

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

D.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Chicago, IL, Employer**

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**Docket No. 17-1584
Issued: February 8, 2018**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 14, 2017 appellant filed a timely appeal from a February 6, 2017 merit decision and an April 27, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish an injury causally related to the accepted September 17, 2015 employment incident; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 1, 2016 appellant, then a 42-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 17, 2015 she sustained a torn disc in her neck and a herniated disc in her back as a result of picking up a tub of mail. She elaborated on the circumstances of her claimed injury in an attached letter, stating that on September 16, 2015 she felt pain in her lower back after delivering a route with parcels. The next day her back was somewhat sore, but appellant proceeded to work and while casing a route, she lifted a mail tub containing flat mail and heard a pop in her back. She immediately began to experience extreme pain and difficulty standing. Appellant stated that, after alerting a supervisor, she was taken to the emergency room of a nearby hospital by her daughter. She stopped work on September 17, 2015.

In an attached statement, the employing establishment controverted appellant's claim. A supervisor stated that she believed appellant was attempting to claim compensation for an injury that occurred outside of work. She noted that appellant had admitted verbally that the back injury did not occur at work, nor had she reported the injury within 30 days. Appellant had applied for a temporary light-duty assignment on November 16, 2015 and applied for a position other than letter carrier on February 11, 2016. The supervisor observed that appellant had applied for these reassignments, yet not filled out a Form CA-1 claiming an injury at work, by February 11, 2016. She further noted that on March 25, 2016 appellant filled out a Form CA-1, but did not bring it into the station to ask her supervisors to fill out their portion of the form. Instead, appellant sent the Form CA-1 to management through a union steward. The supervisor argued that her submission of a light-duty request proved that appellant was injured outside of work, and that appellant's claim was fraudulent.

By letter dated July 7, 2016, OWCP informed appellant of the evidence necessary to establish her claim. It noted that she had not submitted sufficient evidence to establish either the factual or medical portions of her claim, and afforded her 30 days to submit additional evidence. OWCP also requested that appellant respond to a development questionnaire.

By letter dated July 7, 2016, the employing establishment reiterated its controversion of appellant's claim. It noted that appellant failed to submit any medical evidence for the first 30 days of her claimed injury, that she failed to file the claim within 30 days, that she informed supervisors that the injury did not occur on-premises, and that she would seek attention from her private physician. The employing establishment noted that appellant had been off work since September 21, 2015, without contacting the employing establishment.

In a report dated July 22, 2016, Dr. Leilanie Narcelles-Mon, a Board-certified internist, diagnosed radiculopathy of the lower extremities, lumbar musculoskeletal spasm, an L4-L5 annular tear, an L4-L5 disc herniation, degenerative changes to the lower lumbar spine, L4-L5 central canal stenosis, and L5-S1 bilateral facet joint hypertrophy. On examination, she noted tenderness on palpation of the lower lumbar spine and severe spasm of the lumbar muscles, weakness of the lower extremities, and radiculopathy of the lower extremities. Dr. Narcelles-Mon opined that appellant sustained a back injury at work. She explained that appellant had related that she had bent down from her waist and picked up a bin-basket full of mail, when she

stood up she felt a pop on her back and had unbearable back pain and severe stiffness of the lower back.

Appellant responded to OWCP's development questionnaire on July 18, 2016. She stated that she did not sustain any other injury between the date of injury and the date she reported it to her supervisor on March 25, 2016. Appellant noted that she did not have any similar symptoms or disability before the date of injury, and clarified that she was claiming a traumatic injury.

In a diagnostic report dated September 25, 2015, Dr. Robert Kidd, a Board-certified diagnostic radiologist, examined the results of a magnetic resonance imaging (MRI) scan of appellant's lumbar spine. He noted impressions of early degenerative change in the lumbar spine without obvious spondylolysis or listhesis; a focal posterior annular disc tear, posterior protrusion, and inferior herniation of the disc at L4-L5 causing central canal stenosis; and no obvious pathological spinal, epidural, or paraspinal soft-tissue enhancement.

In a diagnostic report dated October 27, 2015, Dr. Kidd examined the results of a cervical spine MRI scan. He noted impressions of early degenerative changes in the cervical spine with paraspinal muscle spasm and no evidence of obvious spondylosis or listhesis; broad-based posterior disc protrusions without central canal or neural foraminal stenosis at C2-C3, C3-C4, and C6-C7; a diffuse posterior disc bulge causing mild central canal and mild bilateral neural foraminal stenosis without neurological compromise at C4-C5; and a focal right paracentral annular disc tear along with focal right paracentral protrusion of the disc at C5-C6 causing mild central canal stenosis.

By decision dated August 15, 2016, OWCP denied appellant's claim. It accepted that she had established that she was a federal civilian employee who filed a timely claim, that the incident occurred, that a medical condition had been diagnosed, and that she was within the performance of duty. OWCP found, however, that she had not submitted sufficient medical evidence to establish a causal relationship between the accepted incident of September 17, 2015 and her diagnosed conditions. It noted that Dr. Narcelles-Mon, while rendering an opinion on causation, did not provide rationale to explain the mechanism of how her conditions were caused by lifting a tub of mail.

In a note dated September 6, 2016, Dr. Narcelles-Mon noted that she had examined appellant on September 21, 2015 after an injury on September 17, 2015. She noted that appellant lifted a tub of mail at work and felt a pop in her back. Dr. Narcelles-Mon wrote, "[Appellant] developed tear and herniation of the L4-L5 disc from the work accident of September 17, 2015."

Appellant submitted a letter dated August 17, 2016 signed by three coworkers, acknowledging that they witnessed that she sustained an injury on September 17, 2015 due to casing mail.

On September 7, 2016 appellant requested a review of the written record by an OWCP hearing representative.

By decision dated February 6, 2017, the hearing representative affirmed the decision of OWCP dated August 15, 2016. He found that Dr. Narcelles-Mon had presented only a

conclusory opinion that appellant felt pain after bending down to lift a mail container, but did not describe in detail how such an activity caused or contributed to appellant's diagnosed conditions. The hearing representative further found that Dr. Narcelles-Mon had not differentiated between any preexisting spinal degenerative disc disease disclosed by MRI scan and any effects of the incident of September 17, 2015.

On April 13, 2017 appellant requested reconsideration. She argued that she had informed supervisors of the claimed injury when it occurred on September 17, 2015, and that she had filed a union grievance regarding her supervisors' delay in filing her claim.

Appellant submitted several medical notes dated between September 21, 2015 and February 26, 2016. The note dated September 21, 2015 from Dr. Narcelles-Mon indicated that appellant should be off work until at least September 30, 2015. In a partially illegible note dated September 30, 2015, Dr. Narcelles-Mon indicated that appellant should continue to be off work until October 12, 2015. In a note dated October 13, 2015, Dr. Richard Mon, a Board-certified internist, noted that appellant could not work until October 19, 2015. In a partially illegible note dated October 19, 2015, Dr. Narcelles-Mon recommended work restrictions of no lifting, pushing, or pulling, or bending from the waist, and recommended that appellant stay off work until at least October 24, 2014. A partially legible note dated October 28, 2015, from Dr. Narcelles-Mon referenced work restrictions of no casing mail, no pulling, and no pushing. An undated note reiterated these work restrictions and recommended physical therapy. In a note dated November 16, 2015, Dr. Narcelles-Mon noted that appellant would be off work until December 7, 2015, and with work restrictions of no lifting over 10 pounds, no carrying of over 10 pounds, and no climbing. In a note dated February 26, 2016, she indicated that appellant could return to work on March 7, 2016 with restrictions of no carrying mail, no lifting, pushing, pulling, bending, squatting, kneeling, reaching overhead, prolonged walking, or prolonged standing.

Appellant also submitted a Step B grievance decision dated August 22, 2016. The decision found that management had violated provisions of the National Agreement when they did not submit appellant's Form CA-1 within the specified time frame.

By decision dated April 27, 2017, OWCP denied appellant's request for reconsideration. It found that because she had not raised substantial legal questions nor submitted any new and relevant evidence on reconsideration, she had not met the standard to require merit review of OWCP's prior decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² 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

² *Supra* note 1.

time limitation period of FECA, that an injury³ was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her condition relates to the employment incident.⁵

The claimant has the burden of proof to establish by the weight of reliable, probative, and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.⁶ An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁸ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and compensable employment factors.⁹ 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.¹⁰

³ OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

⁴ *T.H.*, 59 ECAB 388, 393 (2008); *see Steven S. Saleh*, 55 ECAB 169, 171-72 (2003); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

⁶ *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

⁷ *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

⁸ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-56 (2006); *D'Wayne Avila*, 57 ECAB 642, 649 (2006).

⁹ *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

¹⁰ *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

ANALYSIS -- ISSUE 1

Appellant alleged that on September 17, 2015 she sustained a torn disc in her neck and a herniated disc in her back as a result of picking up a tub of mail. OWCP accepted that the incident occurred as alleged, but denied the claim as the medical evidence of record was insufficient to establish causal relationship. The Board finds that appellant failed to submit sufficient evidence to establish a causal relationship between the accepted employment incident of September 17, 2015 and her diagnosed conditions.

In a report dated July 22, 2016, Dr. Narcelles-Mon, a Board-certified internist, diagnosed a back injury at work, radiculopathy of the lower extremities, lumbar musculoskeletal spasm, an L4-L5 annular tear, an L4-L5 disc herniation, degenerative changes to the lower lumbar spine, L4-L5 central canal stenosis, and L5-S1 bilateral facet joint hypertrophy. On examination, she noted tenderness on palpation of the lower lumbar spine and severe spasm of the lumbar muscles, weakness of the lower extremities, and radiculopathy of the lower extremities. Dr. Narcelles-Mon also related that appellant had stated that she bent down from her waist and picked up a bin-basket full of mail, when she stood up she felt a pop on her back and had unbearable back pain and severe stiffness of the lower back. While she provided diagnoses of appellant's lumbar conditions, she only restated appellant's own opinion as to causation of her diagnosed conditions.¹¹ Dr. Narcelles-Mon made no attempt to explain how pathologically the employment incident could have caused the diagnosed conditions. Medical evidence submitted to support a claim for compensation should reflect a correct history, and the physician should offer a medically sound explanation of how the claimed work event caused or aggravated the claimed condition.¹²

In a note dated September 6, 2016, Dr. Narcelles-Mon noted that she had examined appellant on September 21, 2015 after an injury on September 17, 2015. She reported that appellant lifted a tub of mail at work and felt a pop in her back. Dr. Narcelles-Mon wrote, "[Appellant] developed tear and herniation of the L4-L5 disc from the work accident of September 17, 2015." The Board has also found that a mere conclusion without the necessary rationale is insufficient to meet a claimant's burden of proof.¹³ A mere conclusory opinion provided by a physician without the necessary rationale explaining how and why the incident or work factors were sufficient to result in the diagnosed medical condition is insufficient to meet a claimant's burden of proof to establish a claim.¹⁴

While Dr. Narcelles-Mon rendered an opinion that appellant's diagnosed conditions were related to her work, she did not rationalize her opinion with a medically sound explanation of how the event of September 17, 2015 caused or aggravated her conditions. This is especially

¹¹ See *M.P.*, Docket No. 06-1388 (issued September 20, 2006).

¹² *D.D.*, Docket No. 13-1517 (issued April 14, 2014).

¹³ *T.M.*, Docket No. 08-0975 (issued February 6, 2009); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *William C. Thomas*, 45 ECAB 591 (1994) (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).

¹⁴ *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

important because appellant had evidence of a preexisting condition.¹⁵ Dr. Narcelles-Mon did not render an explanation of whether the degenerative changes found in the diagnostic studies of Dr. Kidd predated the date of injury, or if the claimed injury could have aggravated the degenerative changes. As noted above, neither the fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.¹⁶ Without a rationalized biomechanical explanation of how the event of September 17, 2015 caused or aggravated her conditions, Dr. Narcelles-Mon's opinion on causal relationship is insufficiently rationalized to establish appellant's claim.¹⁷

OWCP also received diagnostic reports from Dr. Kidd, in which he reviewed appellant's MRI lumbar spine scans. However, diagnostic reports which offer no opinion regarding causal relationship are of limited probative value.¹⁸

There were no other medical reports or notes of record containing an opinion on causal relationship. As appellant has not submitted any sufficiently rationalized medical evidence to support her claim that she sustained an injury causally related to lifting a tub of mail on September 17, 2015, she has not met her burden of proof to establish her claim.

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.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a), OWCP's regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.¹⁹ Section 10.608(b) of OWCP's regulations provide that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(3), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.²⁰

¹⁵ See *S.D.*, Docket No. 16-0999 (issued October 16, 2017).

¹⁶ *Supra* note 9.

¹⁷ See *T.G.*, Docket No. 17-0632 (issued July 26, 2017).

¹⁸ See *G.H.*, Docket No. 17-1387 (issued October 24, 2017).

¹⁹ 20 C.F.R. § 10.606(b)(3); *D.K.*, 59 ECAB 141, 146 (2007).

²⁰ *Id.* at § 10.608(b); see *K.H.*, 59 ECAB 495, 499 (2008).

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim.

In her March 29, 2017 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously considered. With her request for reconsideration, appellant argued that her supervisors had been made aware of the injury on the date of injury and that she had filed a union grievance against her supervisors for delaying submission of her claim. OWCP had already accepted that the incident occurred as alleged and been submitted in a timely manner, and as such evidence regarding timeliness of submission of her claim and the specifics of the incident were irrelevant to the underlying, remaining issue in her claim. The underlying issue is whether appellant submitted sufficient medical evidence to establish a diagnosed injury related to the accepted employment incident of September 17, 2015. That is a medical issue which must be addressed by relevant and pertinent new medical evidence.²¹

Appellant submitted various notes dated between September 21, 2015 and February 26, 2016, stating that she should be off work and recommending work restrictions. This evidence is irrelevant to the issue of causal relationship as none of the notes contained an opinion on causal relationship. Thus, these notes do not comprise a basis for reopening the case.²² A claimant may be entitled to a merit review by submitting pertinent new and relevant evidence, but appellant did not submit any such evidence in support of her request for reconsideration.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or submit relevant and pertinent new evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish an injury causally related to the accepted September 17, 2015 employment incident. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

²¹ See *C.K.*, Docket No. 17-0341 (issued October 3, 2017).

²² See *L.C.*, Docket No. 17-0518 (issued July 21, 2017).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 27 and February 6, 2017 are affirmed.

Issued: February 8, 2018
Washington, DC

Christopher J. Godfrey, 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