

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

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<b>P.S., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 18-1222</b>
	)	<b>Issued: January 8, 2019</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Almont, MI, Employer</b>	)	
_____	)	

*Appearances:*  
*Appellant, pro se*  
*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  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On May 29, 2018 appellant filed a timely appeal from a November 28, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> A claimant has 180 days from the date of OWCP's decision to timely file an appeal. 20 C.F.R. § 501.3(e). In this case, the 180-day period from the November 28, 2017 decision expired on Sunday, May 27, 2018. The following day, May 28, 2018, was a Federal holiday. If the last day to file an appeal falls on a Saturday, Sunday, or Federal holiday, the 180-day period runs until the close of the next business day. 20 C.F.R. § 501.3(f)(2). The appeal in this case, received by the Board on Tuesday, May 29, 2018, was therefore timely filed. *See S.S.*, Docket No. 18-0647, n.2 (issued October 15, 2018).

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

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

## FACTUAL HISTORY

On December 8, 2015 appellant, then a 53-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that, while in the performance of duty, she sustained a lumbar sprain and moderate-to-severe disc damage due to lifting heavy parcels and magazines, reaching into hampers, and pushing containers with mail uphill for over 10 years. She noted that she became aware of her condition on January 20, 2014 and related it to her federal employment on October 29, 2015. Appellant advised that she had performed lifting, pushing, and pulling from October 27 to 29, 2015 and was “unable to work or stand by [the] end of the third day.” She indicated that she had initially filed a notice of recurrence (Form CA-2a) on October 30, 2015, but the employing establishment had advised her to file a claim for a new injury. Appellant stopped work on October 30, 2018. OWCP assigned the claim File No. xxxxxx308.

In an October 30, 2015 attending physician’s report (Form CA-20), Dr. Alan Hoyer, Board-certified in family medicine, diagnosed low back pain and indicated that it was unknown whether the condition was caused or aggravated by employment.

In a November 3, 2015 duty status report (Form CA-17), a physician diagnosed moderate low back muscle spasm and checked a box marked “yes” that the history of injury provided by appellant corresponded to that provided on the form of an injury “breaking down mail.”<sup>3</sup> He provided work restrictions.

On December 1, 2015 Dr. Daniel Scheer, an osteopath, diagnosed an acute exacerbation of low back pain and found that appellant could work with no change from her prior restrictions.

OWCP, in a December 17, 2015 development letter, indicated that it had previously accepted appellant’s October 10, 2014 occupational disease claim for lumbar sprain and right lumbar radiculopathy, assigned File No. xxxxxx466. It noted that she had attributed the development of her back condition under File No. xxxxxx466 to lifting bundled magazines and pushing carts full of mail and packages uphill for more than 10 years. OWCP further noted that on November 3, 2015 appellant had filed a recurrence of disability beginning October 29, 2015 under File No. xxxxxx466. It requested that she submit additional factual and medical information in support of her current occupational disease claim, including a report from her attending physician addressing causal relationship between any diagnosed condition and factors of her federal employment.

Thereafter, OWCP received a December 11, 2015 note from Dr. Kanwaldeep S. Sidhu, a Board-certified orthopedic surgeon. Dr. Sidhu advised that he was treating appellant for a low back condition and found that she could work with restrictions.

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<sup>3</sup> The name of the physician is not legible.

In a September 10, 2014 report, Dr. Mary Lynn Watts, who specializes in family medicine, related that she had evaluated appellant on January 20, 2014 for employment-related back pain. She noted that appellant advised that the “pushing of the cart up the ramp causes strain and fatigue of the low back muscles...” Dr. Watts indicated that diagnostic testing showed degenerative disc disease and spinal stenosis. She related that she had previously found, in a February 6, 2014 report, that appellant had degenerative disc disease, radiculopathy, and spinal stenosis.

In a December 22, 2015 response to OWCP’s development letter, appellant described her work duties in detail, including unloading equipment and bundled magazines from containers. She related that she had to bend at the waist to reach into the hampers and push the hampers up and down an incline. Appellant asserted that she worked with restrictions from January 21 to April 20, 2015 under File No. xxxxxx466 and that her back pain had never completely subsided. She advised that from October 27 to 29, 2015 she had experienced increasing low back pain until she was unable to walk or stand.<sup>4</sup>

By decision dated March 7, 2016, OWCP denied appellant’s occupational disease claim, finding that the medical evidence of record was insufficient to establish a diagnosed condition causally related to the accepted employment factors.

Appellant subsequently submitted an October 30, 2015 progress report from Dr. Hoyer. Dr. Hoyer evaluated her for a recurrent condition that began four days earlier when she began “to lift heavy boxes again after [a] previous back injury at work.” He noted that appellant experienced low back pain radiating into the right knee. Dr. Hoyer diagnosed midline low back pain with right sciatica and indicated that she should remain off work.

In a November 3, 2015 progress report, Dr. Scheer, an osteopath, noted that appellant had an “extensive history of low back pain” beginning in 2003 at work. In 2014, appellant had established low back pain as employment related. Dr. Scheer related that her most recent exacerbation of her symptoms had begun four or five days ago after she lifted outside her prior restrictions of 15 pounds. He noted that appellant indicated that bending forward into hampers to lift packages and pushing hampers up a ramp increased her back pain. Dr. Scheer diagnosed an acute exacerbation of chronic low back pain and found that appellant could resume work lifting up to five pounds.

On December 1, 2015 Dr. Scheer indicated that appellant’s back pain had increased since her last visit. He diagnosed an acute exacerbation of chronic low back pain with radiculopathy and found that she should continue with the same work restrictions. Dr. Scheer recommended evaluation by a back surgeon.

Appellant, on June 6, 2016, requested reconsideration.

By decision dated August 18, 2016, OWCP denied appellant’s request for reconsideration as she did not raise an argument or submit new and relevant evidence sufficient to warrant reopening her case for further merit review under 5 U.S.C. § 8128(a).

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<sup>4</sup> On January 28, 2016 Dr. Sidhu found that appellant could work with restrictions.

Appellant again requested reconsideration on October 31, 2016. In an October 19, 2016 statement, she asserted that she had submitted new and relevant evidence with her prior reconsideration request. Appellant provided 2014 and 2015 lumbar magnetic resonance imaging (MRI) scans in support of her request for reconsideration.

Appellant also submitted a January 28, 2016 report from Dr. Sidhu. Dr. Sidhu discussed her complaints of low back pain radiating into the right upper extremity and noted that she attributed her pain “to repetitive activity at work.” He noted that the lumbar spine MRI scan showed moderate stenosis and facet disease at L4-5 and degeneration at L3. Dr. Sidhu recommended a laminectomy and fusion at L4-5.

In an April 20, 2016 report, Dr. Jason Peter, an osteopath, advised that he had treated appellant beginning December 23, 2015 for employment-related low back pain. He found that her symptoms were “aggravated by lifting heavy items at work and also by pushing and pulling a heavy mail cart.” Dr. Peter diagnosed low back pain, lumbar spondylosis, lumbar radiculopathy, and chronic pain syndrome. He provided permanent work restrictions.

By decision dated January 19, 2017, OWCP modified its March 7, 2016 decision to reflect that appellant had established the diagnosed condition of sciatica. It however, found that her claim remained denied as the medical evidence of record was insufficient to establish that her sciatica was caused or aggravated by factors of her federal employment.

Appellant, on January 25, 2017, requested reconsideration. In a statement dated January 18, 2017, she asserted that OWCP had inadvertently placed medical evidence submitted in support of the present claim in File No. xxxxxx466. Appellant identified the evidence that she believed that was placed in the wrong file as an April 20, 2016 report from Dr. Peter, the December 29, 2015 MRI scan, a January 28, 2016 report from Dr. Sidhu, and an enclosed report from Dr. Mubina Khan, Board-certified in family medicine.

In an April 14, 2016 progress report, Dr. Khan, Board-certified in family medicine, noted that appellant had a history of chronic lumbar degenerative joint disease and lumbago and that her current symptoms began over a year earlier. He diagnosed lumbar radiculopathy and right-sided low back pain without sciatica.

By decision dated March 28, 2017, OWCP denied modification of its January 19, 2017 decision. It found that Dr. Kahn, Dr. Peter, and Dr. Sidhu had not provided reasoned medical evidence explaining how the identified work factors caused or aggravated a diagnosed condition.

In an April 4, 2017 report, Dr. Khan related that appellant “developed chronic low back pain secondary to a work[-]related injury in 2014 and reinjury in October 2015. [Appellant] has spondylolisthesis [and] intervertebral disc disorder with radiculopathy. Due to the repetitious nature of her work, it is not unreasonable to develop degenerative disc disease with lumbar radiculopathy.”<sup>5</sup>

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<sup>5</sup> On March 30, 2017 Dr. Khan found that appellant was disabled from employment for the period April 1 to 14, 2017.

On May 3, 2017 appellant requested reconsideration.

By decision dated November 28, 2017, OWCP denied modification of its March 28, 2017 decision. It found that Dr. Kahn's opinion in his April 7, 2017 report was speculative and thus insufficient to meet appellant's burden of proof.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>6</sup> 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 or specific condition for which compensation is claimed is causally related to the employment injury.<sup>7</sup> 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.<sup>8</sup>

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 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.<sup>9</sup>

The medical evidence required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable 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.<sup>10</sup>

### **ANALYSIS**

The Board finds that appellant has not met her burden of proof to establish a back condition causally related to the accepted factors of her federal employment under File No. xxxxxx308.

Appellant alleged that she sustained lumbar sprain and disc damage as a result of lifting heavy parcels, reaching into hampers, and pushing containers uphill for more than 10 years. She specified that she had experienced increased back pain due to lifting from October 27 to 29, 2015. OWCP had previously accepted that appellant had sustained lumbar sprain and right radiculopathy

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<sup>6</sup> *Supra* note 2.

<sup>7</sup> *See J.I.*, Docket No. 18-0286 (issued September 17, 2018); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> *See R.B.*, Docket No. 18-0416 (issued September 14, 2018); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>9</sup> *See P.D.*, Docket No. 17-1885 (issued September 17, 2018).

<sup>10</sup> *See J.R.*, Docket No. 17-1781 (issued January 16, 2018); *I.J.*, 59 ECAB 408 (2008).

under File No. xxxxxx466. It noted that she had filed a recurrence of disability on October 29, 2015 under File No. xxxxxx466.<sup>11</sup>

OWCP accepted that appellant experienced the employment factors claimed under the current File No. xxxxxx308. It denied her claim, however, as she had not submitted a rationalized medical report sufficient to establish causal relationship between the diagnosed conditions and her federal employment duties.

Dr. Watts, in a September 10, 2014 report, opined that she had evaluated appellant on January 20, 2014 for back pain related to her employment. She noted that she related that pushing a cart up a ramp fatigued the muscles of her low back and indicated that testing showed spinal stenosis and degenerative disc disease. Dr. Watts, however, did not specifically relate the diagnosed conditions of degenerative disc disease and spinal stenosis to appellant's employment or provide any rationale for her causation finding, and thus it is of little probative value.<sup>12</sup>

Dr. Hoyer, on October 30, 2015, advised that he was evaluating appellant for a low back pain radiating into the right knee that began four days earlier after she lifted boxes at work after a prior work injury. He diagnosed low back pain with right sciatica. In a Form CA-20 dated October 30, 2015, Dr. Hoyer diagnosed low back pain. He indicated that it was unknown whether the condition resulted from work duties, and thus his opinion is insufficient to meet appellant's burden of proof.

The record contains a November 3, 2015 Form CA-17 with an illegible signature. If a document does not bear a legible signature identifying that it was authorized or reviewed by a qualified physician, it does not constitute probative medical evidence.<sup>13</sup>

Dr. Scheer, on November 3, 2015, noted that appellant had a long history of low back pain that began at work in 2003. He indicated that she had experienced an exacerbation of her symptoms four or five days earlier she lifted more than 15 pounds. Dr. Scheer discussed appellant's assertion that bending into hampers to lift packages and pushing hampers uphill aggravated her back pain. He diagnosed an acute exacerbation of chronic low back pain. Pain, however, is a symptom rather than a medical diagnosis, and thus insufficient to satisfy appellant's burden of proof to establish the medical component of fact of injury.<sup>14</sup>

Dr. Sheer, on December 1, 2015, diagnosed an acute exacerbation of chronic low back pain with radiculopathy and found that appellant should continue with the same work restrictions. He

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<sup>11</sup> The Board notes that OWCP's procedures provide that "in some occupational disease cases where the diagnosis remains the same but disability increases due to additional exposure to the same work factors, the claimant may submit Form CA-2a rather than filing a new claim." Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(c)(5) (June 2013).

<sup>12</sup> See *G.C.*, Docket No. 18-0506 (issued August 15, 2018).

<sup>13</sup> See *D.M.*, Docket No. 16-1734 (issued January 27, 2017).

<sup>14</sup> See *M.D.*, Docket No. 18-0709 (issued September 4, 2018).

did not, however, address causation. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>15</sup>

On December 11, 2015 Dr. Sidhu indicated that he was treating appellant for a low back condition. As he did not address causation, his opinion is of no probative value.<sup>16</sup>

In a January 28, 2016 report, Dr. Sidhu noted that appellant attributed her back pain to repetitive work duties. He indicated that a lumbar spine MRI scan showed moderate stenosis and facet disease at L4-5 and degeneration at L3. While Dr. Sidhu discussed appellant's belief that her condition was employment related, he did not make an independent finding regarding causation. A physician's report is of limited probative value when it is based on a claimant's belief rather than the physician's independent judgment.<sup>17</sup>

Dr. Peter, on April 20, 2016, related that he began treating appellant in December 2015 for low back pain due to her employment. He asserted that lifting heavy items and pushing a mail cart aggravated her symptoms. Dr. Peter diagnosed low back pain, lumbar spondylosis, lumbar radiculopathy, and chronic pain syndrome. He did not, however, provide any rationale for his causation finding. Medical conclusions unsupported by rationale are of limited probative value.<sup>18</sup>

On April 14, 2016 Dr. Khan discussed appellant's history of chronic lumbar degenerative joint disease and lumbago. He diagnosed lumbar radiculopathy and right-sided low back pain without sciatica. In an April 4, 2017 report, Dr. Khan advised that appellant experienced low back pain as the result of a 2014 employment injury and an October 2015 reinjury. He diagnosed spondylolisthesis, intervertebral disc disorder with radiculopathy. Dr. Kahn found that as appellant performed repetitive work it was "not unreasonable" for her to have the diagnosed conditions of degenerative disc disease and lumbar radiculopathy. His opinion regarding the cause of the degenerative disc disease and lumbar radiculopathy is speculative in nature and thus of limited probative value.<sup>19</sup>

The mere fact that work activities may produce symptoms revelatory of an underlying condition does not raise an inference of an employment relation.<sup>20</sup> Such a relationship must be shown by rationalized medical evidence of causal relation based upon a specific and accurate history of employment conditions which are alleged to have caused or exacerbated a disabling

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<sup>15</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>16</sup> *Id.*

<sup>17</sup> See *M.O.*, Docket No. 18-1056 (issued November 6, 2018).

<sup>18</sup> See *T.A.*, Docket No. 18-0431 (issued November 7, 2018).

<sup>19</sup> See *F.M.*, Docket No. 17-1547 (issued November 2, 2018).

<sup>20</sup> See *M.B.*, Docket No. 17-1999 (issued November 13, 2018); *P.D.*, Docket No. 17-1885 (issued September 17, 2018).

condition.<sup>21</sup> As appellant has not submitted such rationalized medical evidence in this case, the Board finds that she has not met her burden of proof to establish her occupational disease 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.<sup>22</sup>

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 28, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 8, 2019  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>21</sup> *Id.*

<sup>22</sup> The Board notes that OWCP has not administratively combined File No. xxxxx466 and File No. xxxxxx308.