

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

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**L.P., Appellant**

**and**

**U.S. POSTAL SERVICE, PATTERSON ANNEX,  
Grand Rapids, MO, Employer**

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**Docket No. 08-727  
Issued: July 22, 2008**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On January 14, 2008 appellant filed a timely appeal from a December 11, 2007 decision of an Office of Workers' Compensation Programs' hearing representative who affirmed the denial of her occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether appellant met her burden of proof in establishing that she developed an occupational disease in the performance of duty.

**FACTUAL HISTORY**

On January 18, 2007 appellant then a 60-year-old clerk, filed an occupational disease claim alleging that she developed soft tissue inflammation with protrusions and pinched nerves in the performance of duty. She first became aware of her condition and related it to her employment on November 22, 2006. Appellant attributed her condition to lifting tubs of magazines from above her head and below her knees and twisting to feed her machine. She

explained that she originally strained her back in 2000 and that since that time she had experienced many strains, each of which aggravated the original strain and resulted in arthritis with protrusions and pinched nerves. Appellant stopped work on November 22, 2006 and returned to light duty in December 2006.

In support of her claim, appellant submitted notes from Dr. Mark Armstrong, an osteopath. On November 28, 2006 Dr. Armstrong released appellant to return to work with restrictions. However, in a December 8, 2006 note, he stated that she would remain off work from December 1 through 13, 2006, due to back pain. On December 11, 2006 Dr. Armstrong released her to return to work with restrictions against lifting more than 10 pounds, excessive squatting or bending at the waist. He noted that appellant's physical restrictions would continue until February 15, 2007. In an attending physician's report also dated December 11, 2006, Dr. Armstrong diagnosed degenerative joint disease of the lumbar spine with myofascial pain. He advised that appellant was totally disabled between November 23 and 30, 2006.

By correspondence dated February 12, 2007, the Office requested additional information concerning appellant's claim.

By decision dated April 26, 2007, the Office denied appellant's occupational disease claim, finding that the medical evidence was insufficient to establish a causal relationship between her diagnosed back condition and the established work-related activities.

On May 5, 2007 appellant requested an oral hearing which was conducted on September 26, 2007. She testified that she had previously filed claims for a low back condition, which were denied. Appellant sought treatment from Dr. Armstrong, who found that she had a soft tissue condition due to her previous back injuries, which had progressed into arthritis.

After the hearing, appellant submitted a November 1, 2007 report from Dr. Armstrong, discussing her history of back injuries. Dr. Armstrong explained that appellant had most recently injured her back at work on July 8, 2006. Appellant experienced progressive pain with radiation into the buttock and left groin as well as myofascial pain symptoms. Dr. Armstrong stated that appellant's condition recurred in November 2006 and had continued to cause intermittent periods of disability. He stated that computerized tomography (CT) scans showed degenerative disc disease and facet arthrosis at the L4-5 and L5-S1 levels of her lumbar spine. Dr. Armstrong explained that appellant's employment may not have caused her current arthritis, but that her employment contributed to her arthritis becoming chronic. He concluded that her condition was related to her recent soft tissue injury with myofascial pain symptoms, that she would need permanent work restrictions, and that her ongoing employment would contribute to the development of her degenerative arthritis.

By decision dated December 11, 2007, the hearing representative affirmed the denial of appellant's occupational disease claim finding that she failed to establish a causal relationship between her diagnosed back condition and the accepted work-related events.

## LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged, and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.<sup>2</sup> 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.<sup>3</sup>

An occupational disease or injury is one caused by specified employment factors occurring over a longer period than a single shift or workday.<sup>4</sup> The test for determining whether appellant sustained a compensable occupational disease or injury is three-pronged. To establish the factual elements of the claim, appellant must submit: "(1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the 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 factors identified by the claimant."<sup>5</sup>

The medical evidence required to establish causal relationship generally is 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.<sup>6</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant<sup>7</sup> and must be one of reasonable medical certainty<sup>8</sup> explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>9</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>4</sup> *D.D.*, 57 ECAB 734 (2006).

<sup>5</sup> *Michael R. Shaffer*, 55 ECAB 386, 389 (2004), citing *Lourdes Harris*, 45 ECAB 545 (1994); *Victor J. Woodhams*, *supra* note 3.

<sup>6</sup> *Conard Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>7</sup> *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>8</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>9</sup> *Judy C. Rogers*, 54 ECAB 693 (2003).

## ANALYSIS

The record establishes that appellant's clerk duties involved lifting and twisting as she alleged. However, the Board finds that the medical evidence does not support that appellant's diagnosed low back condition was causally related to her clerk duties.

In support of her claim, appellant submitted several treatment notes and a November 1, 2007 report from Dr. Armstrong. The treatment notes indicated that she was initially unable to work due to back pain and discussed her work restrictions. These notes do not establish a causal relationship between her back condition and any employment factors such as lifting or bending. Dr. Armstrong did not provide a firm diagnosis, identify or discuss the employment factors, or offer any opinion on causal relationship. The Board has held that a medical report which does not include an opinion on causal relationship is of diminished probative value.<sup>10</sup> Accordingly, the Board finds that Dr. Armstrong's treatment notes do not establish a causal relationship between appellant's diagnosed low back condition and the accepted work-related events.

The November 1, 2007 narrative report is insufficient to establish a causal relationship between appellant's diagnosed low back condition and her employment. Dr. Armstrong addressed causal relationship, stating that appellant's myofascial pain symptoms were related to a previous injury at work and that her degenerative arthritis may have been aggravated by her work injuries. However, he did not provide sufficient rationale or explanation in support of his opinion. The Board has held that an opinion on causal relationship must be based on a complete factual and medical history.<sup>11</sup> Dr. Armstrong did not provide a full explanation of appellant's previous back injuries. In her initial statement, appellant stated that she had experienced back injuries as early as 2000. However, Dr. Armstrong only noted a previous injury on July 7, 2006, and did not discuss any earlier symptoms or injuries. Moreover, he did not provide a full description of the circumstances of appellant's July 7, 2006 injury, merely stating that it occurred at work. He did not discuss the diagnosis arising from that incident or give a detailed and specific explanation of the physical nature of the injury and its relation to appellant's present condition. Dr. Armstrong did not identify any specific employment activities that caused or aggravated her back condition. Although he stated that appellant's previous back injury may have contributed to the progression of her degenerative arthritis, he did not explain, with physical details, the precise nature of that contribution and how particular work activities would have contributed to the progression. His opinion is speculative in nature. This report is insufficient to establish that employment activities caused or aggravated appellant's diagnosed low back conditions. The Board finds that Dr. Armstrong's reports are insufficient to establish that appellant's low back conditions are caused or aggravated by her employment.

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<sup>10</sup> See *A.D.*, 58 ECAB \_\_\_ (Docket No. 06-1183, issued November 14, 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).

<sup>11</sup> See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).

**CONCLUSION**

The Board finds that appellant has not met her burden of proof in establishing that she developed an occupational disease in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 11, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 22, 2008  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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