

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

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**B.H., Appellant**

**and**

**U.S. POSTAL SERVICE, OXFORD POST  
OFFICE, Oxford, MA, Employer**

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**Docket No. 19-0826  
Issued: September 9, 2019**

*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 7, 2019 appellant filed a timely appeal from a February 11, 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.

**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.

**FACTUAL HISTORY**

On December 22, 2018 appellant, then a 65-year-old rural mail carrier, filed an occupational disease claim (Form CA-2) alleging that, as a result of repetitive movements, she sustained injuries to her neck, shoulders, and lower back while in the performance of duty. She

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

indicated that she first became aware of her condition in September 2018, and its relationship to factors of her federal employment in November 2018. On the reverse side of the claim form the employing establishment noted that appellant was last exposed to the conditions alleged to have caused her condition on December 31, 2018.

In a supplemental statement received by OWCP on January 3, 2019, appellant indicated that she had worked as a rural carrier for approximately 23 years. She noted that she developed neck, shoulder, and lower back pain due to carrying parcels on her route.

By development letter dated January 10, 2019, OWCP informed appellant of the deficiencies of her claim, and advised her of the type of medical evidence needed to establish her claim. It afforded her 30 days to submit the necessary evidence.

In a report dated January 2, 2019, Dr. Phong Kieu, a physical medicine and rehabilitation specialist, related that he had examined appellant for complaints of low back pain. He reviewed a magnetic resonance imaging (MRI) scan of her lumbar spine, which revealed neural foraminal narrowing bilaterally worse at L4-L5. Dr. Kieu also noted an impression of multilevel degenerative changes seen with moderate central narrowing and moderate bilateral neuroforaminal encroachment. He diagnosed right lumbar radiculopathy, lumbar facet arthropathy, and neural foraminal stenosis of lumbar spine. Dr. Kieu opined that appellant's diagnosed conditions were likely related to overuse injuries sustained from being a letter carrier for decades.

Appellant submitted diagnostic reports dated November 12 and December 21, 2018 and January 17, 2019. In the November 12, 2018 report, Dr. Steven McCormack, a Board-certified diagnostic radiologist, performed an MRI scan on appellant's lumbar spine, pelvis, and right hip, and noted impressions of progression of degenerative disc and facet joint changes, progression of levoscoliosis, and development of grade 1 spondylolisthesis at L4-L5. In the December 21, 2018 report, Dr. Iryna Rastarhuyeva, a Board-certified diagnostic radiologist, administered a whole-body nuclear medicine bone scan, and indicated an impression of no abnormal focal uptake within the L4 vertebral body suggestive of benign etiology of the lesion seen within the L4 vertebral body. In the January 17, 2019 report, Dr. Wayne Trotter, a Board-certified diagnostic radiologist, related impressions of narrowing of the spine canal and bulging discs.

By decision dated February 11, 2019, OWCP denied appellant's claim, finding that the evidence of record failed to establish that her lumbar conditions were causally related to the accepted factors of her federal employment.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</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

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<sup>2</sup> *Id.*

time limitation period of FECA,<sup>3</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>4</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>5</sup>

In an occupational disease claim, a claimant must submit the following: (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 evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>6</sup>

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>7</sup> 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.<sup>8</sup> 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>9</sup>

### 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.

The record contains a January 14, 2019 report from Dr. Kieu who diagnosed right lumbar radiculopathy, lumbar facet arthropathy, and neural foraminal stenosis of lumbar spine. Dr. Kieu also opined that appellant's diagnosed conditions were likely related to overuse injuries from being a letter carrier for decades. While Dr. Kieu provided an affirmative opinion on causal relationship,

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<sup>3</sup> *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *C.M.*, Docket No. 18-1516 (issued May 8, 2019); *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>5</sup> *A.M.*, *supra* note 3; *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>6</sup> *C.M.*, *supra* note 4; *E.M.*, Docket No. 18-0275 (issued June 8, 2018).

<sup>7</sup> *T.S.*, Docket No. 18-1518 (issued April 17, 2019); *A.M.*, Docket No. 18-0685 (issued October 26, 2018).

<sup>8</sup> *T.S.*, *id.*; *E.V.*, Docket No. 18-0106 (issued April 5, 2018).

<sup>9</sup> *A.M.*, *supra* note 7; *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

his opinion is of limited probative value as it was couched in speculative terms.<sup>10</sup> Dr. Kieu failed to explain the pathophysiological mechanism by which the repetitive movements involved in appellant's employment duties caused or contributed to her diagnosed lumbar conditions.<sup>11</sup> As such, his report lacks the specificity and detail needed to establish that appellant's diagnosed lumbar conditions resulted from the accepted employment duties.<sup>12</sup>

Appellant also submitted a series of diagnostic reports. The Board has held that diagnostic reports lack probative value as they do not provide an opinion on causal relationship between appellant's diagnosed conditions and the accepted factors of her federal employment.<sup>13</sup>

As the record is devoid of rationalized medical opinion evidence explaining how appellant's accepted employment factors either caused or contributed to the claimed conditions, she has not met her burden of proof.

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>10</sup> *C.S.*, Docket No. 19-0401 (issued July 23, 2019).

<sup>11</sup> *K.V.*, Docket No. 18-0947 (issued March 4, 2019).

<sup>12</sup> *Id.*; *M.E.*, Docket No. 18-1135 (issued January 4, 2019).

<sup>13</sup> *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *S.G.*, Docket No. 17-1054 (issued September 14, 2017).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 11, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 9, 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