

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

T.W., Appellant)	
)	
and)	Docket No. 18-0788
)	Issued: July 22, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Dallas, TX, Employer)	
)	

Appearances:
Appellant, pro se
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 March 1, 2018 appellant filed a timely appeal from a January 18, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ 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.³

¹ The Board notes that, following the January 18, 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 additional evidence for the first time on appeal. *Id.*

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, during the pendency of this appeal, OWCP issued a May 13, 2019 nonmerit decision, which denied reconsideration of the January 18, 2018 merit decision that is the subject of the current appeal. The Board and OWCP may not simultaneously exercise jurisdiction over the same issue(s). 20 C.F.R. §§ 501.2(c)(3), 10.626. *See Arlonia B. Taylor*, 44 ECAB 591 (1993); *Douglas E. Billings*, 41 ECAB 880 (1990). Consequently, OWCP's May 13, 2019 decision is set aside as null and void.

ISSUE

The issue is whether appellant has met her burden of proof to establish an injury in the performance of duty as alleged.

FACTUAL HISTORY

On October 20, 2017 appellant, then a 45-year-old distribution operations supervisor (DOS), filed an occupational disease claim (Form CA-2) for “other disorders due to repeated trauma” while in the performance of duty.⁴ She noted that she first became aware of her condition on October 1, 2017, and first realized it was related to factors of her federal employment on October 3, 2017.

In an October 25, 2017 development letter, OWCP acknowledged receipt of appellant’s claim, but noted that it had not received any other documentation. It advised her of the essential elements to establishing entitlement to FECA benefits, and specifically requested that she provide factual information regarding the circumstances of her alleged injury, as well as medical evidence establishing a diagnosis causally related to the alleged employment injury/factor(s). OWCP provided a questionnaire for appellant’s completion, and afforded her 30 days to submit the requested evidence. By separate development letter of even date, it similarly requested information from the employing establishment regarding her work activities.

OWCP subsequently received an October 5, 2017 initial evaluation report from Dr. Ed Wolski, a pain management specialist. Dr. Wolski related appellant’s complaints of low back pain radiating into her bilateral hips, knees, ankles, and feet. He indicated that she had worked as a mail clerk for the employing establishment for 18 years and as a supervisor for the past 3 years. Dr. Wolski conveyed that appellant’s employment involved standing for eight to nine hours a day, five days a week. He described that, as a mail clerk, her daily essential tasks involved scanning mail placard documents, pushing and pulling the automated postal center (APC) equipment, receiving, sorting, processing, and routing incoming and outgoing mail, and lifting and carrying mail flats or bags weighing up to 50 pounds. Appellant also reported that she walked considerable distances each day on concrete surfaces. Dr. Wolski reviewed her history and conducted an examination. He observed palpable tenderness across the lumbar axial spine at the L3, L4, L5, and S1 levels and some tenderness across the bilateral facet joints. Range of motion showed radiating pain past both knees. Dr. Wolski also reviewed October 5, 2017 x-rays of appellant’s bilateral hips, knees, ankles, feet, and her lumbar spine. He diagnosed lumbar spondylosis, lumbar radiculitis, bilateral hip osteoarthritis, bilateral knee osteoarthritis, bilateral ankle osteoarthritis, and bilateral plantar fasciitis. Dr. Wolski opined that appellant sustained work-related injuries to her low back, hips, knees, ankles, and feet as a direct result of her normal working duties as a mail clerk and supervisor over the past 21 years.

⁴ Although the claim form noted that a narrative statement was attached, no such statement accompanied appellant’s Form CA-2.

In an October 17, 2017 work capacity evaluation (OWCP-5c), Dr. Wolski indicated that appellant could work an eight-hour day with restrictions on walking, standing, twisting and squatting.

OWCP also received a series of magnetic resonance imaging (MRI) scans dated November 16 and 17, 2017 of appellant's lumbar spine, hips, and knees.

In a December 5, 2017 work capacity evaluation (OWCP-5c), Dr. Wolski extended appellant's work restrictions through January 2, 2018.

OWCP did not receive the requested factual information from either appellant or the employing establishment.

By decision dated January 18, 2018, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that the events occurred in the performance of duty as described. As such, it concluded that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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 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

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."⁹ 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

⁵ *Id.*

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 20 C.F.R. § 10.5(q).

evidence establishing that the diagnosed condition is causally related to the identified employment factors.¹⁰

The employee's burden of proof includes the submission of a detailed description of the employment factors or conditions, which she believes caused or adversely affected a condition for which compensation is claimed.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty, as alleged.

In the Form CA-2, appellant described her injury as "other disorders due to repeated trauma." However, she did not submit any additional factual evidence identifying specific employment factors or activities alleged to have caused or contributed to her claimed condition(s). By letter dated October 25, 2017, OWCP informed appellant that the record was insufficient to establish that she experienced any employment factors that were alleged to have caused an injury. It requested that she complete an attached questionnaire describing her employment-related activities and explain how these activities contributed to the claimed conditions. Appellant, however, did not respond to OWCP's development letter.

As previously noted, a claimant has the burden of proof to submit a detailed description of the employment factors or conditions which he or she believed caused or adversely affected a condition for which compensation is claimed.¹² As appellant has not provided a factual statement describing in detail the employment factors alleged to have caused the claimed conditions, the Board finds that she has not met her burden of proof to establish the factual element of her claim.¹³

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 established an injury in the performance of duty as alleged.

¹⁰ S.C., Docket No. 18-1242 (issued March 13, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹¹ J.C., Docket No. 16-1663 (issued January 18, 2017); *P.G.*, Docket No. 15-1345 (issued August 23, 2016); *Lori A. Facey*, 55 ECAB 217 (2004).

¹² *Id.*

¹³ As appellant has not met her burden of proof to establish the factual aspects of her claim the Board need not review the medical evidence of record.

ORDER

IT IS HEREBY ORDERED THAT the January 18, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 22, 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