

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

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Y.S., Appellant )  
and ) Docket No. 18-0366  
U.S. POSTAL SERVICE, PROCESSING & ) Issued: January 22, 2020  
DISTRIBUTION CENTER, Jackson, MS, )  
Employer )  
\_\_\_\_\_  
)

*Appearances:*

*Alan J. Shapiro, Esq.*, for the appellant<sup>1</sup>  
*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  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On December 12, 2017 appellant, through counsel, filed a timely appeal from a September 25, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUE**

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

## **FACTUAL HISTORY**

On September 29, 2016 appellant, then a 52-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging degenerative arthritis which caused pain to her hands, knees, and lower back, due to factors of her federal employment, including handling mail continuously over an eight-hour period. She noted that her hands began to swell after handling mail that was sorted by an automated machine. Appellant also indicated that she had to bend to sweep bins, which caused pain in her lower back and knees. She noted that she first became aware of her condition on December 18, 2015, and first realized its relation to her federal employment on June 15, 2016. On the reverse side of the claim form, the employing establishment indicated that appellant continued to work with no change in her assignment. It also noted that she had not reported any of the conditions to her supervisor/manager.

In an October 25, 2016 development letter, OWCP requested that appellant submit additional evidence in support of her claim, including a physician's opinion supported by a medical explanation as to how her federal employment caused or aggravated a medical condition. It provided a questionnaire for her completion, which inquired about the job activities she believed caused or contributed to her condition(s). OWCP afforded appellant 30 days to respond. On October 25, 2016 it also requested additional information from the employing establishment, which was also to be submitted within 30 days.

OWCP subsequently received employing establishment position descriptions for mail processing clerk and senior mail processor. It also received a leave analysis report documenting appellant's periodic absence from work during the period January 1 through November 4, 2016.

In a November 3, 2016 statement, D.T., an employing establishment distribution operations supervisor, described appellant's job duties, which included standing the entire tour, lifting, pushing containers, pulling bins to the rack, and bending/stooping intermittently for eight hours per day. She indicated that automation clerks rotated four hours feeding mail to the machine and four hours sweeping bins to the rack. D.T. noted that in September 2016 appellant only worked in automation for four days, which D.T. surmised was not enough time to incur the alleged injuries.

In a November 7, 2016 statement, appellant indicated that she had no outside activities or outside employment. She also indicated that she was currently not working because of pain and swelling of her hands, resulting in her dropping mail and other objects she may have been holding. Appellant also indicated that she developed tendinitis in her right thumb, and wore a brace on her right wrist for support. She further indicated that, while working in automation as a mail processing clerk, she used her hands repeatedly to load letter mail on the machine when serving as the feeder. When working as a sweeper, appellant repeatedly used her hands to sweep the bins, which caused swelling, redness, and pain. Sometimes her pain was so severe that she had to leave work.

In a November 17, 2016 report, Dr. Rose M. Sotolongo, a podiatrist, noted that appellant complained of periodic pain, which she described as aches and throbbing in her toes, ankles, and feet. She indicated that she prescribed custom orthotics for appellant's shoes, but they did not work as intended. Dr. Sotolongo also noted that appellant controlled her daily pain with prescribed medications. Appellant reported that constant movements, prolonged standing, and extensive walking increased the neuropathic pain in her feet and knees. Dr. Sotolongo noted that appellant's job as a mail processing clerk required her to stand during an eight-hour shift. However, appellant was currently unable to stand more than one hour in an eight-hour shift due to degenerative arthritis of multiple joints. Dr. Sotolongo further indicated that appellant's pain and her inability to bend limited her activities of daily living and prevented appellant from performing her current job duties.

In a November 23, 2016 report, Dr. Louis J. Saddler, a Board-certified internist, noted that he had seen appellant on November 22, 2016 for bilateral hand, bilateral knee, and lumbar pain. He reported that appellant's hand pain/swelling started after doing repetitive tasks at work, and her back pain was aggravated with standing and movement over long periods of time. Dr. Saddler returned appellant to work with restrictions that included no standing/walking more than two hours a shift, no bending/stooping/crouching, no repetitive use of either hand, and no lifting greater than 10 pounds.

By decision dated January 4, 2017, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that her employment duties either caused or contributed to her multi-joint degenerative arthritis.

On January 11, 2017 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on July 12, 2017.

In a June 9, 2017 report, Dr. Saddler indicated that appellant had been complaining of multiple joint pain and swelling in both hands, with stiffness and decreased gripping. He also noted complaints of intermittent lower back pain, which appellant described as a dull ache and throbbing. Appellant's lower back pain was reportedly aggravated by movement and worse with standing. Dr. Saddler also reported complaints of bilateral knee pain all around the joints with extension, flexion, and with walking. Appellant also experienced jerking muscle spasms. Her pain interfered with, and limited her activities of daily living. Dr. Saddler further noted that appellant was taking prescribed medications for pain, but they did not provide her relief. Physical examination revealed significant loss of motion of multiple joints, and x-rays revealed degenerative changes. Dr. Saddler indicated that appellant had degenerative arthritis of multiple joints, and had also been diagnosed with rheumatoid arthritis. He advised that appellant could not use her hands, could not bend, and could not stand for more than one hour a day. In conclusion, Dr. Saddler indicated that appellant was unable to perform her current job because of her restrictions, and that she was permanently disabled from work.

By decision dated September 25, 2017, OWCP's hearing representative affirmed OWCP's January 4, 2017 decision, finding that the evidence of record, including Dr. Sadler's June 9, 2017 report, was insufficient to establish causal relationship.

## **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim, including 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 of FECA,<sup>4</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>5</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>6</sup>

To establish that an injury was 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 employment factors identified by the claimant.<sup>7</sup>

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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 specific employment factors identified by the employee.<sup>9</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>10</sup>

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<sup>3</sup> *Id.*

<sup>4</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>5</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>6</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>7</sup> *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

<sup>8</sup> *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>10</sup> See *J.P.*, Docket No. 19-0216 (issued December 13, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

## **ANALYSIS**

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

In a November 17, 2016 report, Dr. Sotolongo, a podiatrist, diagnosed degenerative arthritis of multiple joints, and indicated that appellant reported that constant movements, prolonged standing, and extensive walking increased the neuropathic pain in her feet and knees. Although Dr. Sotolongo noted that appellant's duties as a mail processing clerk required her to stand during an eight-hour shift, she did not provide 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 is of no probative value on the issue of causal relationship.<sup>11</sup> Therefore, Dr. Sotolongo's November 17, 2016 report is insufficient to establish appellant's claim.

In his November 23, 2016 report, Dr. Saddler reported complaints of bilateral hand, bilateral knee, and lumbar pain. Appellant's hand pain and swelling reportedly started after performing repetitive tasks at work, and her back pain was aggravated with standing and movement over long periods of time. Dr. Saddler did not specifically comment about the source of appellant's bilateral knee pain. However, this report is insufficient to satisfy appellant's burden of proof because pain is a symptom, not a specific medical diagnosis.<sup>12</sup>

In a June 9, 2017 report, Dr. Saddler indicated that appellant had degenerative arthritis of multiple joints, and had also been diagnosed with rheumatoid arthritis. He advised that appellant could not use her hands, could not bend, and could not stand for more than one hour a day. As such, appellant was unable to perform her current job because of her restrictions, and Dr. Saddler determined that she was permanently disabled. The Board notes that Dr. Saddler did not specifically address causal relationship. Dr. Saddler's June 9, 2017 report did not describe what, if any relationship existed between appellant's diagnosed degenerative and/or rheumatoid arthritis and her duties as a mail processing clerk. As previously noted, 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.<sup>13</sup> Consequently, Dr. Saddler's June 9, 2017 report is insufficient to establish appellant's claim.<sup>14</sup>

As the medical evidence of record does not contain a rationalized opinion establishing causal relationship between appellant's diagnosed conditions and the accepted factors of her federal employment, the Board finds that appellant has not met her burden of proof.

On appeal counsel argues that OWCP applied an incorrect standard of causation and failed to give due deference to the attending physician's findings. He also alleges that OWCP's

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<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> Findings of pain or discomfort alone do not satisfy the medical aspect of the fact of injury medical determination. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.4a(6) (August 2012).

<sup>13</sup> See *supra* note 11.

<sup>14</sup> *Id.*

September 25, 2017 decision was contrary to law and fact. As explained above, the medical evidence of record is insufficient to establish that appellant's diagnosed conditions are causally related to the accepted factors of her federal employment. Consequently, 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 medical condition causally related to the accepted factors of her federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 25, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 22, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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