



## ISSUE

The issue is whether appellant met her burden of proof to establish that her right shoulder, right wrist/hand, and lumbar conditions are causally related to factors of her federal employment.

## FACTUAL HISTORY

This case has previously been before the Board.<sup>3</sup> The facts as presented in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On August 16, 2011 appellant, then a 51-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained injury to her right shoulder, right wrist/hand, and lower back due to performing repetitive jobs over time. She indicated that she pushed mail trays on a roller up a conveyor belt, pushed mail trays on the conveyor belt when they became stuck, sleeved mail trays, and emptied mail bins when they were full. Appellant reported that she first became aware of her claimed conditions in June 2007 and first realized on August 10, 2011 that they were caused or aggravated by her employment.<sup>4</sup> She stopped work on August 10, 2011 and did not return.<sup>5</sup>

In a decision dated November 15, 2011, OWCP denied appellant's claim because she failed to submit evidence sufficient to establish that the claimed conditions were causally related to the identified factors of her federal employment.

Appellant disagreed with the decision and requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. By decision dated March 30, 2012, the hearing representative affirmed the November 15, 2011 decision denying appellant's claim.

On December 3, 2012 OWCP received appellant's request for reconsideration of the March 30, 2012 decision. In a February 26, 2013 decision, it denied her occupational disease claim because she failed to submit sufficient evidence to establish causal relationship element of her claim.<sup>6</sup>

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<sup>3</sup> Docket No. 13-1043 (issued September 9, 2013).

<sup>4</sup> Appellant reported that, about two months prior to filing her claim, she began working in a position which involved handling a greater volume of mail. In an accompanying statement, she described additional work duties including sweeping mail bins and lifting mail trays. Appellant noted that she was required to work above her shoulder level at a fast pace.

<sup>5</sup> The record reflects that OWCP previously accepted, under a separate OWCP File No. xxxxxx560, that appellant sustained a work-related lumbar sprain on March 8, 2010.

<sup>6</sup> In its decisions, OWCP found that the medical reports submitted by appellant did not contain adequate medical rationale to establish her claim for work-related occupational diseases, including medical reports of Dr. Jeffrey F. Augustin, an attending Board-certified orthopedic surgeon, and Dr. Shailendra Hajela, an attending Board-certified physical medicine and rehabilitation physician.

Appellant appealed her claim to the Board and, in a September 9, 2013 decision,<sup>7</sup> the Board affirmed OWCP's February 26, 2013 decision denying her claim for work-related occupational conditions. The Board found that she failed to submit a medical report containing a rationalized, probative opinion which related her alleged current right shoulder, right wrist/hand, or lower back condition to federal employment factors.

On January 17, 2014 appellant, through counsel, requested reconsideration of her claim. Counsel argued that an attached October 30, 2013 report of Dr. Augustin established appellant's claim for work-related occupational conditions.

In his October 30, 2013 report, Dr. Augustin advised that appellant had been known to him for more than 15 years. He noted that appellant reported sustaining prior injuries including a March 8, 2010 back injury which she attributed to lifting a 60-pound mail tray at work. Dr. Augustin indicated that a magnetic resonance imaging (MRI) scan of the lumbosacral spine disclosed bulging annuli at T12-L1, L3-L4, and L5-S1 and moderate disc protrusion at L5-S1.<sup>8</sup> He noted that appellant's job involved engaging in repeated bending, lifting packages, and placing them on a conveyor belt which had to be kept full the entire day. Dr. Augustin indicated that, in a typical workday, appellant was required to pick up about 126 racks and lift them to the conveyor belt. He noted, "Repeated bending and lifting has caused her to have not only lumbar strain but a disc protrusion." Dr. Augustin opined that appellant's heavy work at the employing establishment caused her chronic low back condition and advised that supportive treatment could alleviate her symptoms, but could not cure the disc condition diagnosed by MRI scan. He noted, "There is a direct correlation between the heavy work performed by [appellant] and her injuries of rotator cuff, lumbar strain, and disc protrusion."<sup>9</sup>

By decision dated February 28, 2014, OWCP denied appellant's claim because she failed to submit evidence sufficient to establish that the claimed conditions were causally related to factors of her federal employment. It found that Dr. Augustin failed to provide a rationalized medical opinion relating appellant's claimed conditions to work factors.

On January 30, 2015 appellant, through counsel, requested reconsideration of OWCP's February 28, 2014 decision. Counsel argued that an enclosed December 23, 2014 report of Dr. Haleja established appellant's claim.

In his December 23, 2014 report, Dr. Haleja discussed appellant's medical history noting that he first saw appellant on March 22, 2010 for pain management of low back pain related to an injury reported to have occurred at work on November 17, 2009 when she fell while engaging in lifting. He detailed the treatment appellant received for back pain since that time, including extensive physical therapy, and described the results of diagnostic testing obtained during this

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<sup>7</sup> See *supra* note 3.

<sup>8</sup> The record contains the findings of December 4, 2009 MRI scan testing of the lumbosacral spine which contains an impression of bulging annuli at T12-L1, L3-L4, and L5-S1 and moderate disc protrusion at L4-5 (rather than at L5-S1 as reported by Dr. Augustin).

<sup>9</sup> Appellant also submitted a July 23, 2010 report in which Dr. Augustin discussed the medical treatment for her March 8, 2010 employment injury.

period. Dr. Haleja noted that it had been his experience that individuals who “sustain such traumatic injury of the lumbar spine” have a tendency to experience acute exacerbations of pain involving this area at later dates which might be caused by minor or incidental trauma, and which might interfere with one’s normal activities of daily living “as has been the case with [appellant].” He advised that appellant had been compliant with physical therapy and noted that appellant’s history of traumatic injury “may also predispose [her] to the premature development of osteoarthritis involving the lumbar spine.” Dr. Haleja diagnosed lumbar dysfunction, lumbar radicular pain, lumbar disc protrusion at L4-L5, bulging annuli at T12-L1, L3-L4, and L5-S1, and left hip bursitis. He indicated that appellant’s subjective signs and symptoms were within the normal limits of the average person “subjected to this type of trauma” and that the objective findings “confirmed the presence of the injury including positive examinations and diagnostic tests previously mentioned.” Dr. Haleja noted that, based on appellant’s history, complaints, examinations, test results, and lack of previous symptoms, it was his opinion within a reasonable degree of medical probability that the diagnosed conditions were directly and causally related to repetitive activities of her work.<sup>10</sup>

The findings of June 29, 2015 electromyogram (EMG) and nerve conduction velocity (NCV) testing of appellant’s lower extremities showed reduced amplitude in the left and right tibial motor nerves and increased insertional activity associated with several nerve distributions, including the left anterior tibialis, left biceps femoris, left L4 paraspinal, and left L5 paraspinal. The findings of a July 9, 2015 MRI scan of appellant’s lower back showed degenerative changes between the T12 and S1 levels.

By decision dated August 15, 2016, OWCP denied modification of the February 28, 2014 decision denying appellant’s occupational disease claim. It found that the December 23, 2014 report of Dr. Haleja did not contain a rationalized medical opinion which would establish an occupational disease caused or aggravated by work factors over time as alleged.

On September 26, 2016 appellant, through counsel, requested reconsideration of OWCP’s August 15, 2016 decision. Counsel resubmitted a copy of the December 23, 2014 report of Dr. Haleja.

By decision dated November 29, 2016, OWCP denied modification of its August 15, 2016 decision denying appellant’s claim.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>11</sup> has the burden of proof to establish 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 the injury was sustained while in the performance of duty as

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<sup>10</sup> Dr. Haleja indicated that, in all likelihood, “these areas will be permanently weakened and [appellant] will experience future exacerbations of her condition.” He advised that future arthritic degenerative changes of the lumbar spine might occur “as a direct result of this injury.”

<sup>11</sup> *Supra* note 2.

alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>12</sup> To establish fact of injury, an employee 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.<sup>13</sup> An employee must also establish that such event, incident, or exposure caused an injury.<sup>14</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>15</sup>

OWCP regulations define the term “[o]ccupational disease or illness” as a condition produced by the work environment over a period longer than a single workday or shift.<sup>16</sup> To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee 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 diagnosed condition is causally related to the employment factors identified by the employee.<sup>17</sup>

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence.<sup>18</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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 established employment factors.<sup>19</sup>

### ANALYSIS

On August 16, 2011 appellant filed an occupational disease claim alleging that she sustained injuries to her right shoulder, right wrist/hand, and lower back due to performing her repetitive work duties over time. These duties included pushing mail trays on a roller up a conveyor belt, pushing mail trays on the conveyor belt when they became stuck, sleeving mail trays, sweeping mail bins, and lifting and emptying mail bins when they were full. Appellant reported that she first realized on August 10, 2011 that these conditions were caused or aggravated by her employment. In several decisions, OWCP denied appellant’s claim because

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<sup>12</sup> 5 U.S.C. § 8101(1); *B.B.*, 59 ECAB 234 (2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>13</sup> *J.C.*, Docket No. 16-0057 (issued February 10, 2016); *E.A.*, 58 ECAB 677 (2007).

<sup>14</sup> *Id.*

<sup>15</sup> *R.H.*, 59 ECAB 382 (2008); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>16</sup> 20 C.F.R. § 10.5(q); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.2b (June 2011).

<sup>17</sup> *D.H.*, Docket No. 15-1876 (issued January 29, 2016); *D.I.*, 59 ECAB 158 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>18</sup> *F.S.*, Docket No. 15-1052 (issued July 17, 2015); *Tomas Martinez*, 54 ECAB 623 (2003).

<sup>19</sup> *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *John W. Montoya*, 54 ECAB 306 (2003).

she did not submit sufficient evidence to establish that the claimed conditions were causally related to factors of her federal employment.

As noted, the Board previously affirmed OWCP's February 26, 2013 decision. Since then, OWCP has reviewed the merits of the claim on three separate occasions. Its latest decision, and the subject of the current appeal, was issued on November 29, 2016. The current analysis will focus on the relevant medical evidence received since OWCP's February 26, 2013 merit decision, which evidence was not before the Board when it last reviewed appellant's claim on September 9, 2013.

The Board finds that appellant has not met her burden of proof to establish an occupational disease due to the accepted work factors. Appellant established employment factors as alleged, but she did not submit medical evidence sufficient to establish that her claimed right shoulder, right wrist/hand, and/or lower back conditions were due to the accepted employment exposure.

Appellant submitted an October 30, 2013 report in which Dr. Augustin, an attending physician, advised that she had been known to him for more than 15 years. He noted that appellant's job involved engaging in repeated bending, lifting packages, and placing them on a conveyor belt which must be kept full the whole day. Dr. Augustin noted, "Repeated bending and lifting has caused her to have not only lumbar strain but a disc protrusion." He opined that appellant's heavy work at the employing establishment caused her chronic low back condition and concluded, "There is a direct correlation between the heavy work performed by [appellant] and her injuries of rotator cuff, lumbar strain, and disc protrusion."

The Board finds, however, that Dr. Augustin's October 30, 2013 report is of limited probative value on the relevant issue of the present case because he did not provide adequate medical rationale in support of his opinion on causal relationship. The Board has long held that medical conclusions unsupported by rationale are of diminished probative value and insufficient to establish causal relationship.<sup>20</sup> While Dr. Augustin provided some discussion of appellant's work duties he did not explain how they were competent to cause the "injuries of rotator cuff, lumbar strain, and disc protrusion." He did not describe appellant's work duties in any great detail or identify the specific findings on diagnostic testing and physical examination which led him to believe that the observed medical conditions were related to these duties. In addition, Dr. Augustin's discussion of appellant's specific shoulder and back conditions was vague and limited in nature. Thus, his opinion does not establish that appellant sustained a work-related occupational disease of her right shoulder, right wrist/hand, and lower back.<sup>21</sup>

In a December 23, 2014 report, Dr. Haleja, an attending physician, discussed appellant's medical history noting that he first saw appellant in March 2010 for pain management of low

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<sup>20</sup> See *Albert C. Brown*, 52 ECAB 152 (2000).

<sup>21</sup> The Board notes that Dr. Augustin did not provide any discussion of appellant's right wrist/hand condition. Appellant also submitted a July 23, 2010 report in which Dr. Augustin discussed the medical treatment for her March 8, 2010 employment injury. However, the March 8, 2010 lumbar injury is not the subject of the present appeal.

back pain. He did not provide detailed current physical examination findings, but he provided diagnoses of lumbar dysfunction, lumbar radicular pain, lumbar disc protrusion at L4-L5, bulging annuli at T12-L1, L3-L4, and L5-S1, and left hip bursitis. Dr. Haleja noted that, based on appellant's history, complaints, examinations, test results, and lack of previous symptoms, it was his opinion within a reasonable degree of medical probability that the diagnosed conditions were directly and causally related to repetitive activities of her work.

The Board finds that Dr. Haleja's December 23, 2014 report is of limited probative value because he did not provide adequate medical rationale in support of his conclusion on causal relationship.<sup>22</sup> He did not provide any discussion of appellant's work duties or explain the medical mechanism through which they could have caused or aggravated the conditions he diagnosed.<sup>23</sup> Dr. Haleja did not identify the specific findings on diagnostic testing and physical examination which led him to believe that the observed medical conditions were work related. He noted that it had been his experience that individuals who "sustain such traumatic injury of the lumbar spine" have a tendency to experience acute exacerbations of pain involving this area at later dates which might be caused by minor or incidental trauma, and which might interfere with one's normal activities of daily living "as has been the case with [appellant]."<sup>24</sup> Dr. Haleja did not adequately explain what he meant by his reference to appellant's "traumatic injury of the lumbar spine" and he did not explain how this general comment about the tendency of individuals to sustain aggravations of prior injuries applied to the specific nature of appellant's medical condition. A mere conclusory opinion provided by a physician without the necessary rationale explaining how and why the incident or work factors were sufficient to result in the diagnosed medical condition is insufficient to meet a claimant's burden of proof to establish a claim.<sup>25</sup>

The Board therefore finds that appellant failed to submit rationalized medical evidence to meet her burden of proof to establish her claim for work-related occupational diseases of her right shoulder, right wrist/hand, and lower back.

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 right shoulder, right wrist/hand, and lumbar conditions are causally related to factors of her federal employment.

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<sup>22</sup> *C.M.*, Docket No. 14-88 (issued April 18, 2014).

<sup>23</sup> Dr. Haleja also did not provide any discussion of appellant's right wrist/hand condition.

<sup>24</sup> Dr. Haleja noted that appellant's history of traumatic injury "may also predispose [her] to the premature development of osteoarthritis involving the lumbar spine."

<sup>25</sup> *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 29, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 7, 2017  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board