

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

M.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Middlesex, NJ, Employer**

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**Docket No. 17-0688
Issued: March 15, 2018**

Appearances:
*Thomas R. Uliase, Esq., for the appellant*¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On February 6, 2017 appellant, through counsel, filed a timely appeal from a September 28, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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The issues are: (1) whether OWCP properly rescinded acceptance of the claim for lumbar spine and right hip contusions; and (2) whether appellant met her burden of proof to

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

establish an aggravation of preexisting cervical, lumbar, bilateral shoulder, and bilateral hip conditions due to factors of her federal employment.

FACTUAL HISTORY

On April 8, 2015 appellant, then a 49-year-old letter carrier, filed an occupational disease claim (Form CA-2), for aggravation of her “back, neck, arms, [and] hips.” She alleged that her job duties increased after her December 17, 2013 work injury (OWCP File No. xxxxxx823), and those duties, which included “an increase of street time,” aggravated her back, neck, arms, and hips.³ Appellant indicated that she first became aware of her conditions on December 17, 2013 and first realized they were caused or aggravated by her employment on November 20, 2014. She stopped work on March 25, 2015 and has not yet returned. OWCP assigned the current claim File No. xxxxxx696.

OWCP received December 18, 2013 emergency department treatment records from Dr. Lisa Ceppetelli, who diagnosed lumbar contusion and hip contusion.⁴ The previous day, appellant had reportedly slipped and fell on concrete steps, striking her back directly on a stair. She subsequently developed pain in her lower back, right groin, and right hand. Dr. Ceppetelli prescribed pain medication and excused appellant from work for two days.

In a March 27, 2015 report, Dr. Mark A.P. Filippone, a Board-certified physiatrist, noted that he had last examined appellant on March 12, 2015. Appellant informed Dr. Filippone that she had been persuaded to work 2 to 3 hours per day delivering mail, but after 1½ hours of carrying a 10-pound (approximate) bag, she began complaining of increased low back pain radiating to her groin, bilaterally. She was reportedly unable to finish the remaining 20 minutes of her route due to back pain and spasm, which radiated to her hips and groin. Later that same day appellant was seen in the emergency room (ER) where she received treatment and x-rays were obtained. She was prescribed pain medication and discharged from the ER after approximately four hours. Since that episode, appellant had been unable to return to work. Dr. Filippone reported that appellant continued to complain of neck pain, bilateral shoulder pain, and low back pain. He advised that appellant was unable to return to work as sitting, standing or walking aggravated her pain. Dr. Filippone also indicated that appellant was unable to carry things, and that her mid and low back pain was worsening. He recommended additional x-rays, a follow-up lumbar magnetic resonance imaging (MRI) scan, and referred appellant for pain management treatment. Lastly, he indicated that appellant was totally disabled.

In a June 29, 2015 report, Dr. Filippone indicated that appellant self-referred for a new injury, assigned File No. xxxxxx696. He stated that appellant was last treated by him on April 19, 2015 for a work injury that had been accepted for brachial neuritis and lumbosacral

³ OWCP accepted appellant’s December 17, 2013 traumatic injury claim for aggravation of brachial neuritis/radiculitis and aggravation of thoracic or lumbosacral neuritis/radiculitis. The injury occurred when she slipped and fell on a porch step that was covered by snow and ice. Under File No. xxxxxx823, OWCP previously accepted brachial neuritis/radiculitis and thoracic or lumbosacral neuritis/radiculitis, which arose on or about August 27, 2007. Under File No. xxxxxx052, OWCP accepted that appellant sustained work-related neck and back (lumbar) sprains on or about April 18, 2000.

⁴ Dr. Ceppetelli is Board-certified in emergency medicine.

neuritis, assigned File No. xxxxxx823. Dr. Filippone opined that appellant's previous injuries were exacerbated while working for the employing establishment between approximately November 14, 2014, when her workload was increased, and March 22, 2015, the last day she was able to work. He reported that appellant had prior work-related neck injuries in 2000 and 2007, and more recently had a fall on December 17, 2013 when she injured her back while delivering mail. Dr. Filippone stated that she was able to return to a modified-duty position, but then her job duties continued to increase until November 2014 when she was given much more street time and more physical work while delivering mail. He diagnosed exacerbation of prior cervical radiculopathy, exacerbation of prior internal derangement of both shoulders, left more than right, exacerbation of thoracicalgia, exacerbation of lumbosacral radiculitis, and exacerbation of internal derangement of both hips. Dr. Filippone concluded that appellant's conditions were due to her increased workload while on limited duty on or about November 2014, which progressed while she continued to work through March 23, 2015.

In a July 1, 2015 development letter, OWCP advised appellant of the deficiencies of her claim and afford her 30 days to submit additional evidence and respond to its inquiries.

In response, appellant submitted additional medical evidence, including two attending physician's reports (Form CA-20) dated June 29 and July 21, 2015 from Dr. Filippone who continued to diagnose exacerbation of appellant's back, neck, bilateral shoulder, and bilateral hip conditions and opined that she had been totally disabled for work since March 22, 2015.

By decision dated August 7, 2015, OWCP accepted appellant's occupational disease claim for right hip and lumbar spine contusions. It further advised that appellant would receive a separate decision addressing the medical conditions of exacerbation of cervical radiculopathy, exacerbation of bilateral internal shoulder derangement, exacerbation of lumbar radiculitis, and exacerbation of bilateral hip internal derangement.

Subsequently, appellant submitted a physical therapy report dated August 19, 2015.

Appellant further submitted attending physician's reports (Form CA-20) from Dr. Filippone dated September 11, October 16, November 11, and December 14, 2015 and January 15, 2016. Dr. Filippone diagnosed lumbosacral radiculopathy and checked the "Yes" box indicating his belief that the condition was caused or aggravated by employment activity.

In reports dated October 16 and November 11, 2015 and January 18, 2016 Dr. Filippone reexamined appellant and opined that she was totally disabled for work.

OWCP also received physical therapy reports dated September 2, December 3, 7, 9, 11, 16, 17, 23, 24, 28, and 30, 2015.

On February 16, 2016 OWCP issued a notice of proposed rescission of its prior acceptance of appellant's claim for lumbar spine and right hip contusions because they were accepted in error under the wrong claim number. It explained that Dr. Ceppetelli's December 18, 2013 E.R. treatment records pertained to a prior injury under File No. xxxxxx823, and it had accepted the diagnosed contusions under the wrong case. OWCP further noted that Dr. Filippone's various reports included diagnoses of lumbar sprain, exacerbation of cervical radiculopathy, exacerbation of bilateral internal shoulder derangement, exacerbation of lumbar

radiculitis, and exacerbation of bilateral hip internal derangement. However, it found that he failed to provide a well-reasoned medical opinion explaining exactly how the claimed work factors either directly caused or aggravated the diagnosed conditions.

In response, appellant submitted a February 8, 2016 report from Dr. Louis G. Quartararo, a Board-certified orthopedic surgeon, who diagnosed severe left hip trochanteric bursitis, L5-S1 disc herniation, and left lower extremity radiculopathy. Dr. Quartararo noted that on December 17, 2013, appellant was delivering mail when she slipped on icy steps and landed on her back.

Appellant also submitted two additional attending physician's reports (Form CA-20) from Dr. Filippone dated February 16 and March 16, 2016. Dr. Filippone continued to diagnose lumbosacral radiculopathy and checked a box marked "Yes" indicating his belief that the condition was caused or aggravated by employment activity.

By decision dated March 24, 2016, OWCP finalized the proposed rescission of the acceptance of appellant's claim for lumbar spine and right hip contusions as it was erroneously accepted under the wrong claim number.

On April 1, 2016 appellant requested an oral hearing by a representative of the Branch of Hearings and Review. The hearing was held on July 12, 2016. Appellant submitted progress reports dated April 20, April 27, and May 24, 2016 from Dr. Filippone who reiterated his diagnoses and opinion that appellant remained totally disabled.

By decision dated September 28, 2016, OWCP's hearing representative affirmed the March 24, 2016 decision, finding that OWCP correctly rescinded acceptance of appellant's claim. He further found that appellant failed to establish an exacerbation or aggravation of any underlying conditions causally related to factors of her federal employment.

LEGAL PRECEDENT -- ISSUE 1

OWCP may reopen a claim at any time on its own motion and may modify, rescind, decrease or increase compensation previously awarded, or award compensation previously denied.⁵ Once OWCP accepts a claim, it has the burden of justifying termination or modification of benefits.⁶ This burden applies even where OWCP later decides that it erroneously accepted a claim.⁷ OWCP must provide a clear rationale for rescinding acceptance of a claim.⁸

⁵ 20 C.F.R. § 10.610; 5 U.S.C. § 8128(a).

⁶ *Delphia Y. Jackson*, 55 ECAB 373, 376 (2004).

⁷ *Id.*

⁸ *Id.*

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to rescind its acceptance of appellant's claim for lumbar spine and right hip contusions. The evidence demonstrated that OWCP's initial acceptance was in error. OWCP explained that Dr. Ceppetelli's December 18, 2013 ER treatment records pertained to a prior injury under File No. xxxxxx823, and it had mistakenly accepted the diagnosed lumbar spine and right hip contusions under the wrong case. The Board finds that OWCP properly rescinded acceptance of the above-noted contusions under the current occupational disease claim, OWCP File No. xxxxxx696.⁹

LEGAL PRECEDENT -- ISSUE 2

A claimant seeking benefits under FECA¹⁰ 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.¹¹

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.¹²

Where there is medical evidence of a preexisting condition involving the same part of the body as the claimed employment injury, the issue of causal relationship invariably requires inquiry into whether there was employment-related aggravation, acceleration or precipitation of the underlying condition.¹³ Accordingly, the physician must provide a rationalized medical opinion which differentiates between the effects of the work-related injury or disease and the

⁹ OWCP purportedly accepted lower back and right hip contusions under File No. xxxxxx823. However, the case record associated with appellant's December 17, 2013 traumatic injury claim is not currently available to the Board for review.

¹⁰ *Supra* note 2.

¹¹ 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). 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. *Id.*

¹² *Victor J. Woodhams, id.*

¹³ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

preexisting condition.¹⁴ Such evidence will permit the proper kind of acceptance, such as whether the employment-related aggravation was temporary or permanent.¹⁵

ANALYSIS -- ISSUE 2

The Board finds that appellant did not meet her burden of proof to establish a claim that federal employment factors caused or aggravated one of her diagnosed medical conditions. Appellant identified the factors of employment that she believed caused her conditions, including “an increase of street time” at work, which OWCP accepted as factual. However, in order to establish a claim that she sustained an employment-related injury, she must also submit rationalized medical evidence which explains how her medical conditions were caused or aggravated by the implicated employment factors.¹⁶

Regarding the reports from Drs. Ceppetelli and Quartararo, the Board finds that they both failed to provide an opinion adequately addressing how appellant’s employment factors, specifically “an increase of street time,” aggravated her preexisting cervical, lumbar, bilateral shoulder, and bilateral hip conditions. Appellant also submitted evidence from physical therapists. These documents do not constitute competent medical evidence because a physical therapist is not a “physician” as defined under FECA.¹⁷ Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered “physician[s]” as defined under FECA.¹⁸ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to compensation benefits.¹⁹ For these reasons, the above-noted evidence is insufficient to satisfy appellant’s burden of proof with respect to causal relationship.²⁰

In a series of reports, Dr. Filippone diagnosed exacerbation of prior cervical radiculopathy, exacerbation of prior internal derangement of both shoulders, left more than right, exacerbation of thoracalgia, exacerbation of lumbosacral radiculitis, and exacerbation of internal derangement of both hips. Dr. Filippone opined that appellant’s conditions were due to her increased workload while on limited duty on or about November 14, 2014, which progressed

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *See A.C.*, Docket No. 08-1453 (issued November 18, 2008).

¹⁷ 5 U.S.C. § 8101(2); *Sean O’Connell*, 56 ECAB 195 (2004) (physician’s assistants); *Jennifer L. Sharp*, 48 ECAB 209 (1996) (physical therapists). *See also Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

¹⁸ 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

¹⁹ *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

²⁰ *See supra* notes 10-14.

while she continued to work through March 23, 2015. Appellant told him that she had been persuaded to work 2 to 3 hours per day delivering mail, but after 1½ hours of carrying a 10-pound (approximate) bag, she began complaining of increased low back pain radiating to her groin, bilaterally. Dr. Filippone stated that appellant was last treated by him on April 19, 2015 for a work injury that had been accepted for brachial neuritis and lumbosacral neuritis, assigned File No. xxxxxx823. He reported that appellant had prior work-related neck injuries in 2000 and 2007, and more recently had a fall on December 17, 2013 when she injured her back while delivering mail. Dr. Filippone stated that she was able to return to a modified-duty position, but then her job duties continued to increase until November 2014 when she was given much more street time and more physical work while delivering mail. He opined that appellant was totally disabled for work.

The Board finds that Dr. Filippone did not provide sufficient medical rationale explaining how appellant's preexisting cervical, lumbar, bilateral shoulder, and bilateral hip conditions were aggravated by "an increase of street time" at work. Dr. Filippone opined that appellant's conditions were aggravated while she was at work, but such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how her physical activity at work actually aggravated the diagnosed conditions.²¹ His opinion was based, in part, on temporal correlation. However, the Board has held that 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 a causal relationship.²² Dr. Filippone did not otherwise sufficiently explain the reasons why diagnostic testing and examination findings led him to conclude that appellant's employment factors caused or contributed to the diagnosed conditions. As noted above, the need for rationale is particularly important as the record indicates that appellant had a prior history of cervical issues since 2000 and a back injury in 2013. Therefore, the Board finds that the reports from Dr. Filippone are insufficient to establish causal relationship.

As appellant has not submitted any rationalized medical evidence to support her allegation that she sustained an injury causally related to the accepted employment factors, she failed to meet her burden of proof to establish a 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.

CONCLUSION

The Board finds that OWCP properly rescinded acceptance of the claim for lumbar spine and right hip contusions. The Board further finds that appellant has not met her burden of proof to establish an aggravation of preexisting cervical, lumbar, bilateral shoulder, and bilateral hip conditions due to factors of her federal employment.

²¹ See *K.W.*, Docket No. 10-98 (issued September 10, 2010).

²² *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

ORDER

IT IS HEREBY ORDERED THAT the September 28, 2016 decision of the Office of Workers' Compensation Programs is affirmed.²³

Issued: March 15, 2018
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

²³ Colleen Duffy Kiko, Judge, participated in this decision, but was no longer a member of the Board effective December 11, 2017.