

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

A.P., Appellant)	
)	
and)	Docket No. 19-1158
)	Issued: October 29, 2019
U.S. POSTAL SERVICE, INTERNATIONAL)	
SERVICE CENTER, JOHN F. KENNEDY)	
INTERNATIONAL AIRPORT, Jamaica, NY,)	
Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On April 27, 2019 appellant filed a timely appeal from December 19, 2018 and April 12, 2019 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

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

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 22, 2018 appellant, then a 68-year-old full-time regular mail handler, filed an occupational disease claim (Form CA-2) for a back injury sustained while in the performance of duty. She noted that she first realized that her condition was caused or aggravated by factors of her federal employment on May 31, 2018. Appellant stopped work on the filing date of her claim and returned to modified-duty work on February 16, 2018.

In support of her claim, appellant submitted a lumbar spine magnetic resonance imaging (MRI) scan report dated May 31, 2018 from Dr. John W. Duncan, a Board-certified diagnostic radiologist. Dr. Duncan provided an impression of multilevel spondylosis most pronounced at L3-4 and L4-5 for which there were diffuse disc bulges with advanced thickening of ligamentum flavum contributing to severe spinal canal stenosis at these levels. He also provided an impression of mild neural foraminal narrowing on the left of L3-4 and bilaterally at L4-5.

Appellant also submitted an official description of her mail handler position.

OWCP subsequently received a June 30, 2018 medical report by Dr. Moiz I. Manaqibwala, an orthopedic surgeon. Dr. Manaqibwala diagnosed spinal stenosis, lumbar radiculopathy, and right foot drop. He advised that appellant may not return to work until further notice.

OWCP also received an attending physician's report (Form CA-20) dated July 11, 2018 from Dr. Alfred F. Faust a Board-certified orthopedic surgeon. Dr. Faust noted a date of injury as May 31, 2018. He also noted that appellant reported the history of injury as unloading mail from a conveyor belt at work and having low back pain for months which had worsened since loading mail at work. Dr. Faust diagnosed lumbar radiculopathy and lumbar spinal stenosis. He checked a box marked "yes" indicating that appellant's conditions were caused or aggravated by the described employment activity. Dr. Faust explained that she had developed radicular back pain while unloading mail from a conveyor belt. He advised that appellant was totally disabled from work commencing July 11, 2018.

In a July 11, 2018 duty status report (Form CA-17), Dr. Faust described a history of injury of an occupational disease involving repetitive motion of the back/leg. He restated his prior diagnosis of lumbar radiculopathy and further diagnosed severe back pain. Dr. Faust advised that appellant's conditions were due to a work injury. He further advised that she was unable to perform her regular work duties.

In a development letter dated July 27, 2018, OWCP notified appellant of the factual and medical deficiencies of her claim. It advised her of the type of evidence needed and provided a questionnaire for her completion. Appellant was afforded 30 days to submit the necessary evidence.

OWCP subsequently received an additional report dated July 10, 2018 from Dr. Faust who reiterated appellant's history of injury and discussed findings on physical examination. He again assessed appellant as having lumbar radiculopathy and degenerative lumbar spinal stenosis. Dr. Faust noted that very high-grade stenosis at L4-5 and moderate stenosis at L3-4 were causing right-sided root compromise.

In an August 8, 2018 report, Dr. Arash D. Yadegar, an orthopedic surgeon and a Board-certified physiatrist, listed a date of injury as May 31, 2018. He noted appellant's low back and right leg pain and that she was off work as a result of her injury, and reported findings on physical examination. Dr. Yadegar provided assessments of radiculopathy of the lumbosacral region, and unspecified low back pain laterally with unspecified chronicity and unspecified presence of sciatica.

In a statement dated August 14, 2018, appellant responded to OWCP's development questionnaire. She alleged that her job duties involved unloading and sorting bags of mail weighing 1 to 70 pounds from airline containers and that her job required repetitive bending, stretching, and lifting heavy mail. Appellant related that after many years of performing these work duties, she began to experience occasional lower back pain that she treated with over-the-counter medication. She noted that, in April 2007, she injured her left hand, wrist, and arm while unloading a container.² Following her injury, appellant returned to limited-duty work four hours a day with restrictions, in 2010. Her work duties at that time included sorting and traying mail off a conveyor belt which involved extensive lifting, stretching, and bending to place the mail into postcons. Appellant's workstation consisted of a stool with worn-out padding over a metal plate with no back support. She claimed that since working this duty, her back pain had progressed and became unbearable in 2018. Appellant reported her pain to her supervisor who disregarded her complaint. She indicated that several physicians had told her that she had developed severe spinal stenosis. Appellant claimed that she never engaged in any activities outside her federal employment that would have contributed to her back condition and never had any similar conditions prior to her federal employment. She noted that she was seen by Dr. George Blatti an attending family practitioner, on May 31, 2018 regarding her back pain. Appellant continued to work off and on until June 22, 2018 when her pain worsened. She noted the subsequent medical treatments she received from Drs. Manaqibwala, Faust, and Yadegar.

Appellant submitted a June 25, 2018 letter from Dr. Blatti who noted that he had been appellant's physician for the past 30 years. He indicated that she had suffered from degenerative joint disease for the past 10 years, however, over the past three months her pain had become so severe that she had trouble attending to her activities of daily living, including her job. Dr. Blatti related that appellant's job required special work which he believed contributed to her worsening back pain. He noted that the May 31, 2018 lumbar spine MRI scan revealed significant degenerative joint disease of the entire spine and spinal stenosis at L3-4 and L4-5 which caused sciatic pain in both legs, the right being more severe than the left. There was also significant swelling of the ligamentum flavum which encroached on the foraminae causing significant spinal stenosis. Dr. Blatti advised that due to the marked progression of appellant's pain, she was no longer able to tolerate the stresses of her work environment. As such, he recommended that she stop work on June 22, 2018. Dr. Blatti related that appellant was scheduled to see an orthopedic surgeon as soon as possible and was placed on increased doses of pain medication which would be contraindicated if she continued to work.

Appellant also submitted an additional report dated June 30, 2018 from Dr. Manaqibwala. Dr. Manaqibwala noted a history of injury that appellant experienced acute lower back pain after

² Appellant noted she had filed a claim for her April 2007 injuries under OWCP File No. xxxxxx293.

sorting mail on May 31, 2018. He reported findings on physical examination and reviewed a lumbar spine MRI scan. Dr. Manaqibwala reiterated his prior assessments of degenerative lumbar spinal stenosis and lumbar radiculopathy and further provided an assessment of osteoarthritis of the spine with radiculopathy, lumbar region.

OWCP thereafter received a progress note dated August 20, 2018 from Samantha Flaum, a physician assistant, who noted a date of injury as May 31, 2018, reported findings on physical examination, and provided assessments of lumbar radiculopathy and degenerative lumbar spinal stenosis.

In an August 20, 2018 duty status report (Form CA-17), Dr. Faust again opined that appellant's lumbar radiculopathy and degenerative lumbar spine stenosis were due to the injury she sustained on May 31, 2018 and that she was unable to perform her regular work.

By decision dated September 7, 2018, OWCP denied appellant's occupational disease claim. It accepted that she performed duties as a mail handler as described, but denied her claim because the medical evidence of record was insufficient to establish a medical diagnosis causally related to the accepted employment factors. OWCP concluded, therefore, that the requirements had not been met to establish an injury causally related to the accepted employment factors.

On October 1, 2018 appellant requested reconsideration.

In an additional Form CA-17 duty status report dated September 25, 2018, Dr. Faust repeated appellant's history of injury and diagnosed lumbar herniated nucleus pulposus, stenosis due to injury. He also repeated his opinion from his July 11 and August 20, 2018 reports regarding her disability status.

OWCP, by decision dated December 19, 2018, denied modification of the September 7, 2018 decision. It found that none of the medical reports submitted contained a rationalized medical opinion establishing causal relationship between appellant's diagnosed lumbar conditions and the accepted employment factors.

On January 22, 2019 appellant requested reconsideration.

Thereafter, OWCP continued to receive medical evidence from Dr. Faust. In a narrative report dated January 15, 2019, Dr. Faust noted that appellant presented for follow-up evaluation of continuing severe pain in her low back and right leg. He noted that she attributed her worsening symptoms to sorting mail and reaching down on a conveyor belt on May 31, 2018. Dr. Faust reported physical examination findings. He restated his prior assessments of lumbar radiculopathy and degenerative lumbar spinal stenosis and again noted that very high grade stenosis at L4-5 and moderate stenosis at L3-4 were causing right-sided root compromise. Dr. Faust indicated that appellant had experienced months of progressively worsening pain and weakness without any treatments or approvals through workers' compensation. He further indicated that there was no prior history of low back pain or pathology prior to her injury. Dr. Faust opined that, appellant's lumbar symptoms were causally related to repetitive motion from work and the described injury sustained after reaching/sorting mail on a conveyor belt. Dr. Faust also maintained that despite moderate narrowing, which was intermittently symptomatic, appellant managed to cope with her lumbar spine; however, from the moment she bent forward during the course of a routine day

performing routine activities she felt a pop that was a herniation/protrusion with some strain component that led to abrupt onset and sustained symptoms since that time. He concluded that there was no claim by him that the repetition was the problem, but instead a well-defined single injury that aggravated a quiescent condition of stenosis.

In additional Form CA-17 reports dated January 15 and February 26, 2019, Dr. Faust continued to repeat appellant's history of injury, and his prior lumbar diagnoses and opinions on causal relationship and her disability status.

OWCP, in an April 12, 2019 decision, denied modification of its December 19, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ 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.⁵

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;⁶ (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;⁷ 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.⁸

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

³ *Supra* note 1.

⁴ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

⁷ *B.K.*, Docket No. 19-0829 (issued September 25, 2019); *Michael R. Shaffer*, 55 ECAB 386 (2004).

⁸ *C.M.*, Docket No. 18-1516 (issued May 8, 2019); *Beverly A. Spencer*, 55 ECAB 501 (2004).

medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁹

ANALYSIS

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

Appellant submitted a series of reports from Dr. Faust. In a July 11, 2018 Form CA-20 report, Dr. Faust checked a box marked “yes” indicating that appellant’s diagnosed conditions of lumbar radiculopathy and lumbar spinal stenosis were caused or aggravated by the employment activity. He noted that she had developed radicular back pain while unloading mail from a conveyor belt. However, Dr. Faust did not provide the necessary medical rationale explaining how unloading mail from a conveyor belt caused or aggravated appellant’s conditions. The Board has held that a checkmark or affirmative notation in response to a form question on causal relationship is insufficient, without medical rationale, to establish causal relationship.¹⁰ Dr. Faust’s July 11, 2018 report is thus insufficient to establish appellant’s burden of proof.

In Form CA-17 reports dated July 11, 2018 to February 26, 2019, Dr. Faust diagnosed lumbar radiculopathy, degenerative lumbar spinal stenosis, and lumbar herniated nucleus pulposus, stenosis due to appellant’s occupational disease involving repetitive motion of her back/leg. The Board finds that, although he supported causal relationship, he did not provide medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant’s lumbar conditions and the accepted factors of her employment.¹¹ Dr. Faust did not explain the process by which repetitive use of her back and leg at work would have caused the diagnosed conditions. As the opinion of appellant’s physician regarding causal relationship was conclusory and unexplained, it was insufficient to meet appellant’s burden of proof. Dr. Faust’s reports are thus insufficient to establish her claim.¹²

Dr. Faust, in a January 15, 2019 report, opined that appellant’s lumbar radiculopathy and degenerative lumbar spinal stenosis were due to her repetitive motion from work, reaching and sorting mail on a conveyer belt on May 31, 2018. He, however, concluded that the May 31, 2018 work incident aggravated her quiescent condition of stenosis. Dr. Faust attributed appellant’s back injury to a traumatic incident from a single occurrence on May 31, 2018, rather than an

⁹ See *J.R.*, Docket No. 17-1781 (issued January 16, 2018); *I.J.*, 59 ECAB 408 (2008).

¹⁰ See *H.A.*, Docket No. 18-1466 (issued August 23, 2019); *K.R.*, Docket No. 18-0711 (issued September 6, 2018); *S.G.*, Docket No. 19-0041 (issued May 2, 2019); *K.T.*, Docket No. 15-1758 (issued May 24, 2016).

¹¹ See *K.B.*, Docket No. 19-0411 (issued July 19, 2019); *S.S.*, Docket No. 17-1256 (issued December 13, 2018); *T.M.*, Docket No. 08-0975 (issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

¹² See *K.B.*, *id.*; *S.S.*, *id.*; *J.M.*, 58 ECAB 478 (2007) (where the Board found that appellant did not meet his burden of proof in establishing a work-related right wrist condition where his physician provided only conclusory support for causal relationship. As the opinion of appellant’s physician regarding causal relationship was conclusory and unexplained, it was insufficient to meet appellant’s burden of proof).

occupational injury, as alleged by appellant in her claim.¹³ Moreover, he again failed to explain how repetitive motion, including reaching and sorting mail, would have caused or aggravated the diagnosed condition. For the reasons set forth above, the Board finds that his January 15, 2019 report is insufficient to meet appellant's burden of proof.¹⁴

Dr. Faust's remaining report dated July 10, 2018 is of no probative value because it did not relate appellant's lumbar diagnoses to the accepted employment factors. Medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹⁵ For the reasons stated, the Board finds that Dr. Faust's July 10, 2018 report is insufficient to establish appellant's burden of proof.

Appellant also submitted Dr. Blatti's June 25, 2018 report. Dr. Blatti noted appellant's preexisting history of degenerative joint disease and reviewed the May 31, 2018 lumbar spine MRI scan. He believed that her employment contributed to her worsening back pain and disability from work. However, Dr. Blatti failed to offer medical rationale explaining how appellant's lumbar degenerative joint disease was aggravated by the accepted employment factors.¹⁶ The need for rationale is particularly important as he indicated that appellant had a prior history of a lumbar condition.¹⁷ For these reasons, the Board finds that Dr. Blatti's June 25, 2018 report is insufficient to meet appellant's burden of proof.

The reports of Dr. Manaqibwala and Dr. Yadegar, which addressed appellant's lumbar conditions and disability from work, are of no probative value on the issue of causal relationship. Neither physician offered a medical opinion finding that her conditions and resultant disability were due to the accepted employment factors. As noted above, the Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's disability/condition is of no probative value on the issue of causal relationship.¹⁸ The Board finds, therefore, that the reports of Dr. Manaqibwala and Dr. Yadegar are insufficient to establish appellant's burden of proof.

Further, Dr. Duncan's May 31, 2018 lumbar spine MRI scan report is also insufficient to establish the claim. The Board has held that diagnostic test reports lack probative value as they do

¹³ A traumatic injury means a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

¹⁴ See *W.P.*, Docket No. 15-1354 (issued October 20, 2015); *J.A.*, Docket No. 14-1443 (issued March 11, 2015).

¹⁵ See *K.B.*, *supra* note 11; *S.G.*, *supra* note 10; *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018) (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).

¹⁶ *Supra* note 11.

¹⁷ See *K.B.*, *supra* note 11; *S.G.*, *supra* note 10; *M.B.*, Docket No. 17-0688 (issued March 15, 2018).

¹⁸ *Supra* note 15.

not provide an opinion on causal relationship between the accepted employment factor(s) and a diagnosed condition.¹⁹

Lastly, the progress note from Ms. Flaum, a physician assistant, has no probative medical value in establishing appellant's claim as a physician assistant is not considered a "physician" as defined under FECA.²⁰ As such, this evidence is also insufficient to meet appellant's burden of proof.

Because appellant has not provided sufficiently rationalized medical evidence to establish that her lumbar conditions were causally related to the accepted factors of her federal employment, the Board finds that she has not met her burden of proof to establish her occupational disease claim.

On appeal appellant contends that her back condition and resultant disability from work are due to her federal employment duties. However, for the foregoing reasons, the Board finds that the medical evidence of record is insufficient to establish that appellant sustained a work-related back condition causally related to the accepted factors of her federal employment.

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 back condition causally related to the accepted factors of her federal employment.

¹⁹ See *R.M.*, Docket No. 18-0976 (issued January 3, 2019); *C.D.*, Docket No. 17-2011 (issued November 6, 2018).

²⁰ 5 U.S.C. § 8101(2) provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. See *id.* at § 8101(2); *P.H.*, Docket No. 19-0119 (issued July 5, 2019); *T.K.*, Docket No. 19-0055 (issued May 2, 2019); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants, and physical therapists are not competent to render a medical opinion under FECA). See also *Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

ORDER

IT IS HEREBY ORDERED THAT the April 12, 2019 and December 19, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 29, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy 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