

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

A.A., Appellant)	
)	
and)	Docket No. 21-0774
)	Issued: January 11, 2022
U.S. POSTAL SERVICE, SANTA FE POST)	
OFFICE, Santa Fe, NM, 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 April 28, 2021 appellant filed a timely appeal from a March 3, 2021 merit decision and an April 8, 2021 nonmerit 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.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a back condition causally related to the accepted factors of her federal employment; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 7, 2021 appellant, then a 47-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained chronic back pain, spondylosis, joint degeneration, and posterior displacement causally related to factors of her federal employment including carrying over 75 pounds daily up and down stairs, as well as repetitive bending, twisting, and lifting for over 24 years. She indicated that she first became aware of her condition and its relationship to her federal employment on November 4, 2020. Appellant stopped work on December 1, 2020.

Appellant explained in a narrative statement dated January 5, 2021 that she began to experience lower back pain in November 2014, which was severe when she stood or lifted. She made an appointment to see her physician on November 24, 2014 and saw him for chronic lower back pain at least twice a year thereafter. The pain had progressed and worsened every year. Appellant noted that duties of her federal employment included daily lifting of over 75 pounds, reaching for parcels and mail, and walking/twisting during mail delivery. She stated that the damage to her back and body had caused her to be unable to perform her required duties of employment.

In a report dated November 24, 2014, Dr. Mustapha Abouda, a Board-certified family practitioner, examined appellant for complaints of low back pain with an onset two months prior. On physical examination of appellant's back, he observed tenderness to palpation of the sacroiliac joint. Dr. Abouda diagnosed low back pain. On January 11, 2016 he examined appellant for complaints of spastic pain of her lower back and tingling/numbness of the fingers of her left hand. Dr. Abouda noted that appellant had discogenic disease of the lumbar spine. On physical examination he observed a positive Phalen's test of the left hand. Dr. Abouda diagnosed left carpal tunnel syndrome and low back pain.

On September 21, 2016 Dr. Abouda screened appellant for depression and diagnosed a moderate single current episode of major depressive disorder. On January 16, 2017 he examined appellant for low back pain. Dr. Abouda diagnosed low back pain, and a moderate single current episode of major depressive disorder. On July 10, 2017 he examined appellant for complaints of exacerbation of low back pain. Dr. Abouda noted a history of arthritis and discogenic disease of the lumbar spine. On physical examination of the back, he observed tenderness to palpation and a positive Patrick's test. Dr. Abouda diagnosed low back pain. On May 14, 2018 he examined appellant for complaints of right shoulder and right-sided low back pain with radiation to her right leg. Dr. Abouda noted that an x-ray taken a few years prior demonstrated degenerative disc disease. On physical examination of the right shoulder he observed some discomfort on range of motion testing, as well as tenderness on palpation anteriorly and laterally. Dr. Abouda diagnosed acute pain of the right shoulder, lumbago with sciatica, and other chronic pain.

In a report dated January 17, 2019, Dr. Abouda examined appellant for complaints of left-sided chest wall pain. On physical examination, he observed tenderness along the lower ribs of the left side. Dr. Abouda diagnosed chest wall pain. On September 18, 2019 he examined appellant for shoulder and back pain. Dr. Abouda noted that she presented with complaints of exacerbation of her low back pain. On physical examination he observed that her back was normal with no tenderness on palpation to the lumbar spine, a normal straight leg test, and a negative

Patrick's test. Dr. Abouda diagnosed right-sided lumbago with sciatica. On July 7, 2020 he examined appellant for low back pain. Dr. Abouda noted that appellant had a long history of low back pain due to discogenic disease. On physical examination he noted a negative straight leg test bilaterally. Dr. Abouda diagnosed bilateral lumbago with sciatica and other chronic pain. On December 17, 2020 he examined appellant for complaints of exacerbation of lower back pain. On physical examination Dr. Abouda observed a positive straight leg test on the right. He diagnosed right-sided lumbago with sciatica.

An x-ray of the lumbar spine obtained on December 17, 2014 demonstrated limited degenerative changes in the lower lumbar spine with moderate facet arthropathy and moderate-to-moderately significant discogenic degeneration at the lumbar sacral junction.

A magnetic resonance imaging (MRI) scan of the lumbar spine obtained on September 23, 2019 demonstrated degenerative changes predominantly at L4-5 and L5-S1, with lateral recess stenosis on the right and descending nerve root impingement, as well as right neural foraminal stenosis.

An MRI scan of the lumbar spine obtained on December 23, 2020 demonstrated multilevel spondylosis with a disc bulge at L3-4, resulting in abutment of the descending L4 nerve roots bilaterally in the subarticular zones, a disc bulge at L4-5 with superimposed extrusion resulting in abutment of the descending L5 nerve roots bilaterally, a disc bulge at L5-S1 with superimposed extrusion resulting in posterior displacement of the descending S1 nerve roots bilaterally and very mild neuroforaminal stenosis, and multilevel hypertrophic facet joint degeneration.

In a letter dated January 14, 2021, the employing establishment challenged appellant's occupational disease claim.

In a development letter dated January 22, 2021, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. It advised her of the type of medical evidence needed, including a report containing a medical diagnosis and a comprehensive narrative report from a qualified physician explaining how factors of her federal employment caused, contributed to, or aggravated a diagnosed condition. OWCP afforded appellant 30 days to respond and submit additional evidence.

In a report dated February 10, 2021, Dr. Abouda stated that appellant had been his patient since 2011. He noted that she had a long history of low back pain with sciatica and that MRI scans of her lower back demonstrated advanced degenerative disc disease. Dr. Abouda stated that her pain had been fluctuating from moderate to severe and that it had impacted her daily life, including her sleep and her mood. Appellant had completed physical therapy and had been on pain management for her symptoms, which had worsened as of late. Dr. Abouda opined that her duties of her federal employment including heavy lifting, bending, and twisting had exacerbated her condition and that he believed that her position as a mail carrier "may have" contributed to and agitated this condition.

On February 11, 2021 appellant replied to OWCP's development questionnaire. She explained that, while she had first made an appointment with her physician in November 2014 for her low back pain, she was not aware at the time of the relationship between her condition and her

federal employment. Appellant only became aware of this relationship in November 2020 when her condition worsened and filed her claim approximately eight weeks after she became aware.

By decision dated March 3, 2021, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that her diagnosed condition was causally related to the accepted factors of her federal employment.

On March 30, 2021 appellant requested reconsideration. With her request, she submitted a March 23, 2021 report by Dr. Abouda, who noted that appellant had a long history of chronic low back pain, ranging from moderate to severe for which she underwent physical therapy and pain management treatments. He reported that heavy lifting, bending and twisting mail have exacerbated her condition. Dr. Abouda concluded that he believed appellant's occupation as a mail carrier "has contributed and agitated her condition."

Additionally, appellant submitted a March 29, 2021 unsigned note on the letterhead of a medical facility. The statement explained that medical evidence demonstrated that the diagnosis of multilevel spondylosis was caused by wear and tear, and that having a job requiring repetitive movement and weight-bearing involving the spine was a direct contributor to spondylosis. It noted that appellant had performed duties of her federal employment, including repetitive movements and continuous heavy lifting, for over 24 years. The statement contained an opinion that these repetitive movements and heavy lifting over that time period was the direct cause of her progressive degenerative disease, specifically multilevel spondylosis. It noted that there was an MRI scan that evidenced nerve root compression and that appellant was unable to perform her demanded job duties and requirements.

By decision dated April 8, 2021, OWCP denied modification of its March 3, 2021 decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² 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.³ 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.

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

² *Id.*

³ *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).

compensation is claimed; and (3) rationalized medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁴

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁵ 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.⁶

ANALYSIS -- ISSUE 1

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

In support of her occupational disease claim, appellant provided a letter dated February 10, 2021 from Dr. Abouda, who opined that factors of her federal employment including heavy lifting, bending, and twisting had exacerbated her condition and that he believed that her position as a mail carrier may have contributed to and agitated this condition. His opinion is speculative in nature as he stated that her position as a mail carrier “may have” contributed to her condition. The Board has held that medical opinions that are speculative or equivocal are of diminished probative value.⁷

Appellant also submitted a series of reports from Dr. Abouda dated from November 24, 2014 through December 17, 2020. In these reports, Dr. Abouda did not offer an opinion on the causal relationship between appellant’s diagnosed discogenic disease of the lumbar spine and duties of her federal employment. 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.⁸

The record contains reports summarizing diagnostic testing. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship, as they do not address whether the employment incident caused any of the diagnosed conditions.⁹ Thus, these reports are insufficient to establish appellant’s claim.

⁴ *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).

⁵ *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁶ *D.J.*, Docket No. 19-1301 (issued January 29, 2020).

⁷ *J.I.*, Docket No. 20-1374 (issued March 3, 2021); *H.A.*, Docket No. 18-1455 (issued August 23, 2019).

⁸ *See C.G.*, Docket No. 20-0957 (issued January 27, 2021); *L.G.*, Docket No. 20-0433 (issued August 6, 2020); *S.D.*, Docket No. 20-0413 (issued July 28, 2020); *S.K.*, Docket No. 20-0102 (issued June 12, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

⁹ *K.S.*, Docket No. 19-1623 (issued March 19, 2020); *M.J.*, Docket No. 19-1287 (issued January 13, 2020).

As appellant has not submitted rationalized medical evidence explaining causal relationship between her back conditions and the accepted factors of her federal employment, the Board finds that she 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.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.¹⁰

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.¹¹

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹² If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹³ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.¹⁴

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

In appellant's timely March 30, 2021 request for reconsideration, she did not argue that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal

¹⁰ 5 U.S.C. § 8128(a); *see T.K.*, Docket No. 19-1700 (issued April 30, 2020); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *W.C.*, 59 ECAB 372 (2008).

¹¹ 20 C.F.R. § 10.606(b)(3); *see L.D., id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹² *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

¹³ *Id.* at § 10.608(a); *F.V.*, Docket No. 18-0230 (issued May 8, 2020); *see also M.S.*, 59 ECAB 231 (2007).

¹⁴ *Id.* at § 10.608(b); *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

argument not previously considered by OWCP. Thus, she was not entitled to a review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).¹⁵

In support of her March 30, 2021 reconsideration request, appellant submitted an unsigned March 29, 2021 note from a medical facility. The Board has held that a medical note containing an illegible signature or which is unsigned has no probative value, as it is not established that the author is a physician.¹⁶ As such, this document did not constitute medical evidence and is irrelevant to the underlying medical issue involved in this case.¹⁷

Appellant also submitted a March 23, 2021 report by Dr. Abouda which was substantially similar to his February 10, 2021 report of record. The Board has held that evidence that either repeats or duplicates information already in the record does not constitute a basis for reopening a claim.¹⁸ Therefore, it is insufficient to require OWCP to reopen the claim for consideration of the merits. Because appellant has not provided relevant and pertinent new evidence, she was not entitled to a review of the merits based on the third requirement under section 10.606(b)(3).¹⁹

The Board, therefore, finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a back condition causally related to the accepted factors of her federal employment. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

¹⁵ See *C.S.*, Docket No. 19-0851 (issued November 18, 2019); *J.B.*, Docket No. 17-0628 (issued June 28, 2017).

¹⁶ See *Z.G.*, 19-0967 (issued October 21, 2019); see *R.M.*, 59 ECAB 690 (2008); *Bradford L. Sullivan*, 33 ECAB 1568 (1982) (where the Board held that a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in FECA).

¹⁷ *A.W.*, Docket No. 21-0298 (issued August 26, 2021); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

¹⁸ *S.F.*, Docket No. 18-0516 (issued February 21, 2020); *James W. Scott*, 55 ECAB 606, 608 n.4 (2004).

¹⁹ See 20 C.F.R. § 10.606(b)(3)(iii).

ORDER

IT IS HEREBY ORDERED THAT the March 3 and April 8, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 11, 2022
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