

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

N.D., Appellant	)	
	)	
and	)	<b>Docket No. 19-0853</b>
	)	<b>Issued: November 6, 2019</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Marcola, OR, 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 14, 2019 appellant filed a timely appeal from a January 29, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

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

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that following the January 29, 2019 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.*

## **FACTUAL HISTORY**

On August 29, 2018 appellant, then a 29-year-old part-time flexible (PTF) sales, services, and distribution associate, filed an occupational disease claim (Form CA-2) for a lower back condition that she allegedly developed while in the performance of duty. She attributed her lower back complaints to constant bending, lifting packages over 50 pounds, lifting heavy trays of mail and bags of flats, and other unspecified repeated daily tasks. Appellant also alleged that, due to staff shortages, she repeatedly worked more than seven hours without a lunch break. She indicated that she first became aware of her condition in December 2016, and first realized it was caused or aggravated by factors of her federal employment on August 4, 2018.

In a report dated August 22, 2018, Dr. Juliette Asuncion, an osteopath Board-certified in family practice, noted that appellant's severe lower back pain began two years prior and had become worse subsequent to an acute injury at work when she was lifting heavy boxes. On examination, she observed decreased range of motion and spasm of the lumbar back. Dr. Asuncion diagnosed chronic bilateral low back pain with right-sided sciatica.

In a narrative statement dated August 29, 2018, appellant indicated that her back pain had started two years prior while working at another location for the employing establishment. She transferred to her current duty station and her back pain subsided, as it was a smaller office with a lighter workload. However, recently appellant had noticed that her back pain was constant and severe at all times.

On August 31, 2018 Dr. Asuncion treated appellant for complaints of abdominal pain. Her diagnoses included chronic bilateral low back pain with right-sided sciatica which she noted were due to a work injury. Appellant also provided a September 5, 2018 workers' compensation form report, which included a diagnostic code (ICD-10-CM) for lumbago with sciatica, right side. Dr. Asuncion indicated that appellant was authorized to perform modified work effective August 31, 2018.

In a development letter dated September 13, 2018, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the factual and medical evidence necessary to establish her claim and also provided a questionnaire for completion. OWCP afforded appellant 30 days to submit additional evidence and to respond to its inquiries.

On September 21, 2018 appellant responded to OWCP's questionnaire. She stated that she considered her claim occupational in nature, as it occurred over time, but that she would list it as a traumatic injury as well, which occurred on August 4, 2018 at the employing establishment. Appellant noted that she worked seven and a half hours on that day with a 10-minute break, constantly bending and lifting flats and parcels, and that the location was short staffed. She stated that delivery point sequence (DPS) trays had caused the initial injury, but after that day, her back pain had become much worse.

In a September 27, 2018 letter, appellant's current postmaster noted that she had reviewed her September 21, 2018 statement and concurred with appellant's statements regarding the volume of mail and lack of staffing. As far as appellant's current work location, the postmaster noted that she had worked safely under her supervision and had no issues with her back while working there.

In a report dated October 9, 2018, Dr. Charles L. Pederson, Board-certified in occupational medicine, examined appellant for complaints of low back pain. He noted that appellant had an acute worsening of her chronic discomfort after lifting heavy packages on August 4, 2018, but that there was no specific event immediately followed by increased pain. Appellant stated that she had no issues with her back. On examination, Dr. Pederson observed moderate tenderness to palpation over the lumbar paraspinals, pain with maximum flexion, and mild pain with extension. He diagnosed lumbar strain. Dr. Pederson noted that appellant's work activities included repetitive heavy lifting, which was a risk factor for developing low back pain and may have contributed to her current symptoms and need for treatment.

By decision dated October 29, 2018, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted employment factors. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP subsequently received an October 12, 2018 x-ray report that indicated a mild loss of disc space at L4-5 and possible congenital spinal stenosis with shortened anteroposterior dimension of the pedicle, most notable at L5-S1 with slight retrolisthesis of L5 upon S1, with at least mild loss of disc space height and facet spurring at this level.

In a November 14, 2018 follow-up report, Dr. Pederson reviewed appellant's recent lumbar x-rays. He noted that it demonstrated reduced spinal diameter consistent with possible spinal stenosis and slight retrolisthesis of L5 on S1. Appellant's low back symptoms were unchanged, consisting of persistent low back discomfort with intermittent paresthesias involving the bilateral lower extremities. Dr. Pederson diagnosed strain of the lumbar region. He opined that without a specific work-related injury and x-ray findings of possible congenital spinal stenosis, it would be difficult to establish work as a major cause of her chronic low back pain. Dr. Pederson advised that appellant could return to work without restrictions.

OWCP also received physical therapy treatment notes dated October 23 through November 20, 2018.

On January 22, 2019 appellant requested reconsideration of the October 29, 2018 decision and submitted additional medical evidence.

In a report dated January 15, 2019, Dr. Pederson followed up with appellant to review the results of a magnetic resonance imaging (MRI) scan of the lumbar spine taken on December 27, 2018. He noted that it demonstrated L4-5 disc protrusion with an extruded fragment compromising the right lateral recess. Dr. Pederson stated that appellant was scheduled for surgery on January 17, 2019, and that subsequent to her last visit, she developed more specific right leg pain and paresthesias. He noted that there was no evidence of congenital stenosis or other significant preexisting conditions on the MRI scan. Dr. Pederson reviewed duties of her federal employment, including unloading pallets with packages weighing up to 70 pounds every morning for approximately one hour, and unloading hampers full of packages for two hours, which required her to bend over at the waist. He stated that there were no other significant risk factors more likely to have caused her disc herniation. Dr. Pederson opined that appellant's work activities were the cause of her L4-5 disc herniation and need for treatment.

By decision dated January 29, 2019, OWCP modified its decision of October 29, 2018 to find that appellant had established a diagnosis of back strain, but also found that she had not submitted sufficient evidence to establish causal relationship between the accepted employment factors and the diagnosed condition.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</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>4</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>5</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>6</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>7</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>8</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>9</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 that explains the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).<sup>10</sup>

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</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>6</sup> *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).

<sup>7</sup> *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>8</sup> *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

<sup>10</sup> *Id.*; *Victor J. Woodhams*, *supra* note 7.

## ANALYSIS

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

Dr. Pederson's report dated January 15, 2019 provided diagnoses and medical opinion as to the cause of appellant's conditions, but failed to provide a detailed explanation on causal relationship.<sup>11</sup> While he identified specific employment factors alleged by appellant, he did not provide a pathophysiological explanation as to how those activities either caused or contributed to appellant's diagnosed conditions.<sup>12</sup> A medical opinion must provide an explanation of how the specific employment factors physiologically caused or aggravated the diagnosed conditions.<sup>13</sup> Without medical reasoning explaining how the accepted employment activities caused or contributed to the diagnosed conditions, Dr. Pederson's report of January 15, 2019 is insufficient to establish appellant's claim.<sup>14</sup>

Moreover, while Dr. Pederson opined in his report of January 15, 2019 that appellant's medical conditions were the cause of her L4-5 disc herniation and need for treatment, he noted that there were no other significant risk factors more likely to have caused her disc herniation. The Board has held that neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.<sup>15</sup>

In a report dated October 9, 2018, Dr. Pederson diagnosed lumbar strain and noted that appellant's work activities included repetitive heavy lifting, which was a risk factor for developing low back pain and may have contributed to her current symptoms and need for treatment. On November 14, 2018 Dr. Pederson opined that without a specific work-related injury and x-ray findings of possible congenital spinal stenosis, it would be difficult to establish work as a major cause of her chronic low back pain. The Board finds that Dr. Pederson's explanation that repetitive heavy lifting "may have contributed" to her diagnosed condition is speculative and equivocal in nature and, therefore, of diminished probative value to establish causal relationship.<sup>16</sup>

In reports dated August 22, 31, and September 5, 2018, Dr. Asuncion diagnosed chronic bilateral low back pain with right-sided sciatica. However, she did not offer an explanation for

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<sup>11</sup> See *R.G.*, Docket No. 19-0233 (issued July 16, 2019).

<sup>12</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). See *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

<sup>13</sup> *M.W.*, Docket No. 18-1624 (issued April 3, 2019); *B.H.*, Docket No. 18-1219 (issued January 25, 2019).

<sup>14</sup> *M.W.*, *id.*; *R.T.*, Docket No. 17-2019 (issued August 24, 2018).

<sup>15</sup> See *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

<sup>16</sup> See *D.D.*, 57 ECAB 734, 738 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004).

her opinion that appellant's lumbar symptoms were due to a work injury. Absent medical reasoning, Dr. Asuncion's opinion is insufficient to establish causal relationship.<sup>17</sup>

The record contains an x-ray of the lumbar spine dated October 12, 2018. The Board has held that diagnostic reports that do not offer an opinion regarding the cause of an employee's condition lack probative value on the issue of causal relationship.<sup>18</sup>

Appellant also submitted notes from physical therapists dated October 23 through November 20, 2018. Certain healthcare providers such as physical therapists, however, are not considered "physician[s]" as defined under FECA.<sup>19</sup> Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.<sup>20</sup>

As appellant has not submitted rationalized medical evidence to establish lumbar conditions causally related to the accepted employment factors, the Board finds that she has not met her burden of proof to establish her 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.

### **CONCLUSION**

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

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<sup>17</sup> *R.T.*, *supra* note 14.

<sup>18</sup> *See K.S.*, Docket No. 18-1781 (issued April 8, 2019); *G.S.*, Docket No. 18-1696 (issued March 26, 2019); *J.M.*, Docket No. 17-1688 (issued December 13, 2018).

<sup>19</sup> 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

<sup>20</sup> *J.T.*, Docket No. 18-0664 (issued August 12, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 29, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 6, 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