

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

S.D., Appellant)	
)	
and)	Docket No. 22-1006
)	Issued: December 5, 2022
U.S. POSTAL SERVICE, SOUTH DOWNEY)	
POST OFFICE, Downey, CA, Employer)	
)	

Appearances:
Roxann M. Gonzalez, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On June 21, 2022 appellant, through her representative, filed a timely appeal from a January 10, 2022 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.³

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.*

³ The Board notes that, following the January 10, 2022 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.*

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 January 27, 2020 appellant, then a 50-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging that she had sustained a lower back injury as a result of her federal employment duties, including lifting, bending, unloading parcels, and bearing weight. She noted that she first became aware of her lower back condition and its relation to her federal employment on October 1, 2019.⁴

In a duty status report (Form CA-17) dated February 6, 2020, Dr. Edward Mittleman, a family medicine specialist, diagnosed lumbar/sacral disc radiculitis and noted that appellant had been advised that she could return to work on January 2, 2020 with restrictions. He had provided the same diagnosis on Forms CA-17 dated January 2 and March 5, 2020.

In a development letter dated March 20, 2020, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of medical and factual evidence necessary to establish her claim and afforded her 30 days to provide the necessary evidence.

OWCP received a December 18, 2019 magnetic resonance imaging (MRI) scan of appellant's lumbar spine. The appearance was noted to be worse compared to prior examination on October 19, 2016.

In a report dated February 6, 2020, Dr. Mittleman diagnosed lumbar disc extrusion with radiculopathy, permanent aggravation of severe lumbar L5-S1 neural foraminal stenosis, and aggravation of lumbar spondylosis. He reviewed appellant's employment duties and described them in detail. Dr. Mittleman noted that, while casing mail, she rotated her lumbar axial skeletal system bilaterally and extended it upward, placing significant force on the lumbar skeletal system. This also placed significant force on the joints of the lumbar spine, causing irritation to appellant's articular cartilage, which resulted in wear of bony structures and eventual osteoarthritis, as documented in the December 18, 2019 MRI scan. Dr. Mittleman explained that filling trays of mail put significant force on her lumbar axial system. Afterward, appellant used a transportation device to load her postal vehicle, which involved significant twisting force of the lumbar spine, transmitting such force to both the joints and discs of the lumbar spine. In delivering mail, she pushed and pulled a mail cart, which again placed significant forces on the structures of her lumbar spine. Dr. Mittleman opined that these repetitive activities that appellant had performed on a daily basis in the course of her employment produced significant changes within the structures of the lumbar spine, as documented by MRI scan. He stated that these changes were consistent with permanent aggravation, which was a continuing and irreversible change in the underlying lumbar

⁴ Appellant previously filed a claim for traumatic injury (Form CA-1) on December 15, 2016 alleging that on September 19, 2016 she injured her lower back when she stepped into a pothole while delivering mail. OWCP assigned that claim OWCP File No. xxxxxx637. It denied the claim by decisions dated May 25, 2017 and July 12, 2018 as appellant had not established that she sustained an injury as defined by FECA. Appellant's claims have not been administratively combined.

condition. Dr. Mittleman opined that it was medically reasonable to infer a direct causal relationship between appellant's lumbar symptoms and her employment duties as a city carrier.

By decision dated April 27, 2020, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed conditions and the accepted factors of her federal employment.

Appellant subsequently submitted a series of CA-17 forms indicating diagnoses of lumbar disc radiculitis and recommending work restrictions, dated from April 8, 2020 through May 27, 2021.

On April 6, 2021 appellant requested reconsideration.

By decision dated July 6, 2021, OWCP denied modification of its April 27, 2020 decision.

Appellant subsequently submitted a series of CA-17 forms indicating diagnoses of lumbar disc radiculitis and recommending work restrictions, dated July 1 through November 30, 2021.

On December 15, 2021 appellant requested reconsideration.

In support thereof, appellant submitted a December 14, 2021 report from Dr. Basimah Khulusi, a physician Board-certified in physical medicine and rehabilitation. Dr. Khulusi diagnosed lumbar extrusion with radiculopathy, permanent aggravation of severe L5-S1 neural foraminal stenosis, and aggravation of lumbar spondylosis. He explained that appellant had performed repetitive lifting and carrying day after day, year after year, that caused repetitive spraining and straining of her low back structures. Continuing to stress these structures by continuing respective lifting and carrying caused increased pressure on the discs in the disc spaces and caused displacement of these discs at multiple levels of the lumbar spine as seen by the MRI scan study of December 18, 2019.

By decision dated January 10, 2022, OWCP denied modification of its July 6, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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 of FECA, 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.⁶ 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 *Id.*

⁶ *C.K.*, Docket No. 19-1549 (issued June 30, 2020); *R.G.*, Docket No. 19-0233 (issued July 16, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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 identified employment factors.⁷

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ 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 factors.⁹

ANALYSIS

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

The issue in the present case is whether appellant has established causal relationship between any diagnosed medical condition and the accepted factors of her federal employment. In his February 6, 2020 report, Dr. Mittleman diagnosed lumbar disc extrusion with radiculopathy, permanent aggravation of severe lumbar L5-S1 neural foraminal stenosis, and aggravation of lumbar spondylosis. He explained that, while casing mail, appellant rotated her lumbar axial skeletal system bilaterally and extended it upward, placing significant force on the lumbar skeletal system. This also placed significant force on the joints of the lumbar spine, causing irritation to appellant's articular cartilage, which resulted in wear of bony structures and eventual osteoarthritis, as documented in the December 18, 2019 MRI scan. Dr. Mittleman further explained that filling trays of mail put significant force on her lumbar axial system. Afterward, appellant used a transportation device to load her postal vehicle, which involved significant twisting force of the lumbar spine, transmitting such force to both the joints and discs of the lumbar spine. In delivering mail, she pushed and pulled a mail cart, which again placed significant forces on the structures of her lumbar spine. Dr. Mittleman opined that these repetitive activities that appellant had performed on a daily basis in the course of her employment produced significant changes within the structures of the lumbar spine, as documented by MRI scan and that these changes were consistent with permanent aggravation, a continuing and irreversible change in the underlying lumbar condition. He opined that it was medically reasonable to infer a direct causal relationship between her lumbar symptoms duties of her employment as a city carrier.

It is well established that, proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares

⁷ *L.D.*, Docket No. 19-1301 (issued January 29, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁸ *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *D.J.*, Docket No. 19-1301 (issued January 29, 2020).

responsibility in the development of the evidence.¹⁰ OWCP has an obligation to see that justice is done.¹¹

The Board finds that Dr. Mittleman's February 6, 2020 report, while not fully rationalized, is sufficient to require further development of the medical evidence.¹² On remand, OWCP shall refer appellant to a physician in the appropriate field of medicine, along with the case record and a statement of accepted facts, for an examination and a rationalized medical opinion as to whether the accepted employment factors either caused or aggravated a diagnosed medical condition.¹³ If the second opinion physician disagrees with the explanations provided by Dr. Mittleman, he or she must provide a fully-rationalized opinion explaining why the accepted employment factors are insufficient to have caused or aggravated a diagnosed medical condition. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹⁴

CONCLUSION

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

¹⁰ See *id.* See also *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

¹¹ See *B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

¹² *Id.*

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *C.C.*, Docket No. 19-1631 (issued February 12, 2020).

¹⁴ On remand, OWCP should consider administratively combining any prior claims for compensation related to appellant's back with the present claim.

ORDER

IT IS HEREBY ORDERED THAT the January 10, 2022 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: December 5, 2022
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board