

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

T.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Charlotte, NC, Employer**

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**Docket No. 10-2058
Issued: June 22, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 10, 2010 appellant filed a timely appeal from a March 10, 2010 merit decision of the Office of Workers' Compensation Programs denying her occupational exposure claim and a July 28, 2010 nonmerit decision denying her request for reconsideration. Pursuant to the Federal Employees' Compensation Act¹ 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 met her burden of proof to establish that she sustained an injury in the performance of duty; and (2) whether the Office properly denied her request for further merit review under 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 22, 2009 appellant, then a 29-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed lumbar strain with Tarlov cyst and Hoffa's syndrome. She stated that she first became aware of her condition on June 1, 2007 and of its relationship to her employment on June 24, 2009.

In an attached June 2, 2009 letter, appellant stated that she had been a letter carrier for the postal service for five years. During 2006, walking her route resulted in lower back pain, headaches and weakness in her legs and since 2007, she had been restricted to limited walking, lifting and standing. Appellant reported that she was diagnosed with lumbar strain with Tarlov cyst in January 2009 and was restricted to working 25 hours per week. She asserted that the weight of her mailbag on her back, and continuous walking and standing caused her inability to fully perform her job. Appellant requested a light-duty assignment within the scope of her restrictions and a later start time.

In a June 1, 2009 report, Dr. Marlela Molero, a treating physician on staff with the Department of Veterans' Affairs, recommended appellant work no more than 25 hours per week and should not be standing for periods longer than 15 minutes, no continuous walking and no lifting. In a June 24, 2009 medical report, she assessed appellant for bilateral knee pain. A magnetic resonance imaging (MRI) scan of the lower extremity showed prominent edema in the supralateral aspect of Hoffa's fat pad and a mild proximal patellar tendinosis.

By letter dated July 23, 2009, the employing establishment controverted appellant's claim asserting that the medical evidence was insufficient.

By letter dated July 30, 2009, the Office informed appellant that the evidence of record was in fact insufficient to support her claim. Appellant was advised of the medical and factual evidence needed and was directed to submit it within 30 days.

By letter dated September 5, 2009, appellant stated that she began experiencing lower back pain, headaches, and knee pain in 2007 from her walking route and was diagnosed with intractable headaches. Due to her restrictions, she was placed on detail as a customer service supervisor but returned to carrying mail in January 2009. Appellant noted that her duties included getting in and out of the postal truck to deliver mail and handling packages which put a significant strain on her knees and lower back. Her curb line routes involved twisting to reach for mail and climbing stairs. Appellant concluded that this resulted in a significant increase in pain which caused her to favor one side of her body over the other and placed pressure on her knees.

By decision dated October 14, 2009, the Office denied appellant's claim finding that the evidence did not establish that the claimed medical conditions were related to the established work-related events.

On December 12, 2009 appellant requested reconsideration. In a September 29, 2009 medical report, Dr. Molero stated that appellant was diagnosed with low back strain, dysraphism, Tarlov cyst and bilateral degenerative joint disease. She opined that appellant's job duties

contributed to the need for her job restrictions because her lumbar strain and degenerative joint disease were aggravated by her activities of lifting weights, repetitive twisting of the lower spine with lateral rotation, changing position from sitting to standing many times during the day, standing for long periods and walking up stairs.

In an undated medical report, Dr. Juliana Millan, Board-certified in internal medicine and also on staff with the Department of Veterans' Affairs, provided almost identical information and made nearly identical findings to those of Dr. Molero in her September 29, 2009 report. She also noted that an MRI scan of appellant's knees showed bilateral patellar impingement.

By decision dated March 10, 2010, the Office affirmed its October 14, 2009 decision.

Appellant requested reconsideration on July 8, 2010 and submitted a medical report from Dr. Millan in support of her request. In a July 8, 2010 medical report, Dr. Millan made the same findings as her previous report and also stated that appellant's back condition might have improved but had worsened when she returned to carrying mail.

By decision dated July 28, 2010, the Office denied appellant's request for reconsideration finding that she did not raise a substantive legal question or include any new and relevant evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Act 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 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.² These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.³

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office 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.⁴ 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 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) a factual

² Gary J. Watling, 52 ECAB 278 (2001); Elaine Pendleton, 40 ECAB 1143, 1154 (1989).

³ Michael E. Smith, 50 ECAB 313 (1999).

⁴ Elaine Pendleton, 40 ECAB 1143 (1989).

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 employee.⁵

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence.⁶ Rationalized medical opinion evidence must be based on a complete factual and medical background of the employee 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 employee. 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.⁷

ANALYSIS -- ISSUE 1

The Office accepted that appellant engaged in lifting packages, standing, walking and reaching for mail in her employment as a letter carrier. It denied her claim on the grounds that the evidence failed to establish a causal relationship between those activities and her claimed lumbar strain with Tarlov cyst and Hoffa's syndrome. The Board finds that the medical evidence of record is insufficient to establish that appellant sustained a lumbar strain causally related to factors of her employment as a letter carrier.

Dr. Molero requested an MRI scan performed on June 24, 2009 of appellant's lower extremity which showed prominent edema in the supralateral aspect of Hoffa's fat pad and a mild proximal patellar tendinosis. In a September 29, 2009 one paragraph medical report, she summarized that appellant was diagnosed with low back strain, dysraphism, Tarlov cyst and bilateral degenerative joint disease. Dr. Molero provided a one-sentence opinion that appellant's job duties contributed to the need for her job restrictions because her lumbar strain and degenerative joint disease were aggravated by her duties of lifting weights, repeated twisting of the lower spine, frequent changes of position from sitting to standing to deliver mail, long periods of standing and climbing stairs.

The Board finds that the single paragraph opinion of Dr. Molero is not well rationalized because she did not mention appellant's prior medical history or treatment and failed to address appellant's preexisting service-related lumbar condition. The report also failed to describe or explain the medical conditions it named. Though Dr. Molero concluded that causal connection existed between appellant's injury and her job duties, the report provided no support for that

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *D.U.*, Docket No. 10-144 (issued July 27, 2010).

⁷ *James Mack*, 43 ECAB 321 (1991).

conclusion. Other than appellant's MRI scan, there was no reference to any findings on physical examination.

While Dr. Molero named some of appellant's work duties, she failed to specify how long appellant worked for the employing establishment, how many hours she stood in a day, the periods and the frequency of other physical movements and tasks and the amount of time she took off. She failed to explain how the work duties caused or aggravated appellant's medical condition. In a claim alleging an occupational disease based on repetitive trauma from work activity, the frequency and duration of the various activities is vital information.

Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.⁸ 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.⁹ Therefore, Dr. Molero's medical reports are not sufficient to meet appellant's burden of proof.

The undated medical report by Dr. Millan essentially duplicated the findings and wording of Dr. Molero's reports. Dr. Millan's reports did not fill in the factual gaps left by Dr. Molero's reports. For the reasons stated above, her report is also insufficient to meet appellant's burden of proof.

LEGAL PRECEDENT -- ISSUE 2

To reopen a case for merit review under section 8128(a), the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.¹⁰ Section 10.608(b) of Office regulations provide that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹¹

ANALYSIS -- ISSUE 2

The Board finds that the July 28, 2010 decision of the Office to deny the reopening of appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

⁸ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

⁹ *See Lee R. Haywood*, 48 ECAB 145 (1996).

¹⁰ *D.K.*, 59 ECAB 141 (2007).

¹¹ *K.H.*, 59 ECAB 495 (2008).

Appellant submitted a July 8, 2010 one-paragraph medical report from Dr. Millan which stated that appellant's records showed that she was being followed for low back strain, Tarlov cyst, and bilateral knee degenerative joint disease and that a recent MRI scan of the knees showed bilateral patellar impingement. Dr. Millan asserted that appellant's job duties contributed to the need for her job restrictions because her lumbar strain and degenerative joint disease were aggravated by lifting weights, twisting the lower spine, frequently changing position from sitting to standing during the day, standing for long periods and climbing stairs. She also noted that appellant's back condition could have improved but became worse when appellant resumed carrying mail.

This report is essentially repetitive in every significant detail of the physician's undated report received earlier by the Office. It is insufficient to reopen the case for review of the merits of appellant's claim.¹² The only new statement in the report was a one-sentence speculation that appellant's back condition could have had a chance to improve but became worse by returning to carry mail. Dr. Millan recommended for the first time that appellant drive no more than 20 miles a day because additional driving might affect her joint conditions. She explains also that an earlier recommendation that appellant work only on weekdays was prompted by the possible side effects of her then-current medication regiment. These slight additions do not compensate for the failure of the record to provide detailed medical rationale to explain and support the medical opinion that appellant's diagnosed conditions were caused or aggravated entirely or in part by her job duties.¹³

Appellant's brief statement in support of the reconsideration request did not establish that the Office erroneously applied or misinterpreted a specific point of law or advance a relevant legal argument not previously considered by the Office.¹⁴ Because her July 8, 2010 application for reconsideration failed to meet any of the three standards for obtaining a merit review of her claim under section 8128(a) of the Act, the Board will affirm the denial of the reconsideration request.¹⁵

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that her lumbar strain with Tarlov cyst and Hoffa's syndrome is causally related to factors of her employment as a letter carrier. The Office properly denied her request for reconsideration without a merit review.

¹² Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case. *Eugene F. Butler*, 36 ECAB 393 (1984).

¹³ Although the Office placed excessive emphasis on the question of a "firm diagnosis," it is also clear that the Office considered the issue of causal connection between the accepted incident and the conditions identified by appellant.

¹⁴ *Sherry A. Hunt*, 49 ECAB 467 (1998).

¹⁵ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated July 28 and March 10, 2010 are affirmed.

Issued: June 22, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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