

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

C.A., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Weyman, MA, Employer)

Docket No. 12-1399
Issued: November 20, 2012

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 4, 2012 appellant filed a timely appeal of the May 16, 2012 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 the case.

ISSUE

The issue is whether appellant met her burden of proof to establish an occupational disease in the performance of duty.

FACTUAL HISTORY

On February 16, 2012 appellant then a 50-year-old city carrier filed a Form CA-2, claim of occupational disease alleging back pain after lifting and carrying mail in the performance of

¹ 5 U.S.C. §§ 8101-8193.

duty. She became aware of her condition and realized that it was causally related to her work on March 26, 2010. Appellant did not stop work.

Appellant was initially treated by Dr. Dahlia Riad, a Board-certified family practitioner, on March 26, 2010 for lower back spasms. She reported no recollection of trauma but woke up stiff and had to cut her workday short. Examination revealed lumbar tenderness on the right, negative straight leg raises and normal patellar reflexes. Dr. Riad diagnosed muscle spasm of the lumbar region and hypertension. On November 2, 2011 she treated appellant for ongoing back spasm. Appellant reported working as a mail carrier and having worsening back pain and stiffness over the course of the day. Dr. Riad noted findings of lumbar spasm, lumbar tenderness on the right, positive straight leg raises on the right, normal patellar reflexes and normal sensation. She diagnosed muscle spasm of the lumbar region and recommended that appellant not work the rest of the week.

In a January 24, 2012 report, Dr. Riad treated appellant for chronic recurring back pain. Appellant reported working as a mail carrier and noted that the prior day she was carrying a mailbag over her right shoulder and felt a pop in the right side lower back which shot down the buttocks and across the back. On examination she had lumbar spasm and lumbar tenderness on the right. Dr. Riad diagnosed back pain. Also submitted was a January 19, 2011 report from a nurse practitioner who treated appellant for lower back pain. On January 31, 2012 the nurse practitioner cleared appellant to return to work without restrictions. On January 30, 2012 appellant underwent a lumbar spine magnetic resonance imaging (MRI) scan which revealed degenerative changes at L4-5 with mild central stenosis and mild bilateral foraminal narrowing and degenerative changes at L5-S1 with moderate right foraminal narrowing with the disc contacting the exiting right L5 nerve root.

On February 29, 2012 OWCP advised appellant of the evidence needed to establish her claim. It requested that she submit a physician's reasoned opinion addressing the causal relationship of her claimed back condition to specific work factors.

In a March 21, 2012 report, Dr. Riad treated appellant for low back pain. She indicated that an MRI scan revealed degenerative disc disease with disc bulges causing compression on the nerve root. Dr. Riad noted that the nature of appellant's work contributed to her symptoms. She requested that appellant have a less physically demanding job when her back pain flared up. In an undated statement, appellant indicated that her job required her to retrieve letters and flats which were very heavy and to carry a satchel about six miles weighing up to 35 pounds.

On May 16, 2012 OWCP denied appellant's claim finding that the medical evidence was insufficient to establish that her back condition was related to the accepted work-related activities.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the

manner alleged. The employee must also establish that such event, incident or exposure caused an injury.²

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 identified by the claimant.³

ANALYSIS

It is not disputed that appellant's duties as a letter carrier include repetitive lifting and carrying mail. The Board finds that appellant did not submit sufficient medical evidence to establish that her back condition was causally related to specific employment factors or conditions. On February 29, 2012 OWCP advised her of the medical evidence needed to establish her claim. Appellant did not submit a rationalized medical report from a physician addressing how the specific employment factors caused or aggravated her back condition.

On March 21, 2012 Dr. Riad noted that diagnostic testing showed degenerative disc disease with disc bulges causing nerve root compression. She stated that the nature of appellant's work contributed to her symptoms and suggested that appellant have a less physically demanding job when her back pain flared. Although Dr. Riad generally supported causal relationship, she did not provide sufficient medical rationale explaining the basis of her conclusory opinion supporting that work factors contributed to appellant's low back condition.⁴ She did not explain the process by which repetitive motions, lifting mail, prolonged walking and carrying a mail satchel would cause or aggravate a diagnosed condition. In a January 24, 2012 report, Dr. Riad noted treating appellant for chronic recurring back pain and related that appellant reported feeling a pop in the right side of her low back while working. On

² See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Solomon Polen*, 51 ECAB 341 (2000).

⁴ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

November 2, 2011 she noted treating appellant for back spasm and lumbar tenderness which appellant reported working as a mail carrier and experiencing worsening back pain and stiffness over the course of the day. Dr. Riad appeared to provide a history of injury as reported by appellant instead of an opinion on causal relationship. To the extent that she supported causal relationship in these reports, she did not provide rationale explaining how particular work duties caused or aggravated a diagnosed medical condition. Dr. Riad's reports are of limited probative value. The other reports from her did not specifically address how particular work factors caused or aggravated a diagnosed condition.⁵ Therefore, Dr. Riad's reports are insufficient to meet appellant's burden of proof.

Also submitted was evidence from a nurse practitioner. The Board has held that treatment notes signed by a nurse practitioner are not considered medical evidence as a nurse is not a physician under FECA.⁶ Other medical evidence, including an MRI scan of the lumbar spine, is insufficient as it fails to provide an opinion on the causal relationship between a diagnosed condition and particular employment factors.

For these reasons, OWCP properly found that appellant did not meet her burden of proof in establishing 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 did not meet her burden of proof to establish that her claimed conditions were causally related to her employment.

⁵ *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

⁶ *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

ORDER

IT IS HEREBY ORDERED THAT the May 16, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 20, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board