



## **FACTUAL HISTORY**

On August 7, 1992 appellant, then a 40-year-old manual clerk, filed a traumatic injury claim, alleging that she sustained injury to her low back, left side and stomach due to lifting boxes at work on August 5, 1992. She stopped work on August 19, 1992. A conference call conducted by OWCP on September 8, 1992, clarified that she believed that she sustained an occupational disease due to engaging in repetitive work duties over a period of time prior to August 5, 1992, including lifting boxes filled with mail and placing them into trucks or mobile containers.

In several form reports from August and September 1992, Dr. William J. McMahon, an attending Board-certified family practitioner, listed the date of injury as August 5, 1992 and diagnosed the “condition due to injury” as resolving lumbar muscle strain. In an undated disability slip, Dr. Vicki Nevins, an attending Board-certified internist, stated that appellant was seen for back and flank pain and noted that she should be off work until September 29, 1992. In another undated disability slip, she indicated that appellant was seen for abdominal pain and recommended that she stay off work until October 2012. In a September 15, 1992 note, a provider with an illegible signature stated that appellant had been seen for “muscle spasm versus herniated disc” and noted that she could return to full duty on September 22, 1992.

In a March 5, 1993 duty status report, Dr. Abdallah Karam, an attending Board-certified internist, indicated that appellant reported injuring herself by lifting boxes of mail on August 5, 1992 and he listed the “diagnosis due to injury” as possible lower spine arthritis. He stated that appellant could not perform her regular work.

In a March 12, 1993 decision, OWCP denied appellant’s claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained a work-related occupational disease prior to August 5, 1992. It indicated that the medical evidence discussed appellant’s back problems, but that the evidence did not provide objective findings or an opinion on causal relationship between the observed conditions and the implicated work factors.

On April 1, 1993 Dr. Karam listed the date of injury as August 5, 1992, noted mild degenerative changes at L5-S1 and diagnosed myofascial syndrome. Regarding the question of whether appellant’s myofascial syndrome was caused or aggravated by an employment activity, he stated, “Unknown. This syndrome can be very much aggravated or caused by work conditions, but we don’t have enough evidence.” Dr. Karam indicated that he was referring appellant for a work capacity evaluation.<sup>2</sup>

Appellant was working in a light-duty position for the employing establishment when she stopped work on August 16, 2010.<sup>3</sup> On June 14, 2011 she filed a notice alleging that she sustained a recurrence of disability on August 16, 2010 causally related to an August 5, 1992

---

<sup>2</sup> Appellant sustained a work-related back condition on April 18, 1997. This condition is not the subject of the present appeal.

<sup>3</sup> The record does not contain any medical report from the period mid 1993 to mid 2010.

work injury to her back. Appellant indicated that she experienced back pain when she bent over at work.

In a June 7, 2011 report, Dr. Jacob Salomon, an attending Board-certified orthopedic surgeon, stated that appellant was a patient at his medical clinic who had a history of chronic low back pain which started back in 1992 and “was an accepted condition while working for the post office.” He stated that appellant recently experienced “recurrent back pain” and on examination had tenderness over her right and left lower back and paraspinal muscles and positive leg raising signs consistent with sciatica and lumbar disc disease. Dr. Salomon noted that appellant’s case was closed on March 31, 2011 and indicated that he was requesting that her case be reopened so that he could have a chance to evaluate her and treat her for back pain. He stated that, from a clinical standpoint, appellant had lumbosacral disc disease with bilateral sciatica. In a June 14, 2011 work restrictions form report, Dr. Salomon listed the date of injury as August 5, 1992 and listed the “diagnosis due to injury” as carpal tunnel syndrome and another illegible condition.

In a July 14, 2011 decision, OWCP denied appellant’s claim that she sustained a recurrence of disability on or after August 16, 2010. It stated, “As you know, your case was formally denied by decision dated March 12, 1993. We cannot consider a recurrence on a denied claim. Therefore, no further action will be taken concerning your claim for recurrence.” In a February 7, 2012 letter, OWCP advised appellant that her recurrence of disability claim had been denied in a July 14, 2011 decision.<sup>4</sup>

In a March 26, 2012 order remanding case,<sup>5</sup> the Board set aside OWCP’s July 14, 2011 decision and remanded the case to OWCP for reconstruction and proper assemblage of the case record to be followed by the issuance of a merit decision on appellant’s claim. The Board noted that a number of documents dated prior to 2011 were missing from the record, including OWCP’s March 12, 1993 decision denying appellant’s claim for a work-related occupational disease.

On remand, OWCP added a number of documents to the record such as its March 12, 1993 decision and a number of medical reports from the early 1990s which discussed appellant’s back problems. In an April 26, 2012 letter, it asked her to submit additional factual and medical evidence both with regard to the originally claimed occupational disease in 1992 and the claimed recurrence of disability in August 2010.

In a May 16, 2012 letter, appellant described her job duties since 1992 and asserted that she sustained an occupational disease to her back due to performing her repetitive job duties in 1992. She further claimed that she sustained a recurrence of disability due to this condition on August 16, 2010, after which she did not return to work.

---

<sup>4</sup> OWCP stated, “We cannot consider a recurrence on a denied claim. Therefore, no further action will be taken concerning your claim for recurrence and your case will remain denied. The case was never formally accepted as being work related so it cannot be reopened.”

<sup>5</sup> Docket No. 11-1903 (issued March 26, 2012).

Appellant submitted a May 4, 2012 report in which Dr. Anatoly M. Rozman, an attending Board-certified physical medicine and rehabilitation physician, stated that she reported working for 27 years prior to August 2010 and performing repetitive lifting, pulling, pushing and walking. She reported that she started to experience pain in her lower back in 1992 which prompted her to seek medical attention. Dr. Rozman stated, “[appellant] was under the care of other providers, and I do not have any records from this time of accident.” He noted that she sought care from Dr. Salomon beginning in May 2011. Dr. Rozman detailed the findings of his physical examination of appellant, noting that she exhibited pain on palpation of the paraspinal muscles. Straight leg testing was positive on the right and negative on the left and muscle strength reflexes of the legs were preserved. Dr. Rozman did not provide any opinion on disability.

Appellant submitted clinical notes from September 15, 1992 which were completed by a provider with an illegible signature. The notes indicated that appellant had full range of motion of her back. In an August 10, 1992 form report, Dr. Nevins provided various work restrictions and noted that clinical findings included left flank pain. Appellant also submitted a February 10, 1993 work capacity program report completed by a therapist and an outpatient registration form from September 1992.

In a June 14, 2012 decision, OWCP denied appellant’s claims that she sustained an occupational disease in 1992 or that she sustained a recurrence of disability in 2010 due to such a condition. It stated:

“Your claim for medical treatment and compensation due to an alleged recurrence of disability must be denied for the reason that the evidence of record fails to establish an ongoing medical condition causally related to the work factors of continuously lifting boxes at work while performing your work duties as a clerk with the U.S. Postal Service on or around August 5, 1992. Your occupational disease claim was initially denied by decision dated March 12, 1993 and remains closed for medical and compensation benefits.”

### **LEGAL PRECEDENT -- ISSUE 1**

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 timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and specific condition for which compensation is claimed are causally related to the employment injury.<sup>6</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>7</sup>

---

<sup>6</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>7</sup> *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990). A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift. 20 C.F.R. § 10.5(ee), (q); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

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 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.

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the compensable 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.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

Appellant claimed that she sustained an occupational disease due to engaging in repetitive work duties over a period of time prior to August 5, 1992, including lifting boxes filled with mail and placing them into trucks or mobile containers. OWCP denied appellant's claim on the grounds that she did not submit sufficient medical evidence in support thereof.

In several form reports from August and September 1992, Dr. McMahon, an attending Board-certified family practitioner, listed the date of injury as August 5, 1992 and diagnosed the "condition due to injury" as resolving lumbar muscle strain. This report does not establish that appellant sustained an occupational disease in 1992 because it does not contain a rationalized medical opinion on causal relationship. Dr. McMahon did not provide any discussion of the repetitive work duties implicated by appellant as causing her condition and he did not explain how they could have caused or contributed to the diagnosed back condition, nor did he provide any notable findings on examination of appellant.

In a March 5, 1993 duty status report, Dr. Karam, an attending Board-certified internist, indicated that appellant reported injuring herself by lifting boxes of mail on August 5, 1992 and he listed the "diagnosis due to injury" as possible lower spine arthritis. On April 1, 1993 Dr. Karam listed the date of injury as August 5, 1992, noted mild degenerative changes at L5-S1 and diagnosed myofascial syndrome. Regarding the question of whether appellant's myofascial syndrome was caused or aggravated by an employment activity, Dr. Karam stated, "Unknown. This syndrome can be very much aggravated or caused by work conditions, but we do n[o]t have enough evidence." In addition to the fact that Dr. Karam did not accurately describe the work factors implicated by appellant, he indicated that he could not provide an opinion on whether work factors caused or aggravated appellant's condition in 1992.

---

<sup>8</sup> See Donna Faye Cardwell, 41 ECAB 730, 741-42 (1990).

In a June 7, 2011 report, Dr. Salomon, an attending Board-certified orthopedic surgeon, stated that appellant was a patient at his medical clinic who had a history of chronic low back pain which started back in 1992 and “was an accepted condition while working for the post office.” He inaccurately stated that appellant’s claim had been accepted for an 1992 occupational disease of the back and he did not provide a clear opinion that he actually believed that appellant sustained such a condition. In a June 14, 2011 work restrictions form report, Dr. Salomon listed the date of injury as August 5, 1992 and listed the “diagnosis due to injury” as carpal tunnel syndrome and another illegible condition. However, he did not provide any description of appellant’s work duties or otherwise explain how they could have caused carpal tunnel syndrome or any other condition. In a May 4, 2012 report, Dr. Rozman, an attending Board-certified physical medicine and rehabilitation physician, stated that appellant reported that she started to experience pain in her lower back in 1992. He noted, “[s]he was under the care of other providers, and I do not have any records from this time of accident.” Dr. Rozman did not provide any opinion whether appellant sustained a work-related occupational disease in 1992.

### **LEGAL PRECEDENT -- ISSUE 2**

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.<sup>9</sup>

### **ANALYSIS -- ISSUE 2**

For the reasons explained above, appellant did not meet her burden of proof to establish that she sustained an occupational disease due to engaging in repetitive work duties over a period of time prior to August 5, 1992 (when she filed her claim), including lifting boxes filled with mail and placing them into trucks or mobile containers. She later stopped work on August 16, 2010 and claimed that she sustained a recurrence of disability due to the occupational disease she believed she sustained in 1992. Given the proper denial of appellant’s occupational disease claim, there was no basis to find that she sustained a recurrence of disability on or after August 16, 2010 due to a 1992 occupational disease as claimed. Therefore, OWCP properly denied her claim that she sustained a recurrence of disability on or after August 16, 2010.

---

<sup>9</sup> *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986). 20 C.F.R. § 10.5(x) provides, “*Recurrence of disability* means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee’s physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.”

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 she sustained an occupational disease in the performance of duty. The Board further finds that she did not meet burden of proof to establish that she sustained a recurrence of disability due to a work-related occupational disease.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 14, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 4, 2013  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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