



## ISSUE

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

## FACTUAL HISTORY

On April 30, 2018 appellant, then a 51-year-old medical supply technician, filed an occupational disease claim (Form CA-2) alleging that she developed a back condition due to factors of her federal employment including repetitive pushing and pulling heavy medical carts and equipment and standing without back support for long periods of time. She indicated that she first became aware of her condition on February 12, 2017, the date she underwent a spinal fusion at L5-S1, and first attributed it to her federal employment on February 21, 2018. Appellant did not stop work.

In an initial incident report dated April 30, 2018, the employing establishment indicated that appellant had sustained a sprain/strain of her lower back/buttocks and upper back and listed a date of occurrence of April 9, 2018. It reported that she had previously undergone back surgery (spinal fusion) on February 12, 2017 and was now experiencing an exacerbation of pain and decreased range of motion in her back when she was pushing and pulling carts, especially around corners or pulling onto and off of the elevators, as well as while lifting supplies.

In a development letter dated May 17, 2018, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. It informed her of the type of evidence necessary to establish her claim and provided a series of questions for her completion regarding the facts and circumstances of the injury. OWCP afforded appellant 30 days to submit the necessary evidence.

On June 4, 2018 the employing establishment submitted a position description and a May 29, 2018 response from appellant's supervisor indicating that appellant had stated that initially pushing the carts was hurting her back and that she later thought it was due to standing at the sink. Appellant's supervisor advised that appellant had not pushed a heavy cart since she had complained in February 2018 that the activity was hurting her back.

Appellant subsequently submitted a June 15, 2018 letter indicating that she had a magnetic resonance imaging (MRI) scan on June 12, 2018 and was awaiting the results. She noted her date of injury as February 12, 2018, which was exactly one year to the date from her original spine surgery on February 12, 2017.

In a June 25, 2018 narrative statement, appellant responded to the questions propounded by OWCP. She indicated that the injury to her back was caused by the additional strain put on her back during construction of her department since it was completely gutted and she was put in a small office with one small sink, which required everything to be cleaned by hand. Appellant explained that, in an eight-hour shift, she was at the sink cleaning equipment for at least three or four hours. The remainder of the time was spent going to all the areas of the hospital picking up dirty instrumentation and equipment so that appellant could clean it. Appellant indicated that this lasted from February 12 to May 9, 2018.

In a May 14, 2018 note, Kristi A. Tesarz, a physician assistant, diagnosed myalgia, lumbar radiculopathy, and sciatica.

A May 22, 2018 report from Dr. Michaele C. Oostendorp, a Board-certified internist, diagnosed benign essential hypertension, lumbar hernia, urinary tract infection (resolved), vitamin B12 and D deficiency, migraine headache, and right-sided sciatica. She indicated that appellant's lower radiating back pain improved after her back surgery, but she still had limitations with repetitive movements, bending, twisting, and lifting.

A June 12, 2018 MRI scan of the lumbar spine demonstrated no evidence of an acute fracture or spondylolisthesis. A disc herniation was present in the midline and slightly eccentric to the right at the L4-5 disc level and mild-to-very-mild impingement upon the neural foramina bilaterally from L3 through S1.

In a report dated June 25, 2018, Dr. Craig J. Everingham, a Board-certified family practitioner, indicated that appellant was seen in May 2018 regarding an injury at work in February 2018. Appellant had presented with severe low back pain with myospasms and severe right leg pain. Dr. Everingham opined that these conditions prevented her from performing normal daily activities, as well as work activities. He concluded that appellant's sustained injuries were directly caused by physical activity required by the employing establishment, opining that the physical activity at work exacerbated her already lingering low back problem which included her prior fusion surgery in 2017.

By decision dated July 2, 2018, OWCP denied appellant's occupational disease claim. It accepted her employment duties as described, but denied her claim because she had failed to submit any medical evidence establishing a medical diagnosis. Therefore, OWCP found that the requirements had not been met to establish an injury as defined by FECA.

On March 19, 2019 appellant, through counsel, requested reconsideration.

Appellant submitted a July 13, 2018 report from Dr. Joseph K. Llanos, a Board-certified occupational medicine specialist, indicating that her physical examination was normal and unremarkable. Dr. Llanos found that she was unable to fully touch her toes with both hands/fingers on forward flexion of the trunk and was able to perform bending, but was hesitant to do repeated bending due to her history of chronic back pain and spinal fusion. He noted that appellant had claimed that her spine physician had recommended another spinal fusion at L4-5.

Appellant further submitted a note dated September 18, 2018 from Ms. Tesarz.

In an October 28, 2018 hospital report Dr. Melanie L. Aaberg, a Board-certified emergency medicine specialist, diagnosed chronic low back pain refractory to her surgery 18 months prior. Dr. Aaberg also indicated that her past medical history included degenerative disc disorder, lumbar stenosis, and arthritis.

On October 31, 2018 appellant underwent a spinal fusion surgery at L4-5, performed by Dr. William A. Athens, a Board-certified orthopedic surgeon.

By decision dated August 12, 2019, OWCP affirmed its July 2, 2018 decision, as modified, finding that the evidence of record contained a medical diagnosis, but was insufficient to establish causal relationship between appellant's diagnosed back conditions and the accepted factors of her federal employment.

### **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,<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>

To establish that an injury 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>6</sup>

Rationalized medical opinion evidence is required to establish causal relationship. 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.<sup>7</sup>

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>8</sup>

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<sup>3</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>4</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>5</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>6</sup> *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>7</sup> *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

<sup>8</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).

## ANALYSIS

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

In his June 25, 2018 report, Dr. Everingham diagnosed severe low back pain with myospasms and severe right leg pain. He opined that appellant's injuries were directly caused by physical activity required by her employing establishment and concluded that her physical work activity exacerbated her already lingering low back problem, which included a 2017 lumbar fusion surgery. Dr. Everingham did not provide rationale explaining how her condition resulted from the accepted employment exposure of repetitive pushing and pulling heavy medical carts and equipment and prolonged standing. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition was related to related employment factors.<sup>9</sup> Additionally, such medical rationale is particularly important in light of appellant's preexisting lumbar conditions.<sup>10</sup> As Dr. Everingham report does not provide a well-rationalized opinion on causal relationship, it is insufficient to meet appellant's burden of proof.

OWCP received a series of reports from Drs. Oostendorp, Llanos, Aaberg, and Athens. In his May 22, 2018 report, Dr. Oostendorp diagnosed right-sided sciatica. Dr. Llanos in his July 13, 2018 report, noted unremarkable physical examination findings and provided a history of appellant's chronic back pain and spinal fusion. On October 28, 2018 Dr. Aaberg diagnosed chronic low back pain refractory to her surgery 18 months prior and indicated that appellant had been previously diagnosed with degenerative disc disorder, lumbar stenosis, and arthritis. Dr. Athens performed a spinal fusion at L4-5 on October 31, 2018. None of these physicians, however, provided an opinion as to the cause of appellant's most recent spinal condition. 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.<sup>11</sup> As the reports from Drs. Oostendorp, Llanos, Aaberg, and Athens do not provide an opinion on causal relationship, they are insufficient to meet appellant's burden of proof.<sup>12</sup>

Appellant submitted notes from a physician assistant, in support of her claim. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.<sup>13</sup> Consequently, their

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<sup>9</sup> *D.L.*, Docket No. 19-0900 (issued October 28, 2019); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017); *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

<sup>10</sup> *See L.J.*, Docket No. 19-1343 (issued February 26, 2020).

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

<sup>12</sup> *Id.*

<sup>13</sup> Section 8101(2) of FECA provides that medical opinion, in general, can only be given by a qualified physician. This section defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *See also B.J.*, Docket No. 18-1276 (issued February 4, 2019); *J.R.*, Docket No. 18-0801 (issued November 26, 2018).

medical findings and/or opinions are of no probative value and will not suffice for purposes of establishing entitlement to compensation benefits.<sup>14</sup>

Appellant also submitted diagnostic testing reports in support of her claim, but these diagnostic tests do not address the etiology of her medical conditions.<sup>15</sup> The Board has held that diagnostic tests, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion on the relationship between the employment incident and a claimant's diagnosed condition.<sup>16</sup>

On appeal, counsel contends that OWCP's decision is contrary to fact and law. As noted above, there is no rationalized medical evidence of record that establishes causal relationship to the accepted employment exposure, appellant 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 a back condition causally related to the accepted factors of her federal employment.

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<sup>14</sup> *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006); *see also S.J.*, Docket No. 17-0783, n.2 (issued April 9, 2018) (nurse practitioners are not considered physicians under FECA).

<sup>15</sup> *J.P.*, Docket No. 18-1486 (issued April 15, 2019).

<sup>16</sup> *G.S.*, Docket No. 18-1696 (issued March 26, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 12, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 23, 2020  
Washington, DC

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

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

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