

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

A.K., Appellant)	
)	
and)	Docket No. 21-0278
)	Issued: July 12, 2021
U.S. POSTAL SERVICE, BLOOMINGTON)	
POST OFFICE, Bloomington, IL, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 14, 2020 appellant filed a timely appeal from a November 2, 2020 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 medical condition 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 November 2, 2020 decision, appellant submitted 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 additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

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

On April 9, 2019 appellant, then a 44-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that she developed a lumbar condition with radiculopathy due to factors of her federal employment. She noted that she first became aware of her condition on November 1, 2018 and realized its relationship to her federal employment on April 3, 2019. Appellant stopped work on April 8, 2019.

On April 15, 2019 Dr. Susan Sheppard, a Board-certified family practitioner, evaluated appellant and advised that she would be off work from April 8 through 13, 2019, and could return to regular-duty work on April 16, 2019. On April 17, 2019 she advised that appellant remained disabled from work and could return to full-duty work on April 18, 2019. On April 23, 2019 Dr. Sheppard opined that the activities and requirements of appellant's job aggravated appellant's condition and that she was totally disabled from work until evaluated by a neurosurgeon. In a duty status report (Form CA-17) of even date, she described clinical findings and diagnosed lumbar disc herniation. Dr. Shepard concluded that appellant was disabled from work. On May 2, 2019 she noted that a magnetic resonance imaging (MRI) scan of the lumbar spine confirmed a lumbar disc herniation. Dr. Shepard opined that the activities and requirements of appellant's job aggravated her condition. She concluded that appellant was temporarily totally disabled from work from April 8 through 13, 2019 and April 17 through May 4, 2019, and she would continue to be temporarily totally disabled from work until evaluated by a neurosurgeon.

On May 10, 2019 Dr. Sheppard opined that the activities and requirements of appellant's job aggravated appellant's condition, and appellant could only perform limited-duty work for two hours a day, five days a week until she was evaluated by a neurosurgeon. She noted that appellant was temporarily totally disabled from May 10 through 28, 2019. On May 30, 2019 Dr. Sheppard indicated that appellant was evaluated by a neurosurgeon and found to be temporarily totally disabled. In Form CA-17 reports dated May 10 and 30, 2019, she diagnosed lumbar disc herniation and indicated that appellant could resume work for two hours per day with restrictions.

By decision dated June 3, 2019, OWCP accepted the alleged employment factors, but denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed conditions and the accepted factors of her federal employment.

On June 11, 2019 appellant requested reconsideration and submitted additional medical evidence in support of her claim.

Appellant submitted reports from Dr. Sheppard dated July 7, 2010 through November 14, 2018, who treated appellant for various conditions. Dr. Sheppard continued to treat appellant through April 2019 and advised that appellant was absent from work from April 8 to 9, 2019 due to a medical condition. In a July 3, 2019 report, she opined that, due to the repetitive nature of

³ Docket No. 20-0003 (issued June 2, 2020).

appellant's job requirements as a city carrier (including carrying mail weighing up to 35 pounds in shoulder satchels, loading and unloading mail containers up to 70 pounds and prolonged standing, walking, bending, twisting, lifting, reaching, and climbing), she reasonably believed with medical certainty that appellant's injury was caused and aggravated by her job duties.

In June 2019, appellant underwent surgery for a lami/microdiscectomy.

Appellant was treated by Dr. Won H. Jhee, a Board-certified physiatrist, on July 3, 2019 who prepared a return to work/light duty medical certificate and noted that she was totally disabled from April 3 through July 8, 2019. Dr. Jhee noted that she underwent a microdiscectomy at L5-S1 on June 17, 2019. He returned appellant to modified-duty work on July 8, 2019.

On July 8, 2019 the employing establishment offered appellant a modified-duty work position within her work restrictions. Appellant accepted the position and returned to work.

On August 1, 2019 Dr. Ann R. Stroink, a Board-certified neurosurgeon, opined that due to the repetitive nature of appellant's job requirements as a city carrier (including carrying mail weighing up to 35 pounds in shoulder satchels, loading and unloading mail containers up to 70 pounds and prolonged standing, walking, bending, twisting, lifting, reaching, and climbing) she reasonably believed with medical certainty that appellant's injury was caused and aggravated by her job duties. She evaluated appellant on May 28, 2019 for severe leg pain and weakness. Dr. Stroink noted that an MRI scan revealed an extruded disc fragment and appellant underwent surgery on June 17, 2019. She diagnosed bulge of the lumbar disc, radiculopathy of the lumbar region, and muscle weakness.

By decision dated September 5, 2019, OWCP denied appellant's June 11, 2019 reconsideration request finding that it was untimely filed and failed to demonstrate clear evidence of error.

On October 1, 2019 appellant appealed the June 3, 2019 merit decision and the September 5, 2019 nonmerit decision to the Board.⁴ By decision dated June 2, 2020, the Board affirmed the June 3, 2019 merit decision, finding that she had not met her burden of proof to establish a medical condition causally related to factors of her federal employment. The Board set aside the September 5, 2019 decision, finding that OWCP improperly denied appellant's request for reconsideration of the merits of her claim as untimely filed and failed to demonstrate clear evidence of error. The Board found that the reconsideration request was timely filed and remanded the case for adjudication under the proper standard for timely reconsideration requests, to be followed by an appropriate decision.

OWCP received additional evidence. On December 5, 2019 Dr. Jhee prepared a light-duty form identifying appellant's physical limitations. He noted that she could drive a truck for three weeks without casing mail. In a Form CA-17 dated December 26, 2019, Dr. Jhee noted clinical

⁴ *Id.*

findings of history of lumbar disc herniation, resolving radiculopathy, and returned appellant to full-duty work on December 28, 2019.⁵

By decision dated July 20, 2020, OWCP denied modification of the prior decision.

In a July 30, 2020 letter, Dr. Sheppard indicated that on April 3, 2019 appellant was performing her work duties casing mail, reaching above her shoulders, bending, twisting, and kneeling when appellant walked to a letter tray staging area and picked up her second tray and put the tray on a piece of equipment and felt excruciating pain. She noted that an April 17, 2019 MRI scan revealed a herniated disc at L4-5 and L5-S1. Dr. Sheppard opined, to a reasonable degree of medical certainty, that appellant's disc herniation occurred on April 3, 2019 while performing appellant's work duties. She advised that appellant was totally disabled from work.

On August 10, 2020 appellant requested reconsideration.

By decision dated November 2, 2020, OWCP denied modification of the July 20, 2020 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,⁶ 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.⁷ 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.⁸

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 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.⁹

⁵ Appellant submitted a May 1, 2020 decision from the Office of Personnel Management (OPM) granting her disability retirement due to lumbar disc herniation and degenerative disc disease.

⁶ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

⁸ *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).

⁹ *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).

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹⁰ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background.¹¹ 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.¹²

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.

By decision dated June 2, 2020, the Board affirmed OWCP's denial of appellant's claim, finding that she had not met her burden of proof to establish a lumbar condition causally related to factors of her federal employment. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹³ The Board will therefore not review the medical evidence addressed in the prior appeal.

Reports from Dr. Sheppard and Dr. Stroink dated July 3 and August 1, 2019 respectively, indicated the physician's opinions that due to the repetitive nature of appellant's job requirements as a city carrier (including carrying mail weighing up to 35 pounds in shoulder satchels; loading and unloading mail containers up to 70 pounds; and prolonged standing, walking, bending, twisting, lifting, reaching, and climbing) they reasonably believed with medical certainty that appellant's injury was caused and/or aggravated by her job duties. While they supported causal relationship, Drs. Sheppard and Stroink offered only a conclusory statement devoid of medical rationale. They did not explain the medical mechanics of how the accepted factors of federal employment were competent to cause appellant's diagnosed conditions. The Board has held that a medical report is of limited probative value on a given medical issue if it contains an opinion which is unsupported by medical rationale.¹⁴ Consequently, the opinions of Drs. Sheppard and Stroink are insufficient to meet appellant's burden of proof to establish her claim.

In a July 30, 2020 letter, Dr. Sheppard indicated that on April 3, 2019 appellant was performing her work duties casing mail, reaching above her shoulders, bending, twisting, and kneeling when she picked up her second tray and put the tray on a piece of equipment and felt excruciating pain. An MRI scan report revealed a herniated disc at L4-5 and L5-S1 and she opined to a reasonable degree of medical certainty that appellant's disc herniation occurred on April 3, 2019, while performing her work duties. However, Dr. Sheppard again did not provide medical

¹⁰ *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

¹¹ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

¹² *Id.*; *Victor J. Woodhams*, *supra* note 9.

¹³ *See M.M.*, 18-1366 (issued February 27, 2019); *E.L.*, 16-0635 (issue November 7, 2016); *R.L.*, Docket No. 15-1010 (issued July 21, 2015). *See also A.P.*, Docket No. 14-1228 (issued October 15, 2014).

¹⁴ *B.M.*, Docket No. 19-1341 (issued August 12, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

reasoning to explain how the accepted employment factors were sufficient to have caused or aggravated appellant's lumbar condition. 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 accepted employment factors.¹⁵ These additional opinions of Dr. Sheppard are also insufficient to establish appellant's claim.

Appellant submitted reports from Dr. Sheppard dated July 7, 2010 through November 14, 2018, who treated her for a left ankle sprain, depression, anxiety, insomnia, and a thyroid condition. On April 9, 2019 Dr. Sheppard found appellant disabled from work from April 8 to 9, 2019 due to a medical condition. However, she failed to address whether the lumbar condition was causally related to the accepted employment incident in any of these reports. Accordingly, these reports are of no probative value on the issue of causal relationship and are insufficient to establish appellant's claim.¹⁶

On July 3, 2019 Dr. Jhee prepared a return to work /light duty medical certificate and noted appellant was totally disabled from April 3 through July 8, 2019. Appellant underwent a microdiscectomy at L5-S1 on June 17, 2019 and he returned her to modified-duty work on July 8, 2019. On December 5, 2019 Dr. Jhee prepared a light duty form identifying her physical limitations. While he found appellant disabled for work, he did not provide a medical diagnosis or reference the accepted employment factors in support of his findings. The Board has held that medical reports which do not provide a firm diagnosis or fail to render an opinion on causal relationship are of no probative value and are insufficient to establish the claim.¹⁷ These reports are therefore insufficient to establish appellant's claim.

In a Form CA-17 dated December 26, 2019, Dr. Jhee noted clinical findings of lumbar disc herniation, resolving radiculopathy and returned appellant to work full duty on December 28, 2019. However, he did not offer an opinion as to whether appellant's diagnosed conditions were causally related to the employment incident. 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.¹⁸ Accordingly, this report is insufficient to establish appellant's claim.

Appellant submitted a May 1, 2020 decision from OPM granting her disability retirement due to lumbar disc herniation and degenerative disc disease. The Board has held that entitlement to benefits under another act does not establish entitlement to benefits under FECA.¹⁹

¹⁵ *G.R.*, Docket No. 19-0940 (issued December 20, 2019); *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).

¹⁶ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁷ *I.M.*, Docket No. 19-1038 (issued January 23, 2020); *V.U.*, Docket No. 19-0755 (issued November 25, 2019); *see also L.B.*, and *D.K.*, *id.*

¹⁸ *Supra* note 15.

¹⁹ *A.L.*, Docket No. 17-0368 (issued June 20, 2018); *J.M.*, Docket No. 17-0785 (issued June 9, 2017); *Freddie Mosley*, 54 ECAB 255 (2002).

As appellant has not submitted rationalized medical evidence establishing that her injury is causally related to the accepted factors of her federal employment, the Board finds that she has not met her burden of proof to establish her claim.

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 November 2, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 12, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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