

ISSUE

The issue is whether appellant met her burden of proof to establish lumbar conditions causally related to her accepted September 26, 2015 employment incident.

FACTUAL HISTORY

On October 1, 2015 appellant, then a 47-year-old rural carrier, filed a Form CA-2a, notice of recurrence, under OWCP File No. xxxxxx218, for medical treatment and lost time from work beginning September 26, 2015 due to her work-related injury of February 8, 2011.⁴ On her CA-2a claim form, she stated that, on September 25, 2015 she pulled a back muscle in the same area. Appellant stopped work on September 26, 2015 and sought medical treatment. She indicated that her back pain had been on and off, but had now worsened. No documentation was received with the CA-2a claim form.

By development letter dated October 16, 2015, OWCP noted that appellant had claimed that she sustained an injury on September 26, 2015, when she lifted a tray of mail to load her vehicle and heard her back pop. It advised her that, based on her description of the September 26, 2015 incident,⁵ she was claiming a new traumatic injury due to new work factors, not a recurrence of the February 8, 2011 employment injury. OWCP informed appellant that the evidence submitted was insufficient to establish her traumatic injury claim. It requested that she respond to an attached questionnaire in order to substantiate the factual elements of her claim and provide medical evidence to establish a diagnosed condition as a result of her employment. OWCP afforded appellant 30 days to submit the requested information.

On October 19, 2015 OWCP received an authorization for examination and/or treatment (Form CA-16) from the employing establishment.

In a September 26, 2015 verification of treatment note, Helen M. Hesslon, a nurse practitioner, indicated that appellant was seen on September 26, 2015. She further indicated that appellant could return to work on September 29, 2015 without any restrictions.

In an October 5, 2015 progress note, Gail Longmire, a family nurse practitioner, noted that appellant developed back pain at work while lifting on September 25, 2015. Appellant was treated at an urgent care center the next day and physical therapy was recommended. Ms. Longmire provided an assessment of unspecified dorsalgia. Appellant was to remain off work until evaluated by physical therapy. Ms. Longmire also signed an October 5, 2016 duty status report, Form CA-17.

⁴ Under OWCP File No. xxxxxx218, appellant filed a traumatic injury claim with date of injury of February 8, 2011 for back strain. Appellant has additional claims related to her back. These include OWCP File No. xxxxxx754 with a date of injury of August 29, 2011 and OWCP File No. xxxxxx137 with a date of injury February 5, 2014.

⁵ OWCP referred to the work incident as occurring on September 26, 2015.

An October 5, 2015 note from Ms. Longmire indicated that appellant was treated and unable to work on October 5, 2015. It noted that appellant could return to work post physical therapy visit, with no restrictions.

On November 20, 2015 OWCP received an undated report from Dr. Hong Yu, a geriatric specialist. Dr. Yu noted that appellant was first treated on October 5, 2015 for an on-the-job injury. He indicated that her lumbosacral spine x-rays showed minimal disc space narrowing inferiorly with loss of the usual lumbar lordosis. Dr. Yu diagnosed lower back pain with sciatica. He noted that appellant indicated that she carried and lifted up to 75 pounds repeatedly throughout her nine-hour work shifts. Dr. Yu opined that this injury “could have been sustained on the job.”

By decision dated November 20, 2015, OWCP denied appellant’s claim as the medical evidence of record was insufficient to establish that the claimed medical conditions were causally related to the established employment incident of September 26, 2015. It noted that Dr. Yu’s opinion was of diminished probative value as, without any explanatory rationale, it was speculative and inconclusive in nature. OWCP noted that diagnoses of pain (dorsalgia, sciatica) were subjective symptoms and not a diagnosed medical condition. It further found that documents from a nurse or nurse practitioner were of limited probative value unless the report was countersigned by a physician.

On December 21, 2015 requested reconsideration. Appellant submitted copies of evidence previously of record.

In an undated statement which OWCP received on November 30, 2015, appellant described the events of September 25 and 26, 2015. She indicated that she was on her mail route exchanging trays of mail, which weighed 30 to 40 pounds. As she lifted the mail tray up, appellant felt a sharp pain in the left lower part of her back. As there was only 20 minutes left on her route, she thought that she could finish her route. However the sharp pain was still there when appellant got out of the vehicle to deliver the last package. It was hard for her to get out of the mail truck and that she walked very stiffly when delivering the package. When appellant returned to the office, her supervisor asked her to work her day off, Saturday, September 26, 2015. She told him that she could not take any packages as it was hard for her to get out of the mail truck because of her back. Appellant’s supervisor agreed to get help for her. Appellant related that, after working that Saturday, her back pain worsened and she went to urgent care. She noted that she had previously injured her back doing the same thing at the same job, but the employing establishment indicated that they were going to treat this injury as a new claim.

In a December 15, 2015 report, Dr. Yu indicated that he had treated appellant since October 5, 2015 for her back pain which was caused by her work as a rural mail carrier. He provided a history of the employment events, noting that appellant had to twist from the waist to pick up the heavy mail tray which weighed 25 to 50 pounds. When she lifted the tray, appellant felt a sharp pain in her left and right lower back which caused pain in her lower obliques and bilateral latissimus dorsi muscle and lumbar spine. Dr. Yu related that this information documented how appellant’s injury occurred during her work as a rural mail carrier. He also opined that appellant was entitled to workers’ compensation benefits for this injury.

By decision dated February 23, 2016, OWCP denied modification of its November 20, 2015 decision, finding that the medical evidence from Dr. Yu failed to establish that the accepted work incident of September 26, 2015 caused or aggravated the condition noted on appellant's lumbar spine x-ray.

On August 22, 2016 appellant requested reconsideration.

A June 20, 2016 magnetic resonance imaging (MRI) of the lumbar spine indicated mild multilevel disc degenerative change and moderate facet degenerative change at L4-5 without significant neural impingement or narrowing of the central canal or neural foramina.

In a July 25, 2016 note, Tracy McLeod, a family nurse practitioner, reviewed appellant's chart. She opined that the September 26, 2015 events caused appellant's lumbago and neuropathy symptoms.

By decision dated November 3, 2016, OWCP denied modification of its February 23, 2016 decision. It found that no new medical evidence from a qualified physician was submitted which established that appellant's current medical conditions were causally related to the accepted September 26, 2015 employment incident.

Appellant requested reconsideration on February 27, 2017. Letters pertaining to appellant's counsel's representation were received along with a request for a copy of the case record and a November 21, 2016 payment statement from the employing establishment. Duplicative evidence previously of record was also received.

In a February 15, 2016 report, Dr. Neil Allen, a Board-certified internist and neurologist, noted that on September 26, 2015 appellant reportedly experienced severe back pain after lifting and carrying heavy parcels from her delivery vehicle while on duty as a rural carrier. He concluded that appellant's case should be updated to include strain/sprain of the lumbar spine. Dr. Allen noted that lumbar sprain/strains were most frequently caused by forceful straightening from a crouched position, as one would perform when lifting or repetitively extending from a bent position similar to that described by appellant. The repetitive, forceful muscular contractions required to stabilize the spine while lifting parcels on September 26, 2015 resulted in the overstretching and microscopic tearing of the ligaments and musculature of appellant's lumbar spine. The surrounding soft tissues reacted and became inflamed, painful and stiff, which restricted both function and mobility within the affected area. Dr. Allen noted that in some cases individuals could also experience radiating symptoms into the buttocks and thighs. He opined that, based upon the injury mechanism described by appellant, her injury resulted from the repetitive occupational trauma she suffered during the performance of her regular work duties on September 26, 2015.

By decision dated April 20, 2017, OWCP denied modification of its February 15, 2016 decision. It found that Dr. Allen's report lacked a medical opinion with sufficient detailed explanation addressing how the assessed lumbar strain/sprain was due to the September 26, 2015 traumatic injury as opposed to the preexisting injuries or conditions for which appellant had previously filed claims.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ 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 or specific condition for which compensation is claimed are causally related to the employment injury.⁷ 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.⁸

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.⁹ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such a causal relationship.¹⁰ The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹¹

ANALYSIS

The Board finds that appellant failed to establish a lumbar condition causally related to the accepted September 26, 2015 employment incident.

OWCP accepted that on September 26, 2015 appellant experienced back pain after lifting up a heavy tray of mail while loading her delivery vehicle. In order to establish a causal

⁶ *Supra* note 2.

⁷ *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁸ *Michael E. Smith*, 50 ECAB 313 (1999).

⁹ *Elaine Pendleton*, *supra* note 7.

¹⁰ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

¹¹ *James Mack*, 43 ECAB 321 (1991).

relationship between a diagnosed condition and the accepted employment incident, appellant must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such causal relationship.¹²

In an undated report, Dr. Yu noted that appellant was first treated on October 5, 2015 and diagnosed with lower back pain with sciatica for the on-the-job injury. He indicated that the lumbosacral spine x-rays showed minimal disc space narrowing inferiorly with loss of the usual lumbar lordosis. Dr. Yu noted that appellant indicated that she lifted and carried up to 75 pounds repeatedly throughout her nine-hour shifts. He opined that this injury “could have been sustained on the job.” In a December 15, 2015 report, Dr. Yu provided a history of the accepted work incident and noted that the information documented how appellant’s injury occurred during her work as a rural mail carrier. He concluded that appellant’s back pain was caused by her work as a rural mail carrier and that she was entitled to workers’ compensation benefits for this injury.

While Dr. Yu found that appellant had lower back pain with sciatica, the Board has consistently held that pain is a symptom, not a compensable medical diagnosis.¹³ It is also noted that Dr. Yu generally repeated appellant’s allegations pertaining to the employment incident. Such generalized statements do not establish causal relationship because they merely repeat appellant’s allegations and are unsupported by adequate medical rationale explaining how this physical activity actually caused the diagnosed conditions as indicated on the lumbar spine x-rays.¹⁴ Moreover, Dr. Yu failed to provide a detailed medical history or discuss whether there was any prior treatment for the back.¹⁵ An unequivocal, well-rationalized opinion is particularly warranted as it remains unclear if appellant’s claimed injury was caused by the September 26, 2015 employment incident or was a preexisting condition.¹⁶ The Board has held that medical evidence that fails to offer a rationalized opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship.¹⁷ Thus, Dr. Yu’s reports are of limited probative value and are insufficient to meet appellant’s burden of proof.¹⁸

In his February 15, 2016 report, Dr. Allen diagnosed strain/sprain of the lumbar spine. He noted that the history of appellant’s September 26, 2015 incident and opined that appellant’s injury resulted from the repetitive occupational trauma she suffered during the performance of her regular work duties on September 26, 2015 as it was both reasonable and expected based upon the mechanism described by the appellant. However, Dr. Allen did not provide sufficient medical rationale based on a full medical history of appellant’s prior conditions and/or injuries to her

¹² *T.H.*, 59 ECAB 388 (2008); *James Mack*, 43 ECAB 321 (1991).

¹³ *C.F.*, Docket No. 08-1102 (issued October 10, 2008); *Robert Broome*, 55 ECAB 339 (2004).

¹⁴ *K.W.*, Docket No. 10-98 (issued September 10, 2010).

¹⁵ *James Mack*, *supra* note 12.

¹⁶ *See J.C.*, Docket No. 11-1980 (issued July 18, 2012).

¹⁷ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹⁸ *See L.M.*, Docket No. 14-0973 (issued August 25, 2014); *R.G.*, Docket No. 14-0113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-0548 (issued November 16, 2012).

back.¹⁹ As noted, an unequivocal, well-rationalized opinion is particularly warranted as it remains unclear if appellant's injury was caused by the employment incident or was a preexisting condition.²⁰ The Board has held that medical evidence that fails to offer a rationalized opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.²¹ Thus, Dr. Allen's report is of limited probative value is insufficient to meet appellant's burden of proof.²²

Other medical evidence of record, including diagnostic test reports, are of limited probative value as they do not specifically address whether appellant's diagnosed conditions are causally related to the accepted employment incident.²³

The medical reports from a nurse or nurse practitioner have no probative medical value in establishing appellant's claim as neither one is a physician as defined under FECA.²⁴

The Board finds that appellant failed to submit rationalized medical evidence sufficient to support her allegation or warrant further development that she sustained a lumbar condition causally related to the accepted September 26, 2015 employment incident.

On appeal counsel alleges that OWCP's decision is wrong as a matter of law as it created a fictional burden of proof. For the reasons discussed above, the Board finds that appellant has not met her burden of proof.²⁵

¹⁹ See *supra* note 14.

²⁰ See *supra* note 15.

²¹ See *C.B.*, *supra* note 17.

²² See *L.M.*, *supra* note 18.

²³ See *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

²⁴ See 5 U.S.C. § 8101(2); see *David P. Sawchuk*, 57 ECAB 316, 320, n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *L.D.*, 59 ECAB 648 (2008) (a nurse practitioner is not considered a physician as defined under FECA).

²⁵ The Board notes that a Form CA-16, authorization for examination and/or treatment, was issued by the employing establishment on October 19, 2015. When the employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. See 20 C.F.R. § 10.300; *D.H.*, Docket No. 17-0520 (issued April 23, 2018); *Val D. Wynn*, 40 ECAB 666 (1989); see also Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.3(a)(3) (February 2012).

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 10.607.²⁶

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish a lumbar condition causally related to the accepted September 26, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated April 20, 2017 is affirmed.

Issued: August 1, 2018
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

²⁶ The Board notes that appellant may separately file a new occupational disease claim for lumbar conditions caused by her lifting duties.