

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

C.H., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Philadelphia, PA, Employer)

**Docket No. 21-0932
Issued: February 10, 2022**

Appearances:
Appellant, pro se
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 June 1, 2021 appellant filed a timely appeal from an April 7, 2021 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 an injury in the performance of duty, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the April 7, 2021 decision, OWCP received additional evidence. 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

On January 19, 2021 appellant, then a 42-year-old sales clerk and distribution associate, filed an occupational disease claim (Form CA-2) alleging that she developed back and bilateral foot pain due to factors of her federal employment, including prolonged standing repetitive bending and dragging. She noted that she first became aware of her condition and realized its relation to her federal employment on October 3, 2020. Appellant did not stop work.

In a form report dated December 2, 2020, Dr. David Stolzenberg, a physical medicine, rehabilitation, and pain management specialist, diagnosed lumbar radiculopathy and lumbar spondylolisthesis. He advised that appellant was unable to repetitively sit, stand, bend, or twist and should not lift over 10 pounds.

In a development letter dated February 1, 2021, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed, including a detailed factual description of the alleged employment factors, and provided a questionnaire for her completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor and an explanation of appellant's work activities. It afforded both parties 30 days to submit the necessary evidence.

OWCP thereafter received an October 28, 2020 note from Dr. Stolzenberg, who provided restrictions allowing appellant to alternate sitting and standing hourly. In a referral form of even date, Dr. Stolzenberg prescribed magnetic resonance imaging (MRI) scan studies of her lumbar spine.

In a February 4, 2021 response to OWCP's development questionnaire, J.W., an employing establishment supervisor, indicated that appellant's job duties had not changed in years which required her primarily to work on her feet. He noted that there had been no recent changes in her duties, and that her duties included distributing parcels, lifting trays, moving equipment around on wheels, and servicing customers at the window with transactions involving small parcels, flats, and books of stamps. In addition, J.W., related that the office had a pallet lift to minimize constant bending, and that employees received a lunch break and rest breaks between customers. He attached a position description for a sales and service associate listing appellant's employment duties, and identified various tasks which she did not perform.

OWCP also received a request for a temporary light-duty assignment dated March 2, 2021.

By decision dated April 7, 2021, OWCP denied appellant's claim, finding that she had not established the factual component of her claim, as she had not submitted additional evidence to substantiate her employment-related activities in response to the development letter. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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,⁴ 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.⁵ 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.⁶

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

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an injury in the performance of duty, as alleged.

In her Form CA-2, appellant indicated that she developed back and bilateral foot pain due to prolonged standing when sorting parcels and repetitive bending and dragging. OWCP, in its February 1, 2021 development letter, requested that she complete an attached questionnaire and provide a detailed factual description of the alleged employment factors. Appellant, however, did not respond to OWCP's February 1, 2021 development letter or otherwise provide a factual statement identifying employment factors alleged to have caused or contributed to a medical condition.⁸ Furthermore, Dr. Stolzenberg's October 28, 2020 forms and February 1, 2021 letter do not identify any employment factors alleged to have caused the diagnosed conditions.

³ *Supra* note 1.

⁴ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *L.D.*, Docket No. 19-1301 (issued January 29, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019).

⁸ *Id.*

As the evidence of record is insufficient to establish that the alleged employment factors occurred as described, the Board finds that 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 an injury in the performance of duty, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the April 7, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 10, 2022
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