding the issue of causal relationship).

**CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish an occupational disease in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 14, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 2, 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