

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

A.S., Appellant)	
)	
and)	Docket No. 19-0704
)	Issued: September 11, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Middletown, DE, Employer)	
)	

Appearances:
Thomas R. Uliase, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On February 15, 2019 appellant, through counsel, filed a timely appeal from an October 11, 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 that her lumbar conditions were causally related to the accepted October 7, 2014 employment incident.

¹ 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.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 23, 2015 appellant, then a 60-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that, on October 7, 2014, she sustained an injury to her back and legs when bending and lifting packages out of a hamper while in the performance of duty. On the reverse side of the claim form, the employing establishment indicated that she stopped work on October 9, 2014 and had not returned.

In a development letter dated April 13, 2015, OWCP advised appellant that additional factual and medical evidence was needed to establish her claim. It provided a questionnaire for her completion, and afforded her 30 days to submit the necessary evidence.

By decision dated May 21, 2015, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish that the alleged incident occurred as described, and that the evidence of record did not establish a medical diagnosis causally related to the alleged October 7, 2014 employment incident.

On May 29, 2015 appellant, through counsel, requested an oral hearing before an OWCP hearing representative.

Appellant submitted a series of medical reports dated October 23, November 12, November 24, and December 8, 2014, and January 12, February 9, March 23, and April 13, 2015 from Dr. Curt C. Blacklock, an osteopathic physician Board-certified in internal medicine, who diagnosed low back pain, lumbar spine sprain and strain, and sciatica. In his October 23, 2014 report, Dr. Blacklock related that appellant had a recurrence of low back pain and sciatica. He also noted that she had been working with an increased volume of mail and packages, which entailed a lot of bending and lifting, as well as loading her own truck. Dr. Blacklock indicated that these were required employment duties.

On September 11, 2015 a hearing was held before an OWCP hearing representative. Appellant testified regarding her employment history and job duties as a rural carrier. She indicated that, on October 7, 2015, she was bending over a hamper to pick up a box and felt a pull in the right side of her lower back. Appellant noted that she reported it immediately to her supervisor and that there were witnesses to the event. She related that only when her sick and annual leave was used up did she file the Form CA-1, purportedly on the advice of her union. The record was held open for 30 days to allow appellant to submit additional evidence. No additional evidence was received.

By decision dated December 1, 2015, OWCP's hearing representative affirmed the May 21, 2015 decision.

On January 29, 2016 appellant, through counsel, requested reconsideration of the December 1, 2015 decision and resubmitted the same series of medical reports spanning October 2014 to April 2015 from Dr. Blacklock along with the request. In addition, appellant submitted a new series of reports dated May 27, June 29, August 10, September 10, October 14, November 16, and December 17, 2015 from Dr. Blacklock, which again noted the previously mentioned diagnoses.

In his October 14, 2015 report, Dr. Blacklock related that appellant's chronic pain was directly related to her low back problems that occurred due to repetitive forward bending and lifting requirements when sorting mail for her delivery route. He also related that her only other significant history of injury was a motor vehicle accident in 2011 wherein she sustained upper neck and back injuries. Dr. Blacklock concluded that appellant would not be able to continue with her employment if it required bending into a low lying mail cart and repetitively lifting from it, as this activity was the direct cause of her current pain syndrome.

In his December 17, 2015 report, however, Dr. Blacklock also indicated that appellant's injury occurred directly due to the improper design of her workstation, and would not have occurred had proper ergonomics been in place.

By decision dated October 11, 2018, OWCP modified, but affirmed, the December 1, 2015 decision finding that appellant established fact of injury, but had not established that her diagnosed lumbar conditions were causally related to the accepted employment incident.

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 determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁷ The second component is whether the employment incident caused a personal injury.⁸

³ *Id.*

⁴ *D.B.*, Docket No. 18-1359 (issued May 14, 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 *D.B.*, *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 *D.B.*, *supra* note 4; *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).

⁷ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *M.H.*, *id.*; *John J. Carlone*, 41 ECAB 354 (1989).

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁹ The opinion of the physician must be based on a complete factual and medical background, 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 incident.¹⁰

ANALYSIS

The Board finds that appellant has not established that her lumbar conditions were causally related to the accepted October 7, 2014 employment incident.

In support of her claim, appellant submitted a series of medical reports from Dr. Blacklock who diagnosed lumbar spine strain and sprain and sciatica. In his October 23, 2014 report, Dr. Blacklock noted appellant's complaints of recurring back pain and sciatica and that she had been working with an increased volume of mail, which required a lot of bending and lifting. He did not offer a medical opinion regarding the cause of appellant's diagnosed conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹¹ The mere recitation of a patient's history does not suffice for purposes of establishing causal relationship between a diagnosed condition and the employment incident.¹²

On October 14, 2015 Dr. Blacklock opined that appellant's chronic pain was directly related to her repetitive forward bending and lifting while sorting mail. He concluded that appellant would not be able to continue employment if it required bending into a mail cart and repetitively lifting from it as this activity was the direct cause of her current pain syndrome. The Board has long explained that pain is a symptom, not a specific medical diagnosis.¹³ This report did not specifically mention appellant's October 7, 2014 employment incident or include a medical diagnosis. It is therefore insufficient to establish appellant's claim.¹⁴

In his December 17, 2015 report, Dr. Blacklock related that appellant's injury occurred due to the improper design of her workstation, and would not have occurred had proper ergonomics been in place. However, he did not provide a history of appellant's October 7, 2014 employment incident or an opinion relating appellant's diagnosed conditions to the accepted October 7, 2014

⁹ *P.S.*, Docket No. 19-0549 (issued July 26, 2019).

¹⁰ *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

¹¹ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² *G.M.*, Docket No. 18-0989 (issued January 3, 2019).

¹³ *A.W.*, Docket No. 18-0867 (issued July 17, 2019); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.4a(6) (August 2012). Findings of pain or discomfort alone do not satisfy the medical aspect of the fact of injury medical determination.

¹⁴ *See A.W.*, *id.*

employment incident.¹⁵ As such, this report is of insufficient probative value on the issue of causal relationship.

The Board finds that the medical evidence of record does not include a rationalized medical opinion explaining how appellant's diagnosed lumbar conditions were physiologically caused by the accepted employment incident.¹⁶ Appellant has therefore not met her burden of proof to establish her claim.¹⁷

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 that her lumbar conditions were causally related to the accepted October 7, 2014 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the October 11, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 11, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁵ See *C.G.*, Docket No. 19-0480 (issued July 18 2019).

¹⁶ See *N.S.*, Docket No. 19-0167 (issued June 21, 2019).

¹⁷ See *R.M.*, Docket No. 19-0332 (issued July 25, 2019).