

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

_____)	
M.D., Appellant)	
)	
and)	Docket No. 19-0338
)	Issued: July 9, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Manteca, CA, Employer)	
_____)	

Appearances: *Case Submitted on the Record*
Capp P. Taylor, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On November 30, 2018 appellant, through counsel, filed a timely appeal from a June 5, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish lumbar conditions causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On January 14, 2015 appellant, then a 61-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained a back injury as a result of her federal employment duties, which entailed delivering packages using repetitive back and forth motions, standing and walking for long periods of time, and climbing stairs while carrying heavy packages. She noted that she first became aware of her condition, and its relationship to her federal employment, on September 12, 2014. On the reverse side of the claim form the employing establishment indicated that appellant first reported her condition to her supervisor and was last exposed to conditions alleged to have caused her disease on January 9, 2015. She did not indicate whether appellant stopped work.

In a report dated January 4, 2015, Dr. Daniel Edward Gavino, a Board-certified family practitioner, indicated that a magnetic resonance imaging (MRI) scan of appellant's lumbar spine showed forward slippage of the L5 vertebrae over the S1 vertebrae and arthritis which contributed to narrowing of the foramen at the L5 level.

In a supplemental statement dated January 8, 2015, appellant related that her employment duties required her to place constant pressure and strain on her back due to repetitive motions throughout the day. Her employment duties included picking, pulling, grabbing, and sorting mail, and grabbing and lifting cases of mail for delivery. Appellant also explained that she sorted mail by pulling and placing into cases, following which she picked up and loaded the cases into her vehicle. She then delivered mail to customers' mailboxes by walking and climbing stairs continuously throughout the day. Appellant noted that she had been previously diagnosed with chronic low back pain with radiation to her right lower leg and foot.

In a development letter dated January 27, 2015, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the medical evidence needed and afforded her 30 days to submit the necessary evidence.

In a report dated January 8, 2015, Dr. John Madanat, Board-certified in physical medicine and rehabilitation, indicated that appellant had a history of back pain, and previous diagnoses including cervical spine radiculopathy, lumbar spine spondylolisthesis, moderate degenerative disc disease at C5-6, subtle scoliosis, mild posterior subluxation of L4 on L5, grade 2 anterolisthesis of L5 on S1 with bilateral spondylolysis, and grade 1 spondylolisthesis of L4 over L5. After review of a lumbar spine MRI scan, Dr. Madanat diagnosed grade 2 anterolisthesis of L5 on S1 with bilateral L5 spondylosis, mild narrowing of the left neural foramen, and mild-to-moderate narrowing of the right neural foramen. He indicated that appellant may return to work.

By decision dated April 13, 2015, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish that her diagnosed conditions were causally related to the accepted factors of her federal employment.

On May 4, 2015 appellant requested an oral hearing before an OWCP hearing representative.

A hearing was held on November 20, 2015 wherein appellant discussed her employment duties, her history of injury, and her course of treatment regarding her lumbar conditions.

By decision dated January 21, 2016, OWCP's hearing representative affirmed the April 13, 2015 decision finding that the evidence of record was insufficient to establish that appellant's diagnosed conditions were causally related to the accepted factors of her federal employment.

On November 1, 2016 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

In a letter dated June 27, 2016, Dr. Kamran Sahrakar, a Board-certified neurosurgeon, reviewed appellant's history of injury and statement regarding her employment duties. Based on objective studies, including a lumbosacral spine radiograph and a lumbar spine MRI scan, he diagnosed posterior subluxation of L4 on L5, grade 2 anterolisthesis of L5 on S1 with associated bilateral spondylolysis, moderate changes of spondylolysis at L5-S1 with disc space narrowing, eburnation, and osteoarthritis of the facet joints of the lower lumbar spine, and moderate narrowing of the right L5-S1. Dr. Sahrakar opined that appellant's job duties required her to perform physical activities that would aggravate her condition.

By decision dated June 5, 2018, OWCP denied modification of the January 21, 2016 decision finding that the evidence of record was insufficient to establish that appellant's diagnosed conditions were causally related to the accepted factors of her federal employment. It also found that she had not provided rationalized medical evidence explaining how her specific claimed employment activities aggravated her diagnosed preexisting condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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,⁴ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁵ 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.⁶

³ *Supra* note 2.

⁴ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *S.C.*, *id.*; *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *S.C.*, *id.*; *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

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.⁷

The medical evidence required to establish causal relationship is rationalized medical opinion evidence.⁸ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is causal relationship between the claimant's diagnosed condition and the implicated 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.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish lumbar conditions causally related to the accepted factors of her federal employment.

In his January 8, 2015 medical report, Dr. Madanat diagnosed multiple lumbar conditions and reiterated appellant's allegations pertaining to her employment duties. However, he did not opine as to the cause of her conditions. Such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how the physical activity actually caused the diagnosed conditions.¹⁰ The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹¹ Therefore, Dr. Madanat's report is insufficient to establish appellant's claim.

In his June 26, 2016 letter, Dr. Sahrakar diagnosed multiple conditions, and opined that appellant's job duties required her to perform physical activities that would aggravate her condition. However, his opinion is vague, generalized, and does not address specifically how her repetitive employment duties caused or contributed to her diagnosed conditions.¹² Given the

⁷ *C.D.*, Docket No. 17-2011 (issued November 6, 2018); *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁸ *M.B.*, Docket No. 17-1999 (issued November 13, 2018).

⁹ *M.L.*, Docket No. 18-1605 (issued February 26, 2019).

¹⁰ *S.F.*, Docket No. 18-1030 (issued April 5, 2019); *R.S.*, Docket No. 18-0120 (issued August 8, 2018).

¹¹ *S.F.*, *id.*; *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² *R.T.*, Docket No. 18-0581 (issued October 3, 2018).

deficiencies of his letter, Dr. Sahrakar's opinion on causal relationship is equivocal in nature and of limited probative value.¹³

OWCP also received a lumbar spine MRI scan report dated January 4, 2015. However, the Board has held that diagnostic test reports lack probative value as they do not provide an opinion on causal relationship between his employment incident and a diagnosed condition.¹⁴

In her January 8, 2015 personal statement, appellant indicated that the repetitive motions involved in her duties of federal employment caused her diagnosed conditions. However, an award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated, or aggravated by her employment is sufficient to establish causal relationship.¹⁵ Appellant's honest belief that the factors of her federal employment caused her medical condition, however sincerely held, does not constitute medical evidence sufficient to establish causal relationship.¹⁶

Appellant may submit new evidence and/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 has not met her burden of proof to establish lumbar conditions causally related to the accepted factors of her federal employment.

¹³ *S.F.*, *supra* note 11; *see L.M.*, Docket No. 14-0973 (issued August 25, 2014); *R.G.*, Docket No. 14-0113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-0548 (issued November 16, 2012).

¹⁴ *T.H.*, Docket No. 18-1736 (issued March 13, 2019).

¹⁵ *P.R.*, Docket No. 18-0737 (issued November 2, 2018); *R.B.*, Docket No. 15-1652 (issued October 9, 2015).

¹⁶ *I.D.*, Docket No. 18-1118 (issued December 31, 2018).

ORDER

IT IS HEREBY ORDERED THAT the June 5, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 9, 2019
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board