

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

S.S., Appellant	)	
	)	
and	)	<b>Docket No. 19-0641</b>
	)	<b>Issued: November 8, 2019</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Tomball, TX, Employer	)	
	)	

*Appearances:*  
Douglas Sughrue, Esq., for the appellant<sup>1</sup>  
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 28, 2019 appellant, through counsel, filed a timely appeal from an October 18, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.

**ISSUE**

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

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<sup>1</sup> 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.

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

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On August 4, 2008 appellant, then a 42-year-old letter carrier, filed an occupational disease claim (Form CA-2), alleging that her preexisting pinched nerve developed into five herniated discs as a result of conducting her letter carrier duties while in the performance of duty. She first became aware of her condition and realized it was causally related to factors of her federal employment on December 19, 2006. Appellant did not stop work at that time.

By decision dated September 29, 2008, OWCP denied appellant's claim on the grounds that the evidence was insufficient to establish the events occurred, as alleged and, thus, the requirements had not been met to establish an injury as defined by FECA. Appellant requested a review of the written record.

By decision dated April 8, 2009, an OWCP hearing representative found that appellant had established the factual element of her claim, but affirmed the denial of the claim because she had not submitted sufficient medical evidence to establish causal relationship.

Appellant subsequently requested reconsideration and, by decisions dated July 27 and November 27, 2009, OWCP denied modification.

Appellant continued to request reconsideration. By decisions dated December 29, 2009 and February 14, 2011, OWCP denied appellant's requests for reconsideration, finding that the evidence submitted was insufficient to warrant reconsideration of the merits of her claim.

On July 26, 2011 appellant appealed to the Board. By an April 12, 2012 order, the Board set aside OWCP's February 14, 2011 decision and remanded the case to OWCP for it to consider all evidence submitted at the time of the February 14, 2011 decision.<sup>4</sup>

By decisions dated August 7, 2012, October 2, 2013, and August 25, 2014, OWCP reviewed the merits of the claim, but denied modification. Appellant appealed to the Board. By decision dated September 22, 2015, the Board affirmed the August 25, 2014 OWCP decision, finding the medical evidence of record insufficient to establish causal relationship.<sup>5</sup>

On September 14, 2016 appellant, through counsel, requested reconsideration. By decision dated December 12, 2016, OWCP denied modification. On February 17, 2017 appellant, through counsel, appealed to the Board. By decision dated August 1, 2017, the Board affirmed the December 12, 2016 decision.

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<sup>3</sup> *Order Remanding Case*, Docket No. 11-1749 (issued April 12, 2012); Docket No. 15-0622 (issued September 22, 2015); Docket No. 17-0755 (issued August 1, 2017).

<sup>4</sup> *Order Remanding Case*, Docket No. 11-1749 (issued April 12, 2012).

<sup>5</sup> Docket No. 15-0622 (issued September 22, 2015).

Appellant, through counsel, requested reconsideration on July 23, 2018.

In support of the request, OWCP received an August 31, 2016 x-ray of the cervical spine, which revealed mild-to-moderate cervical spondylosis. Similarly, a magnetic resonance imaging (MRI) scan of the cervical spine on October 24, 2016 revealed degenerative changes at C2-3, lateral spinal stenosis at C3-4, posterior disc protrusion at C4-5, and posterior disc osteophyte at C5-6.

Appellant was treated by Dr. Mayur Kanjia, a Board-certified anesthesiologist, from November 8, 2016 to May 16, 2017, for a three-month history of neck pain radiating into the bilateral arms and hands. Dr. Kanjia reported a history of lumbar radiculopathy and noted that appellant was status post laminectomy in 2010. He performed steroid injections at C5-6 and a spinal cord stimulator (SCS) implant.

Physical therapy notes dated December 7, 2016 to January 3, 2017 were also received.

In a letter dated September 18, 2017, Dr. Kanjia opined that appellant's duties as a letter carrier, including repetitive bending, twisting, turning, walking, lifting, and carrying more than 10 pounds daily, five to six days a week, for 8 to 10 hours a day, aggravated appellant's preexisting disc herniations and aggravated scar tissue from the surgical fusion of 2010. He reported first treating appellant on November 8, 2016 after she underwent lumbar surgeries in 2008 and 2010. Dr. Kanjia noted that appellant underwent a cervical epidural injection on November 23, 2016 and reported improved symptoms, however, persistent lumbar postlaminectomy pain. On March 7, 2017 appellant underwent a SCS trial with 99 percent pain relief.

On November 6, 2017 Dr. Kanjia indicated that appellant's work duties of repetitive bending, twisting, turning, walking, lifting, and carrying more than 10 pounds on a daily basis, five days a week, eight hours every day aggravated the preexisting disc herniations. He opined that, based on her history and physical examination, appellant's signs and symptoms have drastically changed, which is indicative of increased nerve pinching after the aggravation. On November 29, 2017 Dr. Kanjia provided an amended statement and opined that appellant aggravated her preexisting disc herniation from forces required at work, which include repetitive bending, twisting, turning, walking, lifting, and carrying more than 10 pounds daily, five to six days a week, for 8 to 10 hours a day. He advised that the force from the motion enlarged her herniation causing worsening symptoms.

In a February 20, 2018 letter, Dr. Kanjia opined that appellant's preexisting condition prior to reaggravation was a postlaminectomy fusion, which was high risk for herniating discs above and below the surgery with enough force. He further opined that appellant's work descriptions could cause a great amount of force across the spine to rupture discs.

By decision dated October 18, 2018, OWCP denied modification of its prior decision.

## 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 timely filed within the applicable time limitation of FECA,<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (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 identified employment factors.<sup>10</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>11</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>12</sup> 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 factor(s).<sup>13</sup>

Where there is medical evidence of a preexisting condition involving the same part of the body as the claimed employment injury, the issue of causal relationship invariably requires inquiry into whether there was employment-related aggravation, acceleration, or precipitation of the underlying condition.<sup>14</sup> Accordingly, the physician must provide a rationalized medical opinion,

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

<sup>7</sup> *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>8</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>9</sup> *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>10</sup> *M.S.*, Docket No. 18-1554 (issued February 8, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>11</sup> *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>12</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, *supra* note 10.

<sup>13</sup> *Id.*

<sup>14</sup> *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

which differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>15</sup>

### ANALYSIS

The Board finds that this case is not in posture for decision.

Following the Board's August 1, 2017 decision, appellant, through counsel, requested reconsideration and submitted additional medical evidence. In letters dated September 18 and November 6, 2017, Dr. Kanjia opined that repetitive bending, twisting, turning, walking, lifting, and carrying more than 10 pounds daily, five to six days a week, for 8 to 10 hours a day required by a letter carrier aggravated appellant's preexisting disc herniations and scar tissue from the surgical fusion from 2010. He reported that appellant's symptoms drastically changed indicating more nerve pinching. Similarly, in a report dated November 29, 2017, Dr. Kanjia opined that she aggravated her preexisting disc herniation from forces required at work, which include repetitive bending, twisting, turning, walking, lifting, and carrying more than 10 pounds daily, five to six days a week, for 8 to 10 hours a day. He opined that the force from the motion enlarged her herniation causing increased symptoms. Likewise, in a February 20, 2018 letter, Dr. Kanjia described appellant's work duties and opined that the duties could cause a great amount of force across the spine to rupture discs.

The Board finds that the medical opinion of Dr. Kanjia is based upon a complete factual history and medical background, is supported by reasonable medical certainty, and provides a sufficient level of medical rationale explaining the nature of the relationship between the diagnosed conditions and the accepted employment incident.<sup>16</sup> While Dr. Kanjia's reports are insufficiently rationalized to meet appellant's burden of proof to establish her claim, they are sufficient to require OWCP to further develop the medical evidence and the case record.<sup>17</sup>

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility to see that justice is done.<sup>18</sup> The nonadversarial policy of proceedings under FECA is reflected in OWCP's regulations at section 10.121.<sup>19</sup> On remand OWCP should refer appellant and the medical evidence of record to an appropriate specialist to obtain a rationalized opinion regarding whether she sustained a cervical condition causally related to the accepted employment incident.<sup>20</sup> After such further development as OWCP deems necessary, it shall issue a *de novo* decision.

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<sup>15</sup> *Id.*

<sup>16</sup> W.C., Docket No. 18-1386 (issued January 22, 2019).

<sup>17</sup> C.W., Docket No. 19-0231 (issued July 15, 2019).

<sup>18</sup> X.V., Docket No. 18-1360 (issued April 12, 2019); *Jimmy A. Hammons*, 51 ECAB 219 (1999).

<sup>19</sup> 20 C.F.R. § 10.121.

<sup>20</sup> M.K., Docket No. 17-1140 (issued October 18, 2017).

**CONCLUSION**

The Board finds that the case is not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 18, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 8, 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