



an injury. She first became aware of her condition on January 4, 2011 and of its relationship to her employment on April 5, 2011. Appellant stopped work on January 8, 2011 and notified her supervisor on April 20, 2011. Appellant's supervisor stated that for the last seven years appellant worked as an equipment operator which encompassed operating mules and forklifts and did not have any lifting requirements.

In an undated narrative statement, appellant provided a summary of the different positions she held while working for the U.S. Postal Service (USPS) from 1983 to 2011. Her duties included loading sacks, sorting mail, unloading hand trucks, lifting boxes and trays, pushing loaded hampers weighing up to 1,000 pounds, unloading airline containers, pulling loaded APC's, lifting heavy mail sacks onto conveyer belts and loading skids on to dumpers and belts. Appellant stated that from 2004 to 2011 she was an equipment operator and forklift and mule driver. Her duties included using the forklift to load and unload pallets, skids and equipment from trucks and driving the mule to the docks. Appellant was required to hook up postal equipment which required strenuous pushing and pulling. Certain equipment weighed from 2,000 to 3,000 pounds, which appellant had to push up a ramp to load onto dispatch trucks. Appellant performed these duties for 8 to 10 hours a day, 5 to 6 days a week. She believed that 27 years of lifting, pushing and pulling sacks filled with mail and rolling equipment weighing 70 to 3,000 pounds caused or aggravated her injury. Appellant also noted that in July 2008 she had a back and neck injury but returned to full duty without restrictions in December 2008.

In an April 8, 2011 disability certificate, Dr. Anthony H. Alter, a Board-certified orthopedic surgeon, reported that appellant was totally incapacitated until June 15, 2011.

By letter dated April 26, 2011, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the medical and factual evidence needed and asked to respond to the provided questions within 30 days.

In an April 26, 2011 report, Dr. Leonel A. Hunt, a Board-certified orthopedic surgeon, noted that appellant complained of low back pain radiating from her left hip to her lower leg with numbness and tingling at the bottom of her foot and toes. Appellant's symptoms began in January 2011 with no specific incident and came on gradually, worse with standing and walking. Upon physical examination and review of a January 2011 magnetic resonance imaging (MRI) scan of the lumbar spine, Dr. Hunt diagnosed lumbar degenerative spondylolisthesis with stenosis. He recommended an L4-5 decompression.

In a May 11, 2011 surgical report, Dr. Hunt advised that appellant underwent L4 laminectomy neck, L4-5 bilateral foraminotomies for decompression of nerve roots, L3-4 foraminotomies decompression of nerve roots and L5 laminotomies for her lumbar stenosis with spondylolisthesis.

By decision dated June 16, 2011, OWCP denied appellant's claim finding that the evidence of record failed to establish that her back condition was causally related to the established work activities.

By letter dated December 7, 2011 appellant, through counsel, requested reconsideration of OWCP's decision.

Diagnostic reports dated April 26 and May 11, 2011 were submitted from Dr. Donald S. Cohen, a Board-certified diagnostic radiologist, who summarized imaging results of appellant's lumbar spine.

In a May 26, 2011 report, Dr. Hunt stated that appellant's pain was improving postlumbar laminectomy and decompression on May 11, 2011. He diagnosed lumbar spinal stenosis with radiculopathy status post fusion.

In a November 15, 2011 report, Dr. Jacob E. Tauber, a Board-certified orthopedic surgeon, noted that he evaluated appellant on October 15, 2011. He stated that she had been employed by USPS since November 26, 1983 as a mail handler. Dr. Tauber noted that appellant's job duties included operating a forklift and loading and unloading airline containers, conveyer belts and equipment. The physical requirements consisted of prolonged standing, bending, twisting, stooping, repetitive movement of the upper extremities, lower extremities, repetitive hand movement, gripping, grasping, torquing, fine finger manipulation, lifting and carrying. Appellant worked eight hours per day, five days a week and stopped work on January 18, 2011 due to the intensity of her symptoms.

Dr. Tauber noted that, in approximately 2010, appellant was performing her usual and customary work duties and experienced pain to her low back, radiating to her left hip and leg. Appellant also experienced pain to her neck, shoulders, hands and wrists, which she attributed to the repetitive nature of her job. As her symptoms gradually increased, she sought treatment with Dr. Adler. In March/April 2011 appellant sought treatment with an orthopedic surgeon and was referred to Dr. Hunt who performed a lumbar laminectomy on May 11, 2011. Dr. Tauber provided a history of injury, noting that she was involved in a motor vehicle accident approximately four to five years prior and sustained injuries to her neck and back. Appellant also sustained an industrial injury to her head and neck in 1989 and sustained a possible industrial injury to her neck, back and one of her hands in 2009.<sup>2</sup> She underwent medical treatment for her prior injuries and reported a full recovery. Dr. Tauber reported that he reviewed appellant's diagnostic studies and records extensively, noting objective findings of carpal tunnel syndrome (CTS) bilaterally, cervical radiculopathy and cervical stenosis with confirmation of electrical studies. Upon physical examination, he diagnosed postlumbar laminectomy for spinal stenosis, spondylolisthesis at L4-5, cervical stenosis with radiculopathy and bilateral CTS.

Dr. Tauber opined that appellant's extensive work duties of heavy lifting, bending, stooping and repetitive motions with her upper extremities would have contributed to degenerative disease in the cervical and lumbar spine where she had stenosis. Additionally, repetitive motion duties were a classic cause of CTS. Dr. Tauber stated that strenuous and repetitive motion duties over the period of time appellant worked for USPS beginning in 1983 was a known cause of contributing to her conditions. A portion of the degenerative condition in her cervical and lumbar spine was caused by strenuous duties that she carried out in the course of her employment. Dr. Tauber opined that appellant's degenerative disc disease of the cervical spine, cervical stenosis, cervical radiculopathy, bilateral CTS, lumbar stenosis with

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<sup>2</sup> The record before the Board contains no other information regarding appellant's prior injuries and whether she has any other workers' compensation claims before OWCP.

spondylolisthesis and sciatica were all work related and that her surgery should be considered related to her work duties. He further noted that her work duties were not the sole cause of her condition as a spinal condition can result from degenerative disease. However, given the strenuous nature of appellant's duties, her work significantly contributed to her cervical and lumbar stenosis and CTS. Dr. Tauber provided her with permanent work restrictions.

By decision dated September 26, 2012, OWCP affirmed its June 16, 2011 decision finding that the medical evidence of record failed to establish that appellant's diagnosed conditions were causally related to the established factors of federal employment.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of establishing 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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>3</sup> These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>4</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>5</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee 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 employment factors identified by the employee.<sup>6</sup>

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.<sup>7</sup> The opinion of the physician must be one of reasonable medical certainty

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<sup>3</sup>*Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

<sup>4</sup>*Michael E. Smith*, 50 ECAB 313 (1999).

<sup>5</sup>*Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>6</sup>*See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

<sup>7</sup>*See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>8</sup>

### ANALYSIS

OWCP accepted that appellant engaged in repetitive activities using the upper extremities including lifting, bending, stooping, standing and carrying as a mail handler equipment operator. It denied her claim, however, on the grounds that the evidence failed to establish a causal relationship between the activities and her bilateral CTS, cervical condition or lumbar condition. The Board finds that the medical evidence of record is insufficient to establish that appellant's conditions are causally related to factors of her federal employment as a mail handler equipment operator.

In a November 15, 2011 medical report, Dr. Tauber reported that he evaluated appellant on October 15, 2011 for an injury that occurred on January 4, 2011. He noted that she worked for USPS since November 1983 and worked eight hours per day, five days a week. Appellant's physical duties entailed operating a forklift, loading and unloading airline containers, conveyor belts and equipment, which consisted of prolonged standing, bending, twisting, stooping, repetitive movement of the upper extremities, lower extremities, repetitive hand movement, gripping, grasping, torqueing, fine finger manipulation, lifting and carrying. Dr. Tauber noted that appellant's lower back and leg pain began in 2010. He provided a history of prior injuries which included injuries to her neck and back from a motor vehicle accident four to five years ago, an industrial injury to her head and neck in 1989 and a possible industrial injury to her neck, back and one of her hands in 2009. Appellant stated that she underwent medical treatment for all prior injuries and fully recovered. Upon physical examination and review of diagnostic studies, Dr. Tauber diagnosed postlumbar laminectomy for spinal stenosis, spondylolisthesis at L4-5, cervical stenosis with radiculopathy and bilateral CTS.

Dr. Tauber opined that appellant's extensive work duties of heavy lifting, bending, stooping and repetitive motions with her upper extremities would have contributed to degenerative disease in the cervical and lumbar spine where she had stenosis. He stated that these repetitive motions also contributed to her bilateral CTS. Dr. Tauber noted that the act of strenuous and repetitive motion duties over the period of time appellant worked for USPS beginning in 1983 was a known cause of contributing to her conditions. He stated that a portion of the degenerative condition in her cervical and lumbar spine was caused by her strenuous duties that she carried out in the course of her employment. Thus, Dr. Tauber opined that appellant's degenerative disc disease of the cervical spine, cervical stenosis, cervical radiculopathy, bilateral CTS, lumbar stenosis with spondylolisthesis and sciatica were all work related and that her surgery should also be considered related to her work duties. He further noted that her work duties were not the sole cause of her condition, as a spinal condition can

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<sup>8</sup>James Mack, 43 ECAB 321 (1991).

result from degenerative disease, but given the strenuous nature of her duties, work significantly contributed to her cervical and lumbar stenosis and CTS.

The Board finds that the opinion of Dr. Tauber is not well rationalized. Dr. Tauber's report establishes multiple diagnoses, including degenerative disc disease of the cervical spine, cervical stenosis, cervical radiculopathy, bilateral CTS, lumbar stenosis with spondylolisthesis and sciatica. He opined that appellant's repetitive work duties of heavy lifting, bending, stooping and motions with her upper extremities contributed to her conditions. Dr. Tauber failed, however, to adequately explain how the repetitive movements caused or aggravated her conditions other than offering a generalized opinion that strenuous and repetitive work contributed to degenerative disease in the cervical and lumbar spine. He stated that prolonged standing, bending, twisting, stooping, repetitive movement of the upper extremities, lower extremities, repetitive hand movement, gripping, grasping, torquing, fine finger manipulation, lifting and carrying as appellant's employment duties. Dr. Tauber did not specify how often she was required to perform various tasks or the frequency of other physical movements. While Dr. Tauber provided multiple diagnoses and named the various functions of her employment duties, it is unclear which movements and tasks contributed to which conditions. As he failed to provide a sufficient explanation as to the mechanism of injury, his statement that appellant suffered a work-related injury is equivocal in nature and of limited probative value.<sup>9</sup>

The Board further notes that Dr. Tauber failed to provide an adequate and detailed medical history. Dr. Tauber indicated that appellant's lumbar and cervical conditions were degenerative in nature and therefore a result of wear and tear. He failed to provide detailed findings on her diagnostic reports other than generally stating that he had reviewed x-rays, MRI scan reports and electrical studies. It is unclear what medical reports and records Dr. Tauber reviewed and relied upon when providing his opinion on the cause of appellant's injuries. He also mentioned prior injuries including a neck and back injury from a motor vehicle accident around 2005/2006, a head and neck injury from a 1989 industrial injury and a 2009 industrial neck, back and hand injury. No other details were provided regarding appellant's prior injuries making it unclear if her current diagnoses were caused by factors of her federal employment as alleged, a result of a different work-related incident or caused by a nonwork-related incident. It also appears that Dr. Tauber did not have a complete and accurate history of her injuries as he made no mention of her July 2008 neck and back injury which was noted by appellant in her narrative statement. Furthermore, he noted that appellant had a preexisting lumbar and cervical degenerative condition. While Dr. Tauber stated that her strenuous work duties contributed to her preexisting condition, he failed to explain how these tasks and movements would cause her greater injury. The medical history as provided by him does not provide sufficient detail or clarity on whether appellant's current conditions are caused or aggravated by a preexisting condition or her repetitive employment duties as a mail handler equipment operator.

The Board notes that Dr. Tauber did not evaluate appellant until October 15, 2011. Though appellant has claimed an occupational exposure, his report stated that she sustained an injury on January 4, 2011. While her Form CA-2 notes January 4, 2011 as the date she first became aware of her condition, it is unclear if a traumatic injury, either industrial or

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<sup>9</sup>S.W., Docket No. 08-2538 (issued May 21, 2009).

nonindustrial, occurred on that date. Dr. Tauber noted no additional details about the mechanism of injury, failed to adequately address appellant's medical history and did not explain how the accepted factors of federal employment caused or contributed to her multiple injuries. Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.<sup>10</sup> The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.<sup>11</sup> Dr. Tauber's report does not meet that standard and is insufficient to meet appellant's burden of proof.<sup>12</sup>

The remaining medical evidence of record is also insufficient to establish appellant's claim. While the reports of Dr. Hunt and Dr. Cohen provide findings on her lumbar condition and establish that she underwent lumbar laminectomy and decompression on May 11, 2011, they fail to state any opinion on causal relationship and are of limited probative value.<sup>13</sup>

On appeal, counsel for appellant argues that the medical reports submitted are sufficient to establish her claim or to warrant further development of the evidence. Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While OWCP shares responsibility in the development of the evidence to see that justice is done, it is appellant's burden of proof to submit the evidence necessary to establish her claim.<sup>14</sup> The Board has reviewed the medical evidence and no physician has provided a rationalized opinion that herdegenerative disc disease of the cervical spine, cervical stenosis, cervical radiculopathy, bilateral CTS, lumbar stenosis with spondylolisthesis and sciatica were caused or aggravated by her accepted federal employment duties.<sup>15</sup> The generalized statements on causal relationship made by Dr. Tauber do not raise an uncontroverted inference between appellant's condition and the identified employment factors to require further development of the medical evidence and case record by OWCP.<sup>16</sup>

In the instant case, the record lacks rationalized medical evidence establishing a causal relationship between appellant's degenerative disc disease of the cervical spine, cervical stenosis, cervical radiculopathy, bilateral CTS, lumbar stenosis with spondylolisthesis and sciatica and factors of her federal employment as a mail handler equipment operator. As such, appellant has failed to meet her burden of proof.

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<sup>10</sup>*Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

<sup>11</sup>*See Lee R. Haywood*, 48 ECAB 145 (1996).

<sup>12</sup>*C.B.*, Docket No. 08-1583 (issued December 9, 2008).

<sup>13</sup>*C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

<sup>14</sup>*Phillip L. Barnes*, 55 ECAB 426 (2004).

<sup>15</sup>*G.S.*, Docket No. 10-2231 (issued July 1, 2011).

<sup>16</sup>*C.f. Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

**CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that her bilateral CTS, lumbar and cervical conditions are causally related to the accepted factors of her federal employment as a mail handler equipment operator.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 26, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 9, 2013  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board