

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

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<b>L.L., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 19-1106</b>
	)	<b>Issued: October 18, 2019</b>
<b>DEPARTMENT OF THE TREASURY,</b>	)	
<b>INTERNAL REVENUE SERVICE,</b>	)	
<b>Kansas City, MO, Employer</b>	)	
_____	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On April 16, 2019 appellant filed a timely appeal from a January 3, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish a diagnosed medical condition causally related to the accepted factors of her federal employment.

## FACTUAL HISTORY

On October 25, 2018 appellant, then a 48-year-old file clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained severe lower back pain caused by factors of her federal employment. She explained that, over time, bending over to file documents in boxes caused “severe issues” in her lower back. Appellant noted that she had not filed her claim within 30 days as she was waiting for her doctor to opine whether her lower back issues were being caused by the lifting, bending, stooping, and pushing of heavy carts she performed at work. She noted that she first became aware of her claimed condition on March 5, 2018 and realized her condition was caused or aggravated by factors of her federal employment on March 9, 2018. On the reverse side of the claim form, the employing establishment noted that appellant was laid off on August 31, 2018 before accepting a different position on October 15, 2018. Appellant’s supervisor indicated that she had no knowledge of the circumstances surrounding the claimed injury.

In a development letter dated November 5, 2018, OWCP advised appellant that it required additional factual and medical evidence to determine whether she was eligible for FECA benefits. It requested that she respond to its questionnaire and submit medical evidence which contained a firm diagnosis and a physician’s opinion supported by a medical explanation as to how work activities in her federal employment caused, contributed to, or aggravated her medical condition. OWCP afforded appellant 30 days to respond.

In a separate development letter of even date, OWCP requested that the employing establishment provide additional information regarding appellant’s occupational disease claim, including comments from a knowledgeable supervisor regarding the accuracy of appellant’s statements, and a copy of appellant’s position description and physical requirements of her position. It afforded the employing establishment 30 days to respond.

In a November 21, 2018 response to OWCP’s questionnaire, appellant described her duties as constantly lifting of heavy objects, bending, stooping and pushing heavy carts, as well as extensive standing and walking for long periods of time. She performed these duties five days a week for seven and half hours a day. Appellant explained that she first noticed her condition in March 2018 and that her symptoms of back pain and stiffness progressively got worse while working with the files. She used pain medication, therapy, and massages to help her with her condition.

By decision dated January 3, 2019, OWCP accepted that the alleged employment factors occurred while in the performance of duty, as alleged. However, it denied appellant’s claim, finding that she had not submitted probative medical evidence establishing a medical diagnosis causally related to the accepted employment factors. OWCP concluded, therefore, that the requirements had not been met to establish that she sustained an injury as defined by FECA.

## LEGAL PRECEDENT

An employee seeking benefits under FECA 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 filed within the applicable time limitation,<sup>3</sup> 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.<sup>4</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>5</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>6</sup>

The medical evidence required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable 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.<sup>7</sup>

## ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition causally related to the accepted factors of her federal employment.

Appellant alleged that she developed a lower back condition due to constant lifting, bending, stooping and pushing of heavy carts, as well as extensive standing and walking for long periods of time. OWCP accepted that appellant's position required the above-mentioned duties. However, appellant did not submit medical evidence diagnosing a medical condition and which offered an opinion regarding causal relationship. OWCP advised appellant that further medical evidence was necessary to establish her claim. Appellant only submitted a November 27, 2018 response to OWCP's questionnaire which is of no probative value as it does not constitute medical evidence. She has the burden of proof to submit rationalized medical evidence establishing that a

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<sup>3</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *S.O.*, Docket No. 18-1559 (issued February 21, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>6</sup> *K.C.*, Docket No. 18-1330 (issued March 11, 2019).

<sup>7</sup> *P.S.*, Docket No. 18-1222 (issued January 8, 2019).

diagnosed medical condition was causally related to the accepted employment factors.<sup>8</sup> Accordingly, as appellant failed to submit medical evidence identifying a medical condition in relation to the requirements of her position, she has not met her burden of proof to establish her claim.<sup>9</sup>

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 a diagnosed medical condition causally related to the accepted factors of her federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 3, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 18, 2019  
Washington, DC

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

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

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

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<sup>8</sup> See *R.C.*, Docket No. 18-1639 (issued February 26, 2019).

<sup>9</sup> See *B.G.*, Docket No. 18-0784 (issued November 9, 2018).