United States Department of Labor
Employees' Compensation Appeals Board

Y.W., Appellant	)	
and	)	**Docket No. 18-1491**
	)	**Issued: February 13, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Kearny, NJ, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On July 31, 2018 appellant, through counsel, filed a timely appeal from a February 14, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the

[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.

Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

ISSUE

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

FACTUAL HISTORY

On August 17, 2017 appellant, then a 49-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she sustained sciatica and nerve pain due to factors of her federal employment, which included pushing, pulling, and lifting of mail. She indicated that she first became aware of her claimed condition on November 1, 2015 and its relationship to her federal employment on August 7, 2017. On the reverse side of the claim, appellant's supervisor noted that appellant first received medical care on April 1, 2017. In addition, her supervisor related that appellant stopped work on July 27, 2017 and returned to work on August 8, 2017.

In a development letter dated September 5, 2017, OWCP acknowledged receipt of appellant's claim and informed her that the evidence submitted was insufficient to establish her claim. It provided a factual questionnaire for her completion and requested medical evidence in support of her claim. By separate letter of the same date, OWCP requested that the employing establishment provide additional factual information regarding the circumstances surrounding appellant's claim, including a statement from a knowledgeable supervisor regarding the accuracy of appellant's statements relative to her claim. It afforded appellant and the employing establishment 30 days to submit the requested evidence.

In a response dated September 20, 2017, the employing establishment noted that it did not concur with appellant's allegations of injury. It related that it had provided her with safety training which included the techniques of safe lifting, bending, pushing, and pulling equipment while at work.

In response to the September 5, 2017 development letter, appellant indicated that she had worked at the employing establishment since 1996 and that she had worked on a number of different machines over the years.[4] She related that her duties consisted of: pushing mail into the machines; sweeping the machines of mail; loading sacks of mail weighing up to 70 pounds onto

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that appellant submitted additional evidence on appeal. 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 additional evidence for the first time on appeal. *Id.*

[4] Appellant noted that she worked on the Optical Character Reader/Bar Code Scanner machine from 1996 to 1998, the Small Parcel and Bundle Sorter machine from 1998 to 2009, the Automated Flat Sorting Machines 100 from 2009 to 2014, the High Speed Universal Sorter machine in 2014, and the Automated Packaging Procession System machine from 2014 to present.

skids; pushing wire containers, hampers, pallets, and skids full of mail; loading mail onto a conveyor belt; and culling mail. Appellant indicated that the constant lifting, pushing, and pulling of mail for close to 20 years caused injury. She noted that she first noticed symptoms in August 2015, but they gradually worsened.

In a narrative report dated October 2, 2017, Dr. Mark A.P. Filippone, Board-certified in physical medicine and rehabilitation, related that he first examined appellant on August 7, 2017 and that he reexamined her on September 28, 2017. He noted that she complained of pain in her low back, buttocks, thighs, calfs, feet, and big toes. During the physical examination, appellant experienced pain, guarding, and spasm in the lumbar paraspinals bilaterally. Dr. Filippone diagnosed bilateral lumbosacral radiculitis. He further indicated that he reviewed a magnetic resonance imaging (MRI) scan of the lumbar spine conducted on January 1, 2017. Dr. Filippone concurred with the findings of Dr. Michael Yuz, Board-certified in diagnostic radiology, that there was straightening of the lumbar lordosis, a mild diffuse disc bulge and a superimposed broad-based central disc protrusion at L5-S1, bilateral facet joint arthropathy, and a mild disc bulge and a superimposed broad-based left formainal/far lateral disc protrusion at L4-5. Regarding causal relationship, he concluded that appellant's pathology was directly the result of excessive pushing, pulling, bending, and twisting of the low back, and opined that the pathology was caused solely by her being overworked on the job as a mail handler.

By decision dated February 14, 2018, OWCP denied appellant's claim. It noted that she had established that the employment factors occurred as alleged and that a medical condition had been diagnosed. However, OWCP found that the evidence of record failed to establish that appellant's diagnosed condition was causally related to the accepted employment factors. It noted that the only medical evidence received was Dr. Filippone's medical report dated October 2, 2017. OWCP determined that this report was insufficient to establish appellant's claim because the physician provided no explanation of how any of the stated factors of her employment caused or affected her condition. It explained that without a rationalized statement from her physician explaining how her condition was caused by the accepted work factors, the evidence of record was insufficient to establish her claim.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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[6] including that he or she sustained an injury in the performance of duty and that any specific condition or disability from work for which compensation is claimed is causally related to that employment injury.[7]

In an occupational disease claim, appellant's burden requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the

[5] *Supra* note 2.

[6] *D.L.*, Docket No. 18-1007 (issued November 28, 2018); *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[7] *D.L., id.; G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[8]

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.[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]

ANALYSIS

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

Appellant submitted a narrative report from Dr. Filippone dated October 2, 2017. In this report, Dr. Filippone documented his examination findings as well as the MRI scan results, and diagnosed bilateral lumbosacral radiculitis, disc bulge at L5-S1 central disc protrusion, bilateral facet joint arthropathy, and a mild disc bulge and a superimposed broad-based left formainal/far lateral disc protrusion at L4-5. He opined that the pathology was directly related to lifting, pushing, pulling, bending, and twisting due to appellant's position as a mail handler. Dr. Filippone concluded that excessive employment duties and overuse of the low back damaged discs caused herniations. However, he did not provide a probative, rationalized opinion regarding how the accepted work duties caused the claimed condition.[11] In this report, Dr. Filippone only generally described appellant's repetitive work activities, and he did not sufficiently explain why, medically, she would have sustained a low back condition due to these work duties.[12] The Board has held that medical evidence which does not offer a clear opinion explaining the physiological cause of an employee's condition is of limited probative value on the issue of causal relationship.[13] The Board has held that a mere conclusion without the necessary rationale explaining how appellant's specific accepted work duties could result in the diagnosed condition is insufficient for her to meet her burden of proof.[14] Thus, the Board finds that Dr. Filippone's report is insufficient to meet her burden of proof.

[8] *D.L., id.; R.H.,* 59 ECAB 382 (2008); *Ernest St. Pierre,* 51 ECAB 623 (2000).

[9] *D.L., id.; I.R.,* Docket No. 09-1229 (issued February 24, 2010); *D.I.,* 59 ECAB 158 (2007).

[10] *D.L., id.; I.J.,* 59 ECAB 408 (2008); *Victor J. Woodhams,* 41 ECAB 345 (1989).

[11] *M.G.,* Docket No. 18-0654 (issued October 17, 2018); *see George Randolph Taylor,* 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[12] *Id.*

[13] *L.J.,* Docket No. 17-1993 (issued March 13, 2018); *see R.B.,* Docket No. 16-1700 (issued September 25, 2017).

[14] *M.G., supra* note 11; *see J.S.,* Docket No. 18-0477 (issued August 28, 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 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 injury causally related to the accepted factors of federal employment.

ORDER

IT IS HEREBY ORDERED THAT the February 14, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 13, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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