

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

L.H., Appellant

and

**U.S. POSTAL SERVICE, FREEHOLD POST
OFFICE, Freehold, NJ, Employer**

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**Docket No. 21-0215
Issued: July 22, 2021**

Appearances:

Russell T. Uliase, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On December 8, 2020 appellant, through counsel, filed a timely appeal from a July 9, 2020 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.

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.*

ISSUE

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

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances of the case as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On July 11, 2016 appellant, then a 51-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she injured her back, legs, and hips due to factors of her federal employment, including bending, twisting, lifting up to 70 pounds, pushing, pulling, sitting, walking, turning, kneeling, squatting, reaching above and below her head, standing, leaning over, stepping up and down, carrying, and stretching.⁴ She noted that she first became aware of her condition on January 22, 2014 and realized its relationship to her employment on January 26, 2016. Appellant stopped work on January 26, 2016.

A February 25, 2014 lumbar magnetic resonance imaging (MRI) scan report showed spinal canal stenosis at L4-5 related to a diffuse disc bulge and prominent facet arthropathy.

In an April 2, 2014 report, Dr. Robert B. Grossman, a Board-certified orthopedic surgeon, indicated that appellant was previously diagnosed with spinal stenosis and entrapment at L4-5. Upon physical examination, he observed tenderness at L4-5 and L5-S1 of the lumbar spine. Straight leg raise testing was positive. Dr. Grossman reported decreased knee reflex and no sensory losses. He opined that appellant's injury was "directly related to overuse at work delivering mail on January 22, 2014."

In notes dated April 30 and July 2, 2014, Dr. Grossman noted physical examination findings of back and sacroiliac (SI) joint tenderness. He opined that appellant's back injury was "directly related to back strains from doing two routes at the same time for the [employing establishment]."

In a January 19, 2016 report, Dr. Sandeep Rathi, Board-certified in physical medicine and rehabilitation and pain medicine, recounted appellant's complaints of low back pain on the right side and significant muscle spasm. Upon physical examination, he observed tenderness to palpation over the right-sided lumbosacral paraspinal musculature and palpable spasm. Straight leg raise testing was negative. Dr. Rathi diagnosed lumbar intervertebral disc displacement.

In a January 20, 2016 report, Dr. Leslie Cauvin, an osteopath who specializes in internal medicine, indicated that appellant was seen for right-side back pain. He reviewed appellant's

³ *Order Remanding Case*, Docket No. 18-1777 (issued July 20, 2019).

⁴ The claim was assigned OWCP File No. xxxxxx373. Appellant previously filed a traumatic injury claim for a back injury related to a January 22, 2014 employment incident. OWCP assigned that claim OWCP File No. xxxxxx498 and accepted it for temporary aggravation of lumbosacral degenerative disc disease

history and provided examination findings. Dr. Cauvin diagnosed low back pain and left elbow sprain.

An April 1, 2016 lumbar spine MRI scan revealed multilevel degenerative disc disease, most prominent within the lower lumbar spine and disc protrusion at T11-12, L1-2, L2-3, L3-4, L4-5, and L5-S1.

On September 6, 2016 OWCP received a statement from appellant. Appellant noted that the date of the original traumatic injury, which resulted in her back condition, was January 22, 2014. She provided a detailed account of her employment duties, which included casing mail, sorting mail into trays, loading trays into carts or skids, signing and writing up all accountable items, pushing the cart or skid full of mail to the loading dock, driving her truck to the dock, loading her mail truck with mail, driving to her mail route, and delivering mail and packages. Appellant indicated that her duties required repetitive grabbing, pulling, twisting, rotating, bending, squatting or kneeling, lifting, reaching, and walking.

In a September 22, 2016 development letter, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of medical and factual evidence necessary to support her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary information.

In reports dated August 2 and October 13, 2016, Dr. Rathi recounted appellant's complaints of low back pain with radiation to the lower extremities. Upon examination of appellant's lumbar spine, he observed tenderness to palpation of the lumbosacral paraspinal musculature. Straight leg raise testing produced pain in the low back and buttocks. Dr. Rathi diagnosed lumbosacral radiculopathy and lumbar intervertebral disc displacement.

On October 20, 2016 OWCP received appellant's response to its development letter. Appellant noted that her original back injury occurred on January 22, 2014 and that diagnostic testing showed that she had two herniated and/or bulging discs in her lower back. She indicated that her second work injury occurred in January 2016 and that a lumbar spine MRI scan revealed that she now had five herniated and/or bulging discs in her lumbar spine.

Appellant submitted additional reports by Dr. Grossman. In reports dated August 3 and October 5, 2016, Dr. Grossman indicated that appellant's problems with her back and legs started in January 2014 and again in 2016 and was caused by her bending, twisting, and walking for work. He indicated that an MRI scan showed L2-3, L3-4, L4-5, and L5-S1 entrapment. Upon examination of appellant's lumbar spine, Dr. Grossman observed back tenderness and entrapment. In the October 5, 2016 report, he assessed "spinal stenosis and degenerative spinal disease, all caused by two injuries at work."

By decision dated November 14, 2016, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that her diagnosed medical conditions were causally related to the accepted factors of her federal employment.

On November 23, 2016 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review, which was held on March 1, 2017.

Appellant submitted progress notes dated January 30 and March 6, 2014 from Dr. Anupam Sinha, an osteopath, regarding appellant's medical treatment for "exacerbation of lumbar disc herniation from work-related incident on January 22, 2014." Dr. Sinha diagnosed L3-4, L4-5, and L5-S1 disc herniation and mild-to-moderate L4-5 stenosis.

OWCP received reports dated April 30 and October 26, 2015 by Dr. Grossman, who treated appellant for left knee pain. Dr. Grossman reported that examination findings revealed joint line tenderness and positive McMurray signs. He diagnosed arthritis and meniscal tear.

Appellant continued to receive medical treatment from Dr. Rathi and submitted reports and procedure notes dated November 21, 2016 through January 19, 2017 regarding the treatment that she received for her lumbar radiculopathy and low back pain.

Appellant submitted reports dated March 7, 2016 through March 23, 2017 from Dr. Grossman who noted the 2014 back injury and indicated that diagnostic testing had confirmed degenerative spine disease and five bulging discs. In reports dated January 11 and February 8, 2017, Dr. Grossman assessed "protruding discs and degenerative spine disease related to the work that [appellant] has done for the last 32 years." In reports dated January 24 and March 8, 2017, he further indicated that the source of appellant's problem began in 2014 when she had to carry an excessive amount of weight at work. Dr. Grossman recounted that appellant had been carrying large weights with a degenerative back for 30 some years and explained that appellant's degenerative problems were accentuated by her working on hard floors, carrying, lifting, turning, and twisting. He reported that appellant's back problems were directly related to being "forced to carry two bags of mail as a rural carrier back in 2014 and did so approximately 30 years." In a March 23, 2017 narrative report, Dr. Grossman further indicated that appellant's injury was made worse by what she had done for the previous 20 to 25 years.

By decision dated April 4, 2017, OWCP's hearing representative affirmed the November 14, 2016 decision.

On February 5, 2018 appellant, through counsel, requested reconsideration.

OWCP received additional reports and procedure notes from Dr. Rathi dated May 1 through December 14, 2017 regarding the medical treatment that appellant received for her lumbar and right hip conditions.

In a narrative June 17, 2017 report, Dr. Grossman indicated that for 30 years appellant was required to work an average of 8½ hours per day, 5 to 6 days per week, casing and delivering mail, which involved twisting, bending, stooping, and lifting. He opined that appellant's medical problems were directly related to what she was required to do and the significant amount of work on her spine. Dr. Grossman explained that significant twisting, turning, and bending all day long for 31 years would disrupt anyone's spine and hips. He concluded that appellant's back and hip problems were directly related to her employment, which required twisting and turning exercises, moving large amounts of mail across the employing establishment floor, and moving that mail again in and out of her truck.

In a report dated August 17, 2017, Dr. Grossman reported that appellant continued to be symptomatic in her back and left lower extremity. He noted examination findings of positive straight leg raise testing and weakness in the dorsiflexion of the left foot.

In a December 12, 2017 report, Dr. Rathi noted appellant's January 22, 2014 work-related injury and discussed the medical treatment that appellant had received, including diagnostic testing, epidural steroid injections, and nerve branch blocks. He reported that appellant's diagnoses related to the January 22, 2014 work injury were lumbar facet joint syndrome bilaterally, annual tear at L3-4 and L4-5, and disc herniation at L4-5 and L5-S1. Dr. Rathi indicated that appellant suffered a permanent, work-related injury on January 22, 2014, which remained symptomatic after conservative treatment. He opined that appellant's work duties for May 2014 through January 2016 aggravated her injury.

In a January 8, 2018 narrative report, Dr. Grossman reiterated appellant's employment duties as a rural carrier and indicated that this was a significant amount of work for anyone, but more problematic for appellant since her January 22, 2014 work injury. He noted that appellant returned to full duty in May 2014 and worked until she reinjured her back in January 2016 while in the performance of her duties. Dr. Grossman indicated that an April 1, 2016 lumbar MRI scan showed additional injuries to her back and clearly showed that returning back to work caused more damage to appellant's lumbar spine. He reported that physical examination findings showed continued back pain and numbness and pain and weakness in her legs. Dr. Grossman concluded that appellant's injuries were directly related to 30 plus years of employment, which involved twisting, turning, stooping, squatting, and lifting large amounts of mail across the floor and in and out of her truck.

In a May 4, 2018 decision, OWCP denied modification of the April 4, 2017 decision.

Appellant appealed to the Board. In a July 29, 2019 order, the Board set aside the May 4, 2018 decision and remanded the case for OWCP to administratively combine the current claim with appellant's previous lumbar claim under File No. xxxxxx498 followed by a *de novo* decision.⁵ On August 15, 2019 OWCP administratively combined the claim files, with File No. xxxxxx498 serving as the master file.

By *de novo* decision dated October 22, 2019, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted factors of her federal employment.

On April 14, 2020 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

In a March 30, 2020 report, Dr. Grossman described how the back consisted of disc spaces between vertebrae, which break and compress, causing irritation, as people become older. He indicated that for someone in appellant's age group, the pressures of twisting, bending, and lifting increase the forces across the back. Dr. Grossman noted that appellant had two significant back injuries. He reported that a 2014 MRI scan showed irritation and the nucleus pulposus materials

⁵ *Order Remanding Case*, Docket No. 18-1777 (issued July 29, 2019).

pushing out against the C1-3 nerve roots. Dr. Grossman indicated that a second MRI scan completed after the 2016 injury revealed that discs were herniated at T11-12, L1-2, L2-3, L3-4, L4-5, and L5-S1. He noted that appellant's lumbar spine had degenerated. Dr. Grossman opined that the degeneration was "related to the amount of weight she carried, lifted, and moved for 30 plus years and so the discs have degenerated throughout her back, putting pressure against her nerve." He concluded that appellant's lumbar condition was degenerated and related to her work-related back injury.

By decision dated July 9, 2020, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ 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,⁷ 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.⁸ 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.⁹

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.¹⁰

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.¹¹ 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

⁶ *Id.*

⁷ *L.C.*, Docket No. 19-0724 (issued September 5, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁸ *D.W.*, Docket No. 18-1139 (issued May 21, 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).

⁹ *D.W.*, *id.*; *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).

¹⁰ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

¹¹ *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

relationship between the diagnosed condition and specific employment factors identified by the employee.¹²

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.¹³

ANALYSIS

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

In support of her claim, appellant submitted a series of reports from Dr. Grossman. Dr. Grossman indicated that he had treated appellant for an accepted lumbar condition due to her January 22, 2014 employment injury. In reports dated August 3 and October 5, 2016, he indicated that appellant's problems with her back and legs started in January 2014 and again in 2016 and was caused by her bending, twisting, and walking for work. Dr. Grossman provided examination findings and noted that diagnostic testing had confirmed degenerative spine disease and five bulging discs. In reports dated January 24 and March 8, 2017, he indicated that appellant had been carrying large weights with a degenerative back for 30 some years and explained that appellant's degenerative problems were accentuated by her working on hard floors, carrying, lifting, turning, and twisting. In a June 17, 2017 narrative report, Dr. Grossman explained that significant twisting, turning, and bending all day long for 31 years would disrupt anyone's spine and hips. He concluded that appellant's back and hip problems were directly related to her employment, which required twisting and turning exercises, moving large amounts of mail across the post office floor, and moving this mail again in and out of her truck. In a March 30, 2020 report, Dr. Grossman described how the back consisted of disc spaces between vertebrae, which break and compress, causing irritation, as people become older. He indicated that for someone in appellant's age group, the pressures of twisting, bending, and lifting increased the forces across the back. Dr. Grossman opined that the degeneration was "related to the amount of weight she carried, lifting, and moved for 30 plus years and so the discs have degenerated throughout her back, putting pressure against her nerve."

The Board finds that Dr. Grossman provided an affirmative opinion on causal relationship, provided a complete factual history confirming the accepted employment factors, and accurately noted appellant's medical history and course of treatment. The Board finds that, while Dr. Grossman's reports are not completely rationalized and are insufficient to meet appellant's burden of proof to establish his occupational disease claim, they are consistent in indicating that

¹² *M.L.*, Docket No. 18-1605 (issued February 26, 2019); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

she sustained a medical condition due to the accepted factors of federal employment and are sufficient to require OWCP to further develop the medical evidence and the case record.¹⁴

It is well established that proceedings under FECA are not adversarial in nature and, while the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.¹⁵

The Board will, therefore, remand the case for further development of the medical evidence. On remand OWCP shall prepare a statement of accepted facts and obtain a rationalized opinion from a physician in the appropriate field of medicine as to whether the accepted work factors caused or aggravated a diagnosed medical condition. If the referral physician opines that the diagnosed condition is not causally related to the accepted employment factors, he or she must explain with rationale how or why their opinion differs from that of appellant's treating physicians. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

¹⁴ *E.P.*, Docket No. 19-1703 (issued April 16, 2021); *G.M.*, Docket No. 19-0657 (issued September 13, 2019); *see also John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

¹⁵ *C.W.*, Docket No. 19-0322 (issued July 18, 2019); *S.W.*, Docket No. 18-0119 (issued October 5, 2018); *William J. Cantrell*, 34 ECAB 1233 (1993).

ORDER

IT IS HEREBY ORDERED THAT the July 9, 2020 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: July 22, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board