

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

C.W., Appellant)	
)	
and)	Docket No. 18-0785
)	Issued: November 16, 2018
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Los Angeles, CA, Employer)	
)	

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 March 1, 2018 appellant filed a timely appeal from a January 26, 2018 merit 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 the claim.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the January 26, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish that her lumbar conditions are causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On July 10, 2017 appellant, then a 57-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she sustained lumbar injury as a result of her federal employment duties.³ She attributed her lumbar spine conditions to loading and unloading mail trucks, using manual force to open and close doors, and driving equipment. Appellant first became aware of her condition and that it was caused or aggravated by her federal employment on August 3, 2016. She retired effective June 30, 2017.

By letter dated July 20, 2017, OWCP advised appellant of the deficiencies in her claim. It requested that she submit additional factual information and medical evidence, including a comprehensive medical report from her treating physician which included a reasoned explanation as to how the specific work factors identified by appellant had caused, contributed to, or aggravated her claimed medical conditions. OWCP afforded appellant 30 days to submit the requested information.

In response, OWCP received an August 3, 2017 statement from appellant outlining her work duties, as well as a number of summary reports from Kaiser Permanente physicians dated from August 3, 2015 to June 10, 2017.

In an August 3, 2015 note, Dr. Stuart Thomas Yee, a physiatrist, related appellant's treatment for neuropathic (nerve) pain. In September 18, November 3, and December 28, 2015 notes, Dr. Joanna Marie Duquette, a family practitioner, noted appellant's treatment for sacral radiculopathy. On January 15, 2016 Dr. Yee related that appellant was seen for back pain. In a February 23, 2016 note, Dr. Neal Kenneth Sheade, a Board-certified physiatrist, noted treatment for right-sided sciatica.

An August 2, 2016 magnetic resonance imaging (MRI) scan noted impressions of disc extrusion at L4-5, disc protrusion at L3-4, canal stenosis L3 to L5, and neuroforaminal narrowing at L3-4. The clinical history noted "Reason R sciatica x 1+ y[ea]rs without source identified on phys[ical] exam[ination]."

In a September 27, 2016 note, Dr. Sheade indicated treatment for lumbar radiculopathy. In a November 4, 2016 note, Dr. Nippon D. Vadehra, a Board-certified anesthesiologist, related that appellant was seen for chronic low back pain. On December 14, 2016 and March 3, 2017 Dr. Vadehra updated appellant's diagnosis to lumbar disc herniation with radiculopathy. In a June 10, 2017 report, Dr. Anh Quan Quoc Nguyen, a Board-certified physiatrist, diagnosed lumbar radiculopathy and chronic back pain, which had lasted more than three months.

³ Appellant indicated that she sustained "sciatica (right leg), chronic lower back pain, protruding disc, lumbar disc herniation, [and] sacral radiculopathy."

By decision dated September 15, 2017, OWCP denied the claim. It found that the medical evidence of record was insufficient to establish that the diagnosed medical conditions were causally related to the accepted work factors.

On October 4, 2017 appellant requested a review the written record by an OWCP hearing representative.

In a September 28, 2017 medical report, Dr. Duquette noted that she had been treating appellant for a little over two years as her primary care physician. She indicated that in a June 3, 2015 history and physical examination, appellant had described right lower extremity paresthesias radiating from her back down through her posterior leg to her foot. Dr. Duquette noted that appellant had experienced these symptoms for the previous six months, without any preceding traumatic injury. She noted that appellant's August 3, 2015 nerve conduction testing revealed sacral radiculopathy and that the August 2, 2016 MRI scan showed significant L3-4 and L5-S1 disc herniation impinging on the spinal cord roots. Dr. Duquette noted that appellant indicated that, when she was working, she was bending while lifting stall doors over 50 pounds, pushing equipment greater than 50 pounds, driving a forklift for 6 hours without a break, and walking and standing on a concrete floor for more than 4 hours without a break. She concluded that "excessive pushing, lifting, pulling and rigorous physical exertion likely contributed to [appellant's] medical condition."

By decision dated January 26, 2018, an OWCP hearing representative affirmed the September 15, 2017 decision. She found that appellant had not submitted rationalized medical evidence, based upon a complete factual background, establishing causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.⁵ 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.⁶

OWCP's regulations define an occupational disease as a condition produced by the work environment over a period longer than a single workday or shift.⁷ 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

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁶ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ 20 C.F.R. § 10.5(q).

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.⁸

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁹ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.¹⁰ 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.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her lumbar conditions were causally related to the accepted employment factors.

In support of her claim, appellant submitted reports dated August 3, 2015 to June 10, 2017 from Kaiser Permanente physicians in which these physicians diagnosed treatment for neuropathic pain, sacral radiculopathy, back pain, right-sided sciatica, lumbar radiculopathy and lumbar disc herniation with radiculopathy. However, these reports all failed to offer an opinion regarding the cause of appellant's diagnosed lumbar spine conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value.¹² As such, the August 15, 2016 to June 10, 2017 Kaiser Permanente reports are insufficient to establish appellant's claim.

OWCP also received a September 28, 2017 report wherein Dr. Duquette noted appellant's employment duties. Dr. Duquette also related findings from appellant's August 3, 2015 nerve conduction testing, which revealed sacral radiculopathy, and her August 2, 2016 MRI scan, which showed significant L3-4 and L5-S1 disc herniation impinging on the spinal cord roots. She concluded that "excessive pushing, lifting, pulling and rigorous physical exertion likely contributed to [appellant's] medical condition." However, the opinion of a physician supporting causal relationship must not be speculative or equivocal.¹³ Dr. Duquette's statement on causation also failed to provide a medically sound explanation as to how the specific employment factors,

⁸ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁹ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

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

¹¹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹² *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018); *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *see also C.B.*, Docket No. 09-2027 (issued May 12, 2010).

¹³ *D.D.*, 57 ECAB 734 (2006).

physiologically, caused or aggravated appellant's conditions.¹⁴ She failed to provide discussion of the underlying degenerative condition and how such condition worsened as a result of appellant's work activities.¹⁵ As Dr. Duquette's opinion was conclusory and without sufficient rationale, her report is insufficient to establish causal relationship.¹⁶

As appellant has not submitted medical opinion evidence sufficient to establish her claim,¹⁷ she has not met her burden of proof.

On appeal appellant contends that a revised statement from her physician establishes causal relationship. As previously noted, the Board is unable to review new evidence on appeal.¹⁸ Appellant has not established causal relationship between her diagnosed lumbar conditions and the accepted factors of her federal employment and, therefore, she has failed to meet her burden of proof.

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 appellant has not met her burden of proof to establish that her lumbar conditions are causally related to the accepted factors of her federal employment.

¹⁴ *T.G.*, Docket No. 14-0751 (issued October 20, 2014).

¹⁵ *See S.W.*, Docket 08-2538 (issued May 21, 2009).

¹⁶ *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

¹⁷ *See P.M.*, Docket No. 17-1320 (issued October 16, 2017).

¹⁸ *See supra* note 2.

ORDER

IT IS HEREBY ORDERED THAT the January 26, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 16, 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