

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

T.L., Appellant)	
)	
and)	Docket No. 18-1729
)	Issued: April 3, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Chanute, KS, Employer)	
)	

Appearances:
Terry Smedley, for the appellant¹
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 September 13, 2018 appellant, through her representative, filed a timely appeal from a June 28, 2018 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.

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.*

ISSUE

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

FACTUAL HISTORY

On June 9, 2017 appellant, then a 28-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained back and leg pain due to the performance of her city carrier duties. She indicated that she first became aware of the condition on April 14, 2017 and its relationship to her federal employment on May 30, 2017. On the reverse side of the claim form, the employing establishment noted that appellant stopped work on June 5, 2017, returned to work on June 7, 2017, and reported her condition to her supervisor on June 9, 2017.

In an accompanying statement dated June 9, 2017, appellant related that her regular job duties consisted of lifting tubs of mail and casing magazines, newspapers, and letters, which required that she twist, turn, bend, reach, pull, and push continuously. She related that while on her route she carried a 35-pound bag full of mail on her shoulder, ascended and descended stairs, bent, turned, twisted, and kneeled while distributing mail. Appellant noted that she started to have back and hip pain around April 14, 2017, and sought medical treatment two weeks later.

In a letter dated May 30, 2017, Dr. Aaron M. McGuire, an orthopedic surgeon, related that he evaluated appellant in regard to lumbar spine conditions that she sustained due to her cumulative work duties. Based on x-ray evaluation, he diagnosed cumulative trauma to the sacrum/lumbar spine due to low back syndrome, resulting in anatomical abnormalities due to sacroiliac sprain, with radiculopathy, and muscle spasms. Dr. McGuire opined that appellant sustained lumbar spine injury as the result of her cumulative employment-related duties that she was partially disabled, but could return to work with restrictions.

In a development letter dated July 6, 2017, OWCP informed the employing establishment of appellant's claim. It requested that it submit comments from a knowledgeable supervisor regarding the accuracy of appellant's statement, a description of her tasks that required physical exertion, and a copy of her position description.

In a separate development letter dated July 7, 2017, OWCP advised appellant that further evidence was necessary to establish her claim. It requested that she submit a comprehensive narrative medical report which provided rationalized medical explanation as to how the diagnosed medical conditions were causally related to the alleged factors of her federal employment. OWCP afforded appellant 30 days to submit the requested evidence.

In a statement dated August 9, 2017, the employing establishment challenged appellant's allegations. It noted that on April 21, 2017 she first informed her supervisor of her condition. The employing establishment related that appellant had not worked from April 21 to 27, 2017 and returned to work with restrictions on April 27, 2017. Appellant failed to report to work on June 6, 2017 and, at that time, she reported that her condition was employment related. OWCP related that she had been observed by other employees, since reporting her condition, engaging in activities outside the scope of her work restrictions with no apparent problems.

In progress reports dated June 6 and 26, and July 24, 2017, Dr. McGuire examined appellant and indicated that there were no new findings or changes in her diagnosed conditions. He indicated that she continued to have localized pain, but was able to continue working within her restrictions.

By decision dated October 25, 2017, OWCP denied appellant's claim. It found that the medical evidence of record was insufficient to establish causal relationship between the diagnosed conditions and the accepted factors of her federal employment. OWCP noted that Dr. McGuire had not provided rationalized medical opinion evidence explaining how appellant's employment duties caused or aggravated a specific diagnosis.

On November 14, 2017 appellant requested an oral hearing before an OWCP hearing representative. The oral hearing was held telephonically on May 23, 2018.

By decision dated June 28, 2018, OWCP's hearing representative affirmed the October 25, 2017 decision. He found that appellant had not met her burden of proof to establish causal relationship between the accepted factors of her federal employment and her diagnosed lower back conditions.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 time limitation period of FECA,³ that an injury 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 These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

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.⁶

³ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *See M.B.*, Docket No. 17-1999 (issued November 13, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue.⁷ 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.⁸ 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.⁹

ANALYSIS

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

In a report dated May 30, 2017, Dr. McGuire diagnosed cumulative trauma to appellant's sacrum/lumbar spine resulting in sacroiliac sprain, with radiculopathy, muscle spasms, and low back syndrome. He opined that her conditions were causally related to her occupational trauma. While Dr. McGuire noted an employment-related injury and diagnosed multiple lumbar conditions, his opinion was merely conclusory. The Board has held that a medical opinion is of limited probative value if it is speculative and conclusory in nature.¹⁰ A medical opinion must provide an explanation as to how the specific employment factors physiologically caused or aggravated the diagnosed conditions.¹¹ Without medical reasoning explaining how the accepted employment factors caused or contributed to the diagnosed conditions, Dr. McGuire's report is insufficient to establish appellant's claim.¹²

Appellant submitted multiple additional progress reports from Dr. McGuire dated June 6 and 26, and July 24, 2018. However, in these reports Dr. McGuire did not provide an opinion as to the cause of her diagnosed 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 on the issue of causal relationship.¹³ These reports, therefore, are insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence to establish a medical condition causally related to the accepted employment factors, the Board finds that she has not met her burden of proof to establish her claim.

⁷ *B.H.*, Docket No. 18-1219 (issued January 25, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *See M.B.*, *supra* note 6.

⁹ *L.G.*, Docket No. 18-0321 (issued October 25, 2018).

¹⁰ *See M.W.*, Docket No. 17-0186 (issued March 13, 2018).

¹¹ *See V.T.*, Docket No. 18-0881 (issued November 19, 2018).

¹² *See R.T.*, Docket No. 17-2019 (issued August 24, 2018).

¹³ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

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 back conditions were causally related to the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the June 28, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 3, 2019
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