

imaging (MRI) scan appointment with her surgeon, who confirmed that she had three herniated discs and fused discs from work. Appellant stopped working on March 2, 2016. She had previously injured her lower back in the performance of duty on June 14, 2004, which OWCP accepted for lumbar sprain and lumbar intervertebral disc displacement under OWCP File No. xxxxxx171.

In a February 17, 2016 attending physician's report (Form CA-20), Dr. George H. Khoury, a neurosurgeon, noted that appellant's back "went out." The date of injury was December 1, 2015. Dr. Khoury provided results on examination appellant on February 8, 2016 and noted that appellant's MRI scan showed a previous fusion at L4-5. He also noted that appellant had a very mild bulging disc at L5-S1 on the left. Dr. Khoury diagnosed acute lumbar radiculopathy and bulging disc at L5-S1 on the left.

In a March 15, 2016 letter, OWCP advised appellant of the deficiencies in her claim and requested additional factual and medical evidence. This request included responding to a questionnaire which inquired about the particular job activities that appellant believed contributed to her condition. OWCP also requested a narrative report from appellant's physician explaining how employment activities either caused, contributed to, or aggravated her medical condition. Appellant was afforded 30 days to submit the requested information.

OWCP subsequently received emergency department treatment records from March 17, 2016. Dr. Christopher A. McCrae, Board-certified in emergency medicine, indicated that appellant presented to the emergency department requesting a steroid shot for acute worsening of right hip pain. Appellant was noted to have chronic low back pain with herniated disc status post fusion. The previous day, she reportedly had gone to an urgent care facility due to acute atraumatic exacerbation of chronic low back pain. Appellant reported receiving an intramuscular Toradol shot. She also reported that her Toradol injections were usually accompanied by a steroid shot, but that was not the case with her most recent injection. Since receiving the shot, appellant experienced worsening right hip pain that radiated into her right lower extremity. Dr. McCrae provided an impression of acute right hip pain and adverse reaction to a nonsteroidal anti-inflammatory drug (NSAID).

In a March 28, 2016 letter, the employing establishment controverted appellant's claim. It noted that under File No. xxxxxx171, date of injury June 14, 2004, she had been rehabilitated into a clerk position from a rural carrier position on March 4, 2006. Appellant performed those duties until she went out for additional surgery and was placed on the periodic rolls. The employing establishment further indicated that appellant later returned to her rehabilitated position as a clerk, and has remained in that position.

The employing establishment also provided a copy of a May 7, 2012 report from Dr. Michael A. Taormina, a Board-certified neurologist, who performed a second opinion examination under File No. xxxxxx171. Dr. Taormina diagnosed chronic lower back pain and status post L4-5 discectomy and fusion. At the time, he opined that appellant's June 14, 2004 work injury had resolved without residuals from the lumbar sprain or aggravation of lumbar disc displacement, and that she was capable of performing her duties as a clerk.

By decision dated April 18, 2016, OWCP denied appellant's claim as the evidence of record failed to establish that she was injured in the performance of duty. It noted that appellant had not provided any factual or medical documentation that would support her having been injured while performing the duties of her position.

LEGAL PRECEDENT

A claimant seeking benefits under FECA 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.²

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.³

The claimant must establish all of the elements of her claim in order to prevail. She must prove the time, place, and manner of the alleged incident, and a resulting personal injury.⁴

A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background.⁵ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.⁶

ANALYSIS

On her March 4, 2016 claim form (Form CA-2), appellant indicated that her surgeon confirmed that she had three herniated discs from working. However, she did not describe how her work as a sales and service associate/window clerk either caused or contributed to her claimed lumbar condition. In his February 17, 2016 report, Dr. Khoury diagnosed acute lumbar radiculopathy and bulging disc at L5-S1 on the left. However, he did not provide an opinion regarding the cause of appellant's lumbar condition. The Board has held that medical evidence

² 20 C.F.R. § 10.115(e), (f); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

³ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁴ See *C.C.*, Docket No. 15-1866 (issued December 11, 2015).

⁵ *Supra* note 3.

⁶ *Id.*

which does not offer any opinion regarding the cause of an employee's injury is of limited probative value on the issue of causal relationship.⁷

On March 15, 2016 OWCP advised appellant of the need for factual and medical evidence to support her claimed lumbar condition. Appellant did not respond to the development questionnaire regarding the employment-related activities that she believed caused or contributed to her claimed condition. She did not provide any specific information describing exactly how she was injured in the performance of duty. Moreover, the March 17, 2016 emergency department treatment records did not identify an employment-related condition arising on or about January 11, 2016, as appellant alleged in her Form CA-2. Dr. McCrae noted that appellant had chronic low back pain with herniated disc status post fusion with an acute worsening of right hip pain. He reported that she wanted a steroid injection for the acute worsening of right hip pain. Dr. McCrae did not indicate that appellant's current right hip complaints were employment related.⁸

Appellant failed to provide a description of the employment activities that she believed either caused or aggravated her lumbar condition. As such, she failed to meet her burden of proof to establish that an injury occurred in the performance of duty.⁹

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.

⁷ *C.B.*, Docket No. 10-0144 (issued July 27, 2010); *D.I.*, 59 ECAB 158 (2007); *Robert Broome*, 55 ECAB 39 (2004); *Anna C. Leanza*, 48 ECAB 115 (1996).

⁸ *Id.*

⁹ *D.S.*, Docket No. 16-0756 (issued September 12, 2016).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained a lumbar condition causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the April 18, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 6, 2017
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board