

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

B.J., Appellant)	
)	
and)	Docket No. 19-0417
)	Issued: July 11, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Dallas, TX, Employer)	
)	

Appearances:
Lonnie Boylan, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 19, 2018 appellant, through her representative, filed a timely appeal from a July 19, 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, right hip, right knee, or bilateral leg conditions causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On May 1, 2016 appellant, then a 51-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging that she injured her back, right hip, right knee, and legs due to daily repetitive tasks. She indicated that she first became aware of her claimed conditions on November 15, 2013, and related them to factors of her federal employment on January 17, 2014. On the reverse side of the claim form the employing establishment noted that appellant first received medical care on November 18, 2013, that she stopped work on January 18, 2014, that she first reported the claimed conditions to her supervisor on April 26, 2016, and that she had not yet returned to work.

In a development letter dated May 4, 2016, OWCP advised appellant of the factual and medical deficiencies of her claim. It provided a questionnaire for her completion to establish the employment factors alleged to have caused or contributed to her medical condition and requested a medical report from her attending physician explaining how and why her federal work activities caused, contributed to, or aggravated her medical condition. OWCP afforded appellant 30 days to submit the necessary evidence.

In a supplemental statement dated January 15, 2016, appellant indicated that on or about February 12, 2007 she experienced pain and discomfort in her lower extremities including her hip/thigh and right leg.³ She noted that her employment duties consisted of walking across uneven properties with steep hills, slopes, and unseen holes. Appellant related that she stepped down into a hidden hole, her leg and body twisted as she braced her fall to the ground, and she experienced pain in her lower extremities. She indicated that, even though her symptoms never subsided, she returned to full duty in April 2009, and continued to work in a limited-duty work status with walking and weight lifting restrictions from 2007 through 2009. Appellant noted that, as a letter carrier, she was required to constantly stand, walk, sort mail, and reach and bend to deliver mail.

In an addendum to her statement dated May 8, 2016, appellant related that she was not informed of the proper documents to file until the later part of April 2016. She indicated that she filed notices of recurrence several times, but OWCP notified her to file her claim as a new injury. Appellant noted that, during a visit to her treating physician on November 15, 2013, she became aware of new information about her conditions and their relationship to her federal employment. She related that on January 17, 2014 her treating physician recommended that she not return to work.

³ The record reflects that appellant had filed previous compensation claims. Appellant resubmitted medical reports, physician's statements, personal statements, and other evidence from her previous OWCP File No. xxxxxx389, which was accepted for a February 12, 2007 employment injury. OWCP has not administratively combined appellant's prior compensation claims with the current claim.

In a progress report dated September 30, 2015, received by OWCP on May 8, 2016, Dr. Louis D. Zegarelli, a Board-certified family practitioner, diagnosed lumbar grade 1 spondylolisthesis at L4-L5, lumbar facet arthropathy, internal derangement of the right hip, right hip sprain, and right knee sprain based on magnetic resonance imaging (MRI) scans dated October 12, 2013. He opined that there was objective evidence that appellant's conditions were deteriorating, which necessitated that appellant be placed off of work commencing January 18, 2014.

In a report dated December 1, 2015, and resubmitted (and redated) on June 2, 2016, Dr. Zegarelli indicated that appellant was able to return to gainful employment in April 2009, but her symptoms never resolved. He noted that appellant had sustained progressive dysfunction and deterioration of her anatomical structures associated with her injuries. Dr. Zegarelli opined that there was a direct relationship between appellant's ongoing persistent functional deficits and her symptoms.

By decision dated June 10, 2016, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted factors of her federal employment.

On August 9, 2016 appellant requested reconsideration of OWCP's June 10, 2016 decision. She submitted a June 22, 2016 statement along with her request for reconsideration which was substantially similar to her May 8, 2016 statement describing the implicated factors of her federal employment. Appellant submitted additional evidence along with her request.

In a report dated June 22, 2016, Dr. Zegarelli noted that appellant related that she had been engaged in daily repetitive employment activities including driving and delivering mail, constant bending and twisting, and dismounting from her vehicle. He opined that these activities caused repeated stress and aggravation to her lower extremities.

By decision dated September 20, 2016, OWCP denied modification of its June 10, 2016 decision, finding that the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted factors of her federal employment.

On August 9, 2017 appellant, through counsel, requested reconsideration of OWCP's September 20, 2016 decision. Counsel submitted additional argument and evidence along with the request.

In a report dated June 6, 2017, Dr. Zegarelli indicated that appellant was unable to perform her federal employment duties. He opined that appellant was medically incapacitated from any gainful employment due to her accepted lumbosacral injury and the resulting symptoms associated with that injury.

In a letter dated August 1, 2017, Dr. Zegarelli opined that the ongoing continual daily trauma to appellant's lumbosacral spine had resulted in irreversible changes. He indicated that appellant was temporarily totally disabled.

By decision dated October 5, 2017, OWCP denied modification of its September 20, 2016 decision.

On March 29, 2018 appellant, through counsel, requested reconsideration of OWCP's October 5, 2017 decision. Counsel submitted additional argument and evidence along with the request.

In a report dated January 4, 2018, Dr. Zegarelli indicated that appellant requested that the employment incident on November 15, 2013 be considered a new injury. He opined that appellant had an aggravation of her condition as opposed to a new injury. Dr. Zegarelli noted that he instructed appellant to present his findings of aggravation of her original condition to the employing establishment, that the employing establishment disagreed, and instead related that it should be designated as a new injury. He again opined that appellant's condition was an aggravation of a preexisting injury from February 12, 2007. Dr. Zegarelli indicated that appellant did not have new insult to the lumbar spine region, but began experiencing increasing dysfunction of her lumbar spine, which resulted in worsening symptoms and greater disability. He opined that appellant's worsening symptoms and greater disability was directly/causally related to the new pathology detected by the updated MRI scan.

By decision dated July 19, 2018, OWCP denied modification of its October 5, 2017 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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,⁵ 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.⁶ 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.⁷

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

⁴ *Supra* note 2.

⁵ *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *A.M.*, *supra* note 5; *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).

establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁸

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.⁹ 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 employee.¹⁰

Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish lumbar, right hip, right knee, or bilateral leg conditions causally related to the accepted factors of her federal employment.

Appellant submitted multiple reports dated September 30 and December 1, 2015, June 2 and 22, 2016, June 6 and August 1, 2017, and January 4, 2018 from Dr. Zegarelli who repeatedly diagnosed lumbar grade 1 spondylolisthesis at L4-L5, lumbar facet arthropathy, internal derangement of the right hip, right hip sprain, and right knee sprain based on MRI scans dated October 12, 2013. Dr. Zegarelli related that appellant's conditions were deteriorating which necessitated that appellant be placed off work. In his June 22, 2016 report, he noted that appellant explained that she engaged in daily repetitive employment activities including driving and delivering mail, constant bending and twisting, and dismounting from her vehicle. Dr. Zegarelli opined that these activities caused repeated stress and aggravation to her lower extremities. In his August 1, 2017 letter, he opined that the ongoing continual daily trauma to appellant's lumbosacral spine had resulted in irreversible changes. Dr. Zegarelli indicated that appellant was temporarily totally disabled from work. In his January 4, 2018 report, he opined that appellant had an aggravation of her original injury dated February 12, 2007 as opposed to a new injury. Dr. Zegarelli indicated that appellant did not have new insult to the lumbar spine region, but began experiencing increasing dysfunction of her lumbar spine which resulted in worsening symptoms and greater disability. He opined that appellant's worsening symptoms and greater disability was directly/causally related to the new pathology detected by the updated MRI scan.

While Dr. Zegarelli noted an employment-related injury and diagnosed multiple lumbar conditions, his opinion regarding causal relationship in these reports was merely conclusory. The Board has held that a medical opinion is of limited probative value if it is speculative and

⁸ *E.M.*, Docket No. 18-0275 (issued June 8, 2018).

⁹ *A.M.*, Docket No. 18-0685 (issued October 26, 2018).

¹⁰ *E.V.*, Docket No. 18-0106 (issued April 5, 2018).

¹¹ *A.M.*, *supra* note 5; *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

conclusory in nature.¹² A medical opinion must provide an explanation as to how the specific employment factors physiologically caused or aggravated the diagnosed conditions.¹³ While he attempted to explain that appellant's continued employment activities aggravated her previous injury-related conditions, without medical reasoning to explain how, physiologically, the accepted employment factors caused or aggravated the diagnosed conditions, Dr. Zegarelli's reports are insufficient to establish appellant's claim.¹⁴

As appellant has not submitted rationalized medical evidence to establish that her diagnosed conditions were causally related to the accepted employment factors, the Board finds that she has not met her burden of proof to establish her claim.¹⁵

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 has not met her burden of proof to establish lumbar, right hip, right knee, or bilateral leg conditions causally related to the accepted factors of her federal employment.

¹² See *M.W.*, Docket No. 17-0186 (issued March 13, 2018).

¹³ See *V.T.*, Docket No. 18-0881 (issued November 19, 2018).

¹⁴ See *R.T.*, Docket No. 17-2019 (issued August 24, 2018).

¹⁵ On return of the case record OWCP should consider combining File No. xxxxxx389 with the present claim.

ORDER

IT IS HEREBY ORDERED THAT the July 19, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 11, 2019
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