

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

K.S., Appellant)	
)	
and)	Docket No. 19-1707
)	Issued: April 29, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Bristol, WI, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On September 12, 2019 appellant filed a timely appeal from an April 5, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish a right inguinal hernia causally related to the accepted factors of her federal employment.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the April 5, 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 evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On June 20, 2018 appellant, then a 49-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 11, 2017 she suffered a right groin rupture and developed a hernia from continuously lifting and moving items while in the performance of duty. On the reverse side of the claim form the employing establishment indicated that she returned to work on August 28, 2017. It noted that appellant had completed a Form CA-1 in July 2017, but it was incorrectly entered into the system. The employing establishment also noted that she underwent surgery on August 9, 2017, but sought follow-up medical treatment for constant pain.

A July 11, 2017 medical record indicated that appellant saw Dr. Charlene Karls, an osteopath Board-certified in family medicine, for a medical examination related to a right inguinal hernia.

In a June 5, 2018 duty status report (Form CA-17), Dr. Karls indicated that appellant's injury occurred when appellant was lifting heavy boxes and experienced abdominal pain. She noted that appellant had been experiencing right groin pain since her August 2017 hernia repair. Dr. Karls' clinical findings included groin tenderness. She opined that appellant's injury caused her groin pain. Dr. Karls concluded that appellant could return to work on a full-time basis.

In a June 25, 2018 letter, the employing establishment suggested that appellant's workplace incident was an occupational disease rather than a traumatic injury.

In a June 28, 2018 development letter, OWCP informed appellant that additional evidence was required to establish her claim. It advised her of the type of factual and medical evidence necessary and attached a questionnaire for her completion. OWCP afforded appellant 30 days to submit the requested evidence.

In a July 23, 2018 statement, appellant responded that she had felt cramping shortly after she was involved in a motor vehicle accident in her mail truck which had rolled over onto its side. Following the accident she continued to lift heavy boxes daily, and over time her cramping worsened. After a particular day in June 2017, appellant lifted seven boxes, five of which were very heavy, and her cramping worsened so she made an appointment with a physician. She noted that over time she began to feel a bulge in her abdomen. Appellant saw a physician on July 11, 2017 and was referred to a surgeon. She clarified that her injury was an occupational disease.

A July 26, 2018 document containing an illegible signature from a care provider indicated that appellant was seen on July 25, 2017 for a right inguinal hernia evaluation. Appellant explained to the provider that she experienced cramping in her right inguinal area. She had also explained that she was a mail carrier and engaged in a fair amount of heavy lifting. Appellant's physical examination revealed a small bulge in her right inguinal area and a right inguinal area small reducible hernia was noted. On August 9, 2017 she underwent a right inguinal hernia repair.

By decision dated August 10, 2018, OWCP denied appellant's occupational disease claim finding that the evidence of record failed to establish a causal relationship between her diagnosed conditions and her accepted factors of federal employment.

On September 8, 2018 appellant requested an oral hearing before an OWCP hearing representative.

At the January 24, 2019 oral hearing, appellant testified that she had not gone to the hospital after her motor vehicle accident on December 20, 2015 because it occurred during the busy season. She noted that she sustained bruising in her groin area, but her hernia bulge had not developed until later. Appellant indicated that on a daily basis she lifted 7 mail trays, each weighing approximately 32 pounds, in addition to lifting 25 packages, 10 of which were heavy. She noted that after her August 9, 2017 surgery that she had missed 15 days of work and returned to light-duty work for 30 days before resuming full-time regular-duty work.

In a February 8, 2019 letter, Dr. Karls noted that appellant had a hernia, which was diagnosed on July 11, 2017 and that she indicated that appellant underwent hernia repair surgery on August 9, 2017. She noted that a hernia is a condition where part of an organ is displaced and protrudes through the wall of the cavity in which it is contained. Dr. Karls explained that appellant performed heavy lifting as a part of her job, and opined that heavy lifting can strain the body and may cause a hernia or aggravate one that has been repaired.

In an undated letter, appellant indicated that the letter from her physician regarding her hernia should prove the fifth element of causal relationship and, therefore, establish her claim.

On April 5, 2019 OWCP's hearing representative affirmed OWCP's August 10, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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,³ 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.⁴ 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.⁵

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit the following: (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

³ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *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).

condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁶

Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue.⁷ A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background.⁸ 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 factors.⁹

ANALYSIS

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

In support of her claim, appellant submitted a July 11, 2017 medical report from Dr. Karls who noted a right inguinal hernia. Dr. Karls' June 5, 2018 Form CA-17 report indicated that appellant's injury occurred when she was lifting heavy boxes and experienced abdominal pain. She also indicated that appellant had been experiencing right groin pain since her August 2017 hernia repair.

Dr. Karls offered a proper history of injury and an opinion regarding causal relationship in her February 8, 2019 letter. She noted that appellant's right inguinal hernia was diagnosed on July 11, 2017 and she indicated that appellant had undergone surgery for a hernia repair on August 9, 2017. Dr. Karls noted the specific employment duties including frequency of lifting and associated weights and explained that a hernia was a condition where part of an organ was displaced and protruded through the wall of the cavity in which it is contained. She noted that appellant performed heavy lifting as a part of appellant's job and opined that heavy lifting can strain the body and may cause a hernia or aggravate one that has been repaired.

The Board finds that, while Dr. Karls' February 8, 2019 medical report is not fully rationalized, it is relevant evidence in support of appellant's claim as it explains the physiological process by which appellant's accepted factors of federal employment could have resulted in the claimed right inguinal hernia.¹⁰ Furthermore, Dr. Karls' opinion is based upon a complete factual history and medical background. The Board notes that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter.¹¹ Although the medical report by

⁶ *R.G.*, Docket No. 19-0233 (issued July 16, 2019). See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ See *A.L.*, Docket No. 19-1122 (issued January 7, 2020); *Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, *supra* note 6.

⁹ *Id.*

¹⁰ See *E.G.*, Docket No. 19-1296 (issued December 18, 2019).

¹¹ See *B.B.*, Docket No. 18-1321 (issued April 5, 2019).

Dr. Karls is alone insufficient to meet appellant's burden of proof to establish her claim, it does raise an uncontroverted inference between the diagnosed right inguinal hernia and the accepted factors of appellant's federal employment sufficient to require OWCP to further develop the claim.¹²

On remand OWCP shall prepare a statement of accepted facts and refer appellant to an appropriate Board-certified specialist for a second opinion examination and an evaluation regarding whether she sustained a medical condition due to the accepted factors of her federal employment. Following any necessary further development, OWCP shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the April 5, 2019 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: April 29, 2020
Washington, DC

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

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

¹² *Supra* note 10.