

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

M.B., Appellant)	
)	
and)	Docket No. 19-0882
)	Issued: November 6, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Erie, PA, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 11, 2019¹ appellant filed a timely appeal of the September 13, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.

ISSUE

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

¹ Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. See 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from September 13, 2018, the date of OWCP's last decision was March 12, 2019. Since using March 18, 2019, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is March 11, 2019, rendering the appeal timely filed. See 20 C.F.R. § 501.3(f)(1).

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 16, 2016 appellant, then a 48-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained right-sided sciatica and degenerative disc disease due to carrying a satchel filled with mail, papers, and packages while in the performance of duty. She explained that her satchel aggravated her back muscles and spine, causing her to experience two slipped discs in her back. Appellant first became aware of her conditions on July 15, 2015 and realized they were caused by factors of her federal employment on June 10, 2016. On the reverse side of the claim form appellant's supervisor noted that she stopped work on June 10, 2016 and had not returned.

In a statement dated June 16, 2016, appellant provided additional details of her claimed injury. She indicated that she first began experiencing back issues in July 2015 and was seen by Dr. Debora Radder, Board-certified in family medicine. Appellant underwent x-rays performed in October 2015 that revealed narrowing of her spine, as well as degenerative disc disease in her lumbar area. She stated that she continued to work 8 to 10 hours per day. Appellant contended that she had not experienced back pain previously, but now has trouble moving up and down the stairs and bending down.

In a report and release-from-work slip both dated June 10, 2016, Dr. Radder held appellant off work from June 10 to 21, 2016 and diagnosed right-sided sciatica, lumbar degenerative disc disease, and generalized anxiety disorder.

In a development letter dated June 23, 2016, OWCP notified appellant of the deficiencies of her claim. It advised her of the factual and medical evidence necessary to establish her claim and also provided questionnaires for appellant and her supervisor to complete. OWCP afforded appellant and her supervisor 30 days to submit the necessary factual and medical evidence.

On June 27, 2016 appellant submitted the signed questionnaire page without responding to OWCP's specific inquiries.

A June 30, 2016 lumbar spine magnetic resonance imaging (MRI) scan, interpreted by Dr. Dale Stevens, a Board-certified radiologist, revealed grade 1 anterolisthesis, multiple disc desiccation with defused disc bulges and degenerative disc disease. Dr. Stevens noted that appellant presented with low back pain radiating down her right hip and legs related to carrying heavy mailbags.

Appellant also submitted progress notes from Dr. Radder, dated June 10 and 16, 2016. Dr. Radder's June 10, 2016 assessment provided that appellant's conditions were likely caused by overuse and repetitive activity at work and recommended rest, hot and cold applications, and an x-ray moving forward. In her June 16, 2016 progress note, she made reference to appellant's increased right hip pain and indicated that a June 15, 2016 x-ray revealed no injury to her right hip.

In a July 6, 2016 medical report, Dr. Radder stated that appellant's MRI scan showed spinal stenosis and spinal cord compression at several levels. She provided that, even with limited to extremely light activities, appellant's symptoms continued to worsen. Dr. Radder opined that appellant would be unable to work and referred her to pain management and neurosurgery.

In a July 13, 2016 statement provided by S.C., appellant's supervisor, she noted that none of appellant's supervisors were aware of her condition until she called out sick on June 13, 2016. S.C. noted that appellant performed well as a carrier assistant, but once she became a regular carrier, she had multiple Family and Medical Leave Act (FMLA) cases. She explained that appellant arrived at work at 8:00 a.m., cased her route and carried the mail and made deliveries accordingly. Appellant carried potentially up to 70 pounds, walked six hours per day on her route and pushed hampers full of mail up a ramp to her vehicle. To the best of S.C.'s knowledge, appellant never made a request for light or limited duty.

On August 3, 2016 appellant consulted with Dr. Gregory Bowden, a Board-certified neurosurgeon. Dr. Bowden reviewed her medical history and discussed performing a lumbar laminectomy and fusion at L3-L4 to relieve the pain in her leg and improve her walking, which was performed on August 11, 2016.

In an August 19, 2016 medical report, Dr. Radder provided that, because appellant was young and demonstrated no prior history of back problems, there was no reason to assume she had degenerative disc disease prior to her job as a mail carrier. She explained that strenuous physical activity, such as the work appellant performs as a mail carrier, could have caused her injury.

By decision dated September 15, 2016, OWCP denied appellant's claim, finding that the evidence submitted was insufficient to establish that the events causing her injuries occurred as described. As appellant had not established the factual element of her claim, it found that she had not met the requirements for establishing an injury as defined by FECA.

On October 7, 2016 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative.

OWCP continued to receive medical evidence from appellant. Appellant submitted a June 15, 2016 evaluation note from Dr. Peter Intrieri, Board-certified in emergency medicine. Also submitted was a June 15, 2016 radiology report from Dr. Antonio Pena, a Board-certified radiologist, both of which noted appellant's right hip pain and indicated that her x-rays found no injury to her hip.

Appellant also submitted Dr. Bowden's operative report detailing her August 11, 2016 L3-L4 laminectomy and lumbar fusion surgery.

In a December 8, 2016 medical note, Dr. Radder opined that appellant's spinal stenosis and degenerative disc disease developed during her federal employment. She provided that carrying a heavy mailbag places mechanical stress on the spine, which could over time, along with normal wear and tear and aging, lead to appellant's problems. Dr. Radder also noted that there was no specific injury event, as appellant's back problems developed gradually over time and that appellant had back pain prior to her federal employment. Finally, she stated that because she did not have x-rays of appellant's back prior to her federal employment, she could not rule out appellant's work duties as the cause of her injuries, but also could not state with certainty that her work duties were the cause of her injuries.

A telephonic hearing was held before an OWCP hearing representative on May 10, 2017. Appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence. No additional evidence was received.

By decision dated June 23, 2017, OWCP's hearing representative modified OWCP's September 15, 2016 decision to accept that appellant had established the implicated employment factors; however, it found that the evidence submitted was insufficient to establish that her conditions were causally related to the accepted factors of her federal employment.

On June 20, 2018 appellant requested reconsideration of OWCP's June 23, 2017 decision. She submitted a new narrative medical report from Dr. Bowden dated May 22, 2018, which had not previously been submitted or reviewed.

In a May 22, 2018 narrative medical report, Dr. Bowden noted appellant's employment history and noted that she had a documented history of lumbar back pain dating at least from 2013, a span of time that includes the time she was employed with the employing establishment. He explained that appellant's duties included carrying a heavy mailbag and walking a significant distance on a regular basis. Dr. Bowden opined that appellant's grade 1 spondylolisthesis was likely previously present as a slow degenerative process and that her "repetitive lifting and sustained off-center load of a 50+ pound mailbag would almost certainly have accelerated the degenerative changes leading to a neurological decline and subsequent need for operative management." He provided that her repetitive lifting and carrying were more likely larger components of her condition, as opposed to a previously unmentioned January 27, 2016 fall on ice. Dr. Bowden also explained how the forward slippage of one vertebrae on another is a biomechanical area of weakness and can result in back pain, radicular pain, spinal stenosis and neurological dysfunction. Finally, he explained how this abnormal strain can eventually result in stenosis.

By decision dated September 13, 2018, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 period of FECA,⁴ 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.⁵ 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.⁶

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the

³ *Supra* note 2.

⁴ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *S.C.*, *id.*; *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *S.C.*, *id.*; *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).

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 evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁷

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.⁸ The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.⁹ 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.¹⁰

ANALYSIS

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

In support of her claim, appellant submitted a May 22, 2018 report from Dr. Bowden which discussed the relationship between appellant's employment history and her diagnosed condition of lumbar spinal stenosis. Dr. Bowden explained how the forward slippage of one vertebrae on another, placed under repetitive stress can result in stenosis. He opined that appellant's previously unmentioned January 27, 2016 fall on ice could have been a factor; that repetitive lifting and carrying was more likely larger components; and that her lumbar condition was likely present previously as a slow degenerative process. Dr. Bowden's report however, was couched in speculative terms and was thus insufficient to establish appellant's claim.¹¹ The Board has held that while the opinion supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, the opinion must be one of reasonable medical certainty and not speculative or equivocal in character.¹²

⁷ *C.D.*, Docket No. 17-2011 (issued November 6, 2018); *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁸ *A.M.*, Docket No. 18-0685 (issued October 26, 2018).

⁹ *E.V.*, Docket No. 18-0106 (issued April 5, 2018).

¹⁰ *B.J.*, Docket No. 19-0417 (issued July 11, 2019).

¹¹ The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value. *R.C.*, Docket No. 18-1695 (issued March 12, 2019); see *Ricky S. Storms*, 52 ECAB 349 (2001) (While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

¹² *M.S.*, Docket No. 19-0189 (issued May 14, 2019); *C.L.*, Docket No. 18-1379 (issued February 5, 2019).

Dr. Bowden's remaining August 3 and 11, 2016 medical and operative notes are of no probative value because they do not give an opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹³ As Dr. Bowden's notes did not contain an opinion on causal relationship, they are also of no probative value.

In Dr. Radder's July 6, August 19 and December 8, 2016 medical notes she opined that appellant's spinal stenosis and degenerative disc disease were due to overuse and repetitive activity associated with her work duties. She stated that because she did not have x-rays of appellant's back prior to her federal employment, she could not rule out appellant's work duties as the cause of her injuries but also could not state with certainty that her work duties were the cause of her injuries. Dr. Radder also noted that carrying a heavy mailbag "could" have caused appellant's injuries. Her notes attempt to address causal relationship, however, they were also couched in speculative terms and were thus insufficient to establish appellant's claim.¹⁴

Dr. Radder's remaining June 10 and 16, 2016 medical reports made reference to appellant's pain and the difficulty she experiences in completing her work. However, the documents do not offer an opinion on the cause of appellant's condition.¹⁵ As Dr. Radder's medical reports do not offer an opinion on causal relationship, they are of no probative value.¹⁶

OWCP also received evaluation notes dated June 15, 2016 from Dr. Intrieri's, in which he made note of the sharp pain in appellant's right hip but indicated that her x-rays found no injuries in her hip. The Board has held that under FECA the assessment of pain is not considered a diagnosis, as pain merely refers to a symptom of an underlying condition.¹⁷ As he failed to provide a firm medical diagnosis and provided no rationalized explanation regarding causal relationship, Dr. Intrieri's evaluation notes are insufficient to establish that the employment incident physiologically caused a diagnosed condition.¹⁸

Additionally, appellant also submitted a June 30, 2016 MRI scan study interpreted by Dr. Stevens. The Board has held that diagnostic tests lack probative value as they do not provide an opinion on causal relationship between appellant's employment duties and the diagnosed conditions.¹⁹ Accordingly, the June 30, 2016 MRI study is of no probative value regarding causal relationship.

¹³ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ *Supra* note 12.

¹⁵ *Supra* note 14.

¹⁶ *See id.*

¹⁷ *M.V.*, Docket No. 18-0884 (issued December 28, 2018). The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis). See *P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

¹⁸ *J.M.*, Docket No. 17-1002 (issued August 22, 2017).

¹⁹ See *J.M.*, Docket No. 17-1688 (issued December 13, 2018).

As appellant has not submitted rationalized medical evidence establishing that her conditions are causally related to the accepted factors of her federal employment, 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 back conditions causally related to the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the September 13, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 6, 2019
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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