

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

F.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Baltimore, MD, Employer**

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**Docket No. 19-0594
Issued: August 13, 2019**

Appearances:

Alan J. Shapiro, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge

ALEC J. KOROMILAS, Alternate Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 23, 2019 appellant, through counsel, filed a timely appeal from an October 19, 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 a lumbar condition causally related to the accepted October 13, 2017 employment incident.

FACTUAL HISTORY

On January 2, 2018 appellant, a 56-year-old postal police officer, filed a traumatic injury claim (Form CA-1), alleging that she sustained an aggravation of her preexisting bulging disc condition on October 13, 2017 due to wearing a gun belt while in the performance of duty. She stated that her bulging disc and pinched nerve caused sciatic pain to shoot down her left leg.³ Appellant stopped work on October 20, 2017. On the reverse side of the claim form, the employing establishment contended that the claim did not meet the legal definition of traumatic injury and that appellant was not in the performance of duty when injured.⁴

In a Postal Police Incident Report dated October 12, 2017, appellant's supervisor indicated that appellant was at work on post 4 that day when her coworker saw her in severe pain. When asked, appellant explained that she was having sharp pains in her left leg, starting from her buttocks area down to her foot, and she was having trouble bending and standing. The supervisor stated several times that appellant needed to go to the hospital and she agreed after a period of time had passed.

A magnetic resonance imaging (MRI) scan dated November 3, 2017 demonstrated left foraminal disc protrusion at L3-4, left foraminal disc osteophyte at L4-5, and a mild right foraminal disc bulge.

In a letter dated November 27, 2017 and addressed to appellant, R.W., the inspector-in-charge, indicated that appellant underwent a fitness-for-duty examination on November 3, 2017 and was found to be unfit for duty by her treating physician. R.W. further explained that the findings were submitted to Dr. Bruce Butler, an occupational medicine specialist and the inspection service medical director, and he concurred with the fitness determination.

OWCP, by development letter dated January 10, 2018, advised appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence and respond to its inquiries.

In response, appellant submitted a January 30, 2018 report from Dr. Dorita C. Egudu, a Board-certified family practitioner, who diagnosed sciatic nerve pain. Appellant informed Dr. Egudu that while she was sitting at work she had a sudden onset of worsening pain from the left gluteal region down to her left foot. Dr. Egudu reviewed appellant's medical history and

³ OWCP assigned the present claim OWCP File No. xxxxxx593. Appellant has a prior claim for a May 8, 2008 traumatic injury under OWCP File No. xxxxxx120, which was accepted for neck sprain and "other symptoms referable to back." Appellant's claims have not been administratively combined.

⁴ By letter dated January 9, 2018, the employing establishment further controverted the claim contending that this is not a traumatic injury because On November 20, 2017 appellant completed a notice of recurrence (Form CA-2a) relating to her May 8, 2008 traumatic injury under OWCP File No. xxxxxx120.

diagnostics studies and opined that appellant's duties, which involved wearing a heavy gun belt and prolonged standing or sitting, were possibly factors that may have exacerbated her symptoms.

Appellant also submitted a February 1, 2018 report from Dr. Louis Chang, a Board-certified neurosurgeon, who opined that adding any additional significant stress or weight to the spine, such as in the case of wearing a gun belt, could possibly aggravate preexisting back pain. However, Dr. Chang stated that he could "not prove whether or not it contributes to structural pathologies such as bulging discs."

By decision dated February 14, 2018, OWCP accepted that appellant was wearing her gun belt on October 13, 2017, however, it denied the claim finding that the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed medical conditions and the accepted work incident.

On March 12, 2018 appellant requested a telephonic hearing, before a representative of OWCP's Branch of Hearings and Review. The hearing was held before an OWCP hearing representative on August 7, 2018. Appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence.

Appellant subsequently submitted a December 6, 2017 report from Dr. Chang who asserted that appellant was being seen for the first time for severe pain going down her left leg that started on October 13, 2017 while she was at work. She related that her issues started when she was involved in an accident back in 2008 while at work. At that time, appellant was living in New York City and she was working as a postal police officer when she was rear-ended while driving a truck. She experienced severe lower back pain and subsequently underwent conservative treatment with physical therapy and injections. Dr. Chang reported that appellant's symptoms improved and she was able to return to work and then moved to Baltimore, Maryland in 2013 and continued her work as a postal police officer. Appellant stated that she was doing okay up until October 13, 2017 when she was sitting at her desk and suddenly felt severe and excruciating pain radiating down her left gluteal region and along the lateral aspect and shin area and all the way down to her left foot. She denied any symptoms down her right leg. Appellant indicated that the symptoms were intermittent and worse with sitting and walking. Dr. Chang diagnosed bulging lumbar disc and advised that if her symptoms did not improve with conservative management, then she would return to his office to reevaluation and discussion of possible surgical options.

In a September 21, 2018 letter, the employing establishment indicated that appellant had been employed as a postal police officer in the Baltimore office since approximately March 17, 2007 and to the best of its knowledge had no pain or issues related to wearing the duty belt, which held her handgun. It reiterated that on or about October 12, 2017, she reported a lack of feeling in one of her legs, which resulted in pain during her tour of duty, and medical attention was requested by management and an ambulance responded.

By decision dated October 19, 2018, OWCP's hearing representative affirmed the February 14, 2018 decision finding the medical evidence of record insufficient to establish causal relationship.⁵

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,⁶ 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.⁷ 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.⁸

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.⁹ First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.¹⁰ Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.¹¹

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 sufficient to establish such causal relationship.¹² The opinion of the physician must be based on a complete factual and medical background, 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.¹³

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation,

⁵ On November 1, 2018 OWCP acknowledged receipt of appellant's change of address which she filed another OWCP File No. xxxxxx120 and sent a copy of its October 19, 2018 decision to her new address of record.

⁶ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

⁸ *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).

⁹ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

¹⁰ *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹¹ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

¹² *K.V.*, Docket No. 18-0723 (issued November 9, 2018).

¹³ *I.J.*, 59 ECAB 408 (2008).

the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹⁴

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a lumbar condition causally related to the accepted October 13, 2017 employment incident.

In support of her claim, appellant submitted medical reports by Drs. Chang and Egudu who opined that prolonged sitting and wearing a heavy gun belt could possibly be factors in aggravating a bulging disc. Further, Dr. Chang specifically noted that he could “not prove” whether or not wearing a gun belt could have contributed to structural pathologies such as bulging discs. The Board finds that these opinions regarding the cause of appellant’s medical condition are speculative and equivocal in nature.¹⁵ Therefore, the Board finds that the reports from Drs. Chang and Egudu are insufficient to establish causal relationship.

As appellant has not submitted rationalized medical evidence to establish an injury causally related to the accepted October 13, 2017 employment incident, she has not met her burden of proof to establish entitlement to compensation benefits.

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 a lumbar condition causally related to the accepted October 13, 2017 employment incident.

¹⁴ *J.F.*, Docket No. 19-0456 (issued July 12, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

¹⁵ Medical opinions that are speculative or equivocal in character are of little probative value. *See Kathy A. Kelley*, 55 ECAB 206 (2004).

ORDER

IT IS HEREBY ORDERED THAT the October 19, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 13, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy 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