

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On May 17, 2021 appellant, then a 57-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained a labral tear of the right hip and partial tear of the gluteus minimus due to factors of her federal employment. She noted that she first became aware of the conditions on January 5, 2020 and realized their relationship to her federal employment on March 6, 2020.

In support of her claim, appellant submitted medical reports dated April 7 and 16 and May 10 and 11, 2021 from Dr. Srino Bharam, an attending Board-certified orthopedic surgeon. Dr. Bharam diagnosed right gluteus medius and minimus tendon labral tear, right hip labral tear, and lumbar spine pain. He opined that the diagnosed conditions were caused by appellant's employment duties and that she remained unable to work.

In a narrative statement dated April 16, 2021, appellant indicated that she started experiencing lower back pain within a few weeks of her return to work on March 6, 2020 following bilateral carpal tunnel and thumb release surgery. She continued to work her entire route with a 35-pound restriction from her surgeon. Appellant eventually felt extreme pain and was diagnosed with trochanteric bursitis of the right hip. She was given job restrictions but then was told that she suffered a hip tear and was not cleared to return to work.

In a development letter dated May 18, 2021, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In a May 18, 2021 response, appellant indicated that she felt lower back pain upon her return to work on March 6, 2020 when she pushed parcel hampers to her truck. She did not experience this pain prior to her bilateral carpal tunnel surgery. Appellant noted a sharp pain after a few months when she loaded her truck, and she sought medical attention in August 2020. From March 2020 to April 5, 2021, she worked full duty with the 35-pound restriction and believed that her hip tear was caused by pushing parcel hampers and loading the truck.

Dr. Bharam, in a June 24, 2021 note, reiterated that appellant had a debilitating right hip condition and that she remained off work.

By decision dated August 12, 2021, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that her diagnosed right hip and lower back conditions were causally related to the accepted factors of her federal employment.

³ Docket No. 23-0330 (issued July 28, 2023).

On September 9, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on January 4, 2022.

OWCP continued to receive medical evidence, including a January 26, 2022 letter, wherein Dr. Bharam opined that appellant's repetitive work activities caused her diagnosed gluteus medius tendon tear and aggravated her right hip labral tear and femoroacetabular impingement. He further opined that she remained totally disabled from work.

Additional medical evidence was received from Dr. Nudrat Ayub, an internal medicine specialist, dated December 10, 2021 and from Dr. Hadi Moten, a Board-certified anesthesiologist and pain medicine specialist, dated August 22, 2020 through February 22, 2021. These physicians offered diagnoses of appellant's hip and lumbar conditions.

By decision dated March 14, 2022, an OWCP hearing representative vacated OWCP's August 12, 2021 decision and remanded the case for further development. The hearing representative related that although Dr. Bharam's report was not fully rationalized, OWCP should obtain additional progress notes from him and a supplemental report explaining how appellant's repetitive employment directly caused her right gluteus medius tendon tear and aggravated her right hip labral tear and femoroacetabular impingement. Dr. Bharam was also asked to address whether appellant had a lumbar diagnosis causally related to her accepted employment factors based on objective findings.

In a report dated March 25, 2022, Dr. Bharam recounted appellant's history of injury. He opined that due to the demanding nature of her job duties, there was a causal relationship between her repetitive work activity, including extensive prolonged lifting, carrying, and ambulation, that caused her to develop a gluteus medius tendon tear and lumbar spine pain. He also noted that these motions aggravated appellant's right hip labral tear and femoroacetabular impingement.

By decision dated December 15, 2022, OWCP denied appellant's occupational disease claim, again 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 January 5, 2023 appellant, through counsel, timely appealed the December 15, 2022 decision to the Board. By decision dated July 28, 2023, the Board affirmed OWCP's December 15, 2022 decision.⁴

On December 1, 2023 appellant, through counsel, requested reconsideration and submitted additional evidence.

In an October 11, 2023 report, Dr. Albert Johnson, a Board-certified orthopedic surgeon, recounted appellant's history that on January 5, 2020 appellant developed back and right hip pain while pushing heavy mail hampers in and out of a truck, pitching and sorting and delivering mail and parcels for delivery as a letter carrier at the employing establishment. He also noted her

⁴ *Id.*

history of medical treatment, reviewed medical records, and reported his examination findings. Dr. Johnson diagnosed post-traumatic strain/sprain lumbar spine; post-traumatic aggravation of underlying facet joint arthropathy; post-traumatic disc bulges at L4-L5 and L5-S1 levels; progressive degenerative pathology by multiple subsequent magnetic resonance imaging (MRI) scans over a two-year period, as seen in subjacent levels; interventional pain management with epidural steroid injection and injections for medial branch for facet joint arthropathy; post-traumatic strain/sprain with partial tear gluteus minimus; post-traumatic strain/sprain right hip; injection gluteus minimus with steroid; arthroscopic repair of the gluteus minimus with excision of the trochanteric bursa, right side; re-tear of the gluteus minimus; and arthroscopic evaluation and bone marrow aspirate infiltration of the gluteus minimus, right side. He opined that the alleged January 5, 2020 work-related injury was the competent producing factor for appellant's subjective and objective findings. Dr. Johnson noted that although she did not have a work-related labral tear because an MRI scan clearly indicated that there was no such condition, there was a definite probability that a tear could happen as appellant repetitively pushed heavy containers of mail into a truck which could cause a strain/sprain and a tear to the gluteus minimus. He explained that a gluteus minimus tear can occur when excessive stress or force is placed on the gluteus minimus muscle during activities that involve pushing heavy objects, including mail hampers and parcels. Dr. Johnson noted that the gluteus minimus is one of the three major muscles that make up the gluteal muscles and plays a crucial role in hip stability and movement. He indicated that appellant's work duties caused muscle overload, repetitive stress, poor body mechanics, sudden or excessive force, and weak muscles. Dr. Johnson explained that muscle overload occurred when engaged in activities that require pushing heavy objects such as, mail hampers or parcels. He noted that the gluteus minimus muscle must work to generate the necessary force. If the force required is beyond what the muscle can handle, it can become overloaded. Dr. Johnson explained that repetitive stress occurred when repeatedly pushing heavy objects which can put significant stress on the gluteus minimus muscle over time. This repeated stress can cause microtears in the muscle fibers, leading to muscle fatigue and increasing the risk of injury. Dr. Johnson explained that poor body mechanics occurred when inadvertent additional strain is placed on the gluteus minimum muscle while pushing or sorting heavy items. Poor posture, incorrect lifting techniques, or twisting while pushing can contribute to the likelihood of injury. Dr. Johnson explained that in some cases, a gluteus minimus tear can result from a sudden, forceful movement or an unexpected twist or turn while pushing heavy objects. This can cause the muscle to overstretch or experience excessive strain. Lastly, Dr. Johnson explained that weak gluteal muscles, including the gluteus minimus, may not provide sufficient support and stability during physically demanding tasks. When weaker muscles are subjected to increased stress, they are more susceptible to injury.

Regarding appellant's alleged work-related back condition, Dr. Johnson explained that she performed her job for 17 years and during that time she put a tremendous amount of stress and strain that could have resulted in the gradual development of facet arthropathy with disc bulges necessitating interventional pain management. He related that repetitive pushing heavy mail hampers, and pitching and sorting mail parcels can potentially lead to both lumbar facet arthropathy and disc pathology due to the physical stress and strain placed on the lower back and lumbar spine. Dr. Johnson opined that appellant's work duties caused lumbar facet arthropathy and disc pathology. Regarding appellant's lumbar facet arthropathy, he reasoned that lumbar facet joints are located in the lower back, and played a role in supporting the spine, enabling movement, and maintaining stability. Repetitive pushing and sorting activities can lead to

prolonged periods of bending, twisting, and compressive forces on the lumbar spine, especially if proper lifting and movement techniques are not employed. Over time, the constant mechanical stress on the facet joints can cause wear and tear on the joint surfaces, leading to lumbar facet arthropathy. Dr. Johnson indicated that this condition is characterized by inflammation, degeneration, and potentially the development of bone spurs within the facet joints. Symptoms of lumbar facet arthropathy may include lower back pain, stiffness, and limited range of motion. The pain can radiate into the buttocks or down the back of the thighs. Regarding appellant's disc pathology, Dr. Johnson explained that the intervertebral discs in the lumbar spine act as shock absorbers and provide flexibility to the spinal column. The repetitive stress from pushing and sorting heavy mail hampers can lead to increased pressure on the intervertebral discs. Prolonged or improper loading can contribute to disc degeneration and potential pathology. Disc pathology may manifest as conditions like disc bulging, disc herniation, or disc degeneration. When the discs weaken or become damaged, they can press on nearby nerves or cause localized inflammation and pain. Symptoms of disc pathology may include lower back pain that can radiate into the buttocks or legs, numbness, tingling, and muscle weakness. Dr. Johnson concluded that appellant had reached maximum medical improvement on October 11, 2023.

By decision dated February 1, 2024, OWCP denied modification of the denial of appellant's occupational disease claim.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim, including 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 of FECA, 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

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (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 identified employment factors by the claimant.⁸

⁵ *Supra* note 2.

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 *B.H.*, Docket No. 20-0777 (issued October 21, 2020); *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).

⁸ *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *L.D.*, Docket No. 19-1301 (issued January 29, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019).

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁹ The opinion of the physician must be based on a complete factual and medical background, 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.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 right hip and lower back conditions causally related to the accepted factors of her federal employment.

Preliminarily, the Board notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of the December 15, 2022 decision because the Board considered that evidence in its July 28, 2023 decision. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹²

In his October 11, 2023 report, Dr. Johnson diagnosed lumbar facet arthropathy and disc pathology. He related that appellant worked as a letter carrier and was required to repetitively push heavy hampers and pitch and sort mail and parcels. Dr. Johnson opined that over time these employment factors “can” lead to facet arthropathy and disc pathology. He explained that the intervertebral discs in the lumbar spine act as shock absorbers and provide flexibility to the spinal column. The repetitive stress from pushing and sorting heavy mail hampers “can” lead to increased pressure on the intervertebral discs. Prolonged or improper loading “can” contribute to disc degeneration and potential pathology. Disc pathology may manifest as conditions like disc bulging, disc herniation, or disc degeneration. When the discs weaken or become damaged, they “can” press on nearby nerves or cause localized inflammation and pain.

While Dr. Johnson discussed the mechanisms of appellant’s general injuries, he failed to specifically attribute them to her diagnosed conditions. Instead, he used the terms “can” and “could” to relate her medical conditions to her employment. The Board has held that medical opinions that suggest that a condition “can” or “could” be caused by work activities are speculative or equivocal in character, and are of diminished probative value.¹³ For these reasons, the Board finds that Dr. Johnson’s report is insufficient to establish appellant’s claim.

⁹ *D.S.*, Docket No. 21-1388 (issued May 12, 2022); *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *D.S. id.*; *D.J.*, Docket No. 19-1301 (issued January 29, 2020).

¹¹ *T.M.*, Docket No. 22-0220 (issued July 29, 2022); *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *see also J.L.*, Docket No. 18-1804 (issued April 12, 2019).

¹² *J.B.*, Docket No. 24-0069 (issued April 17, 2024); *G.W.*, Docket No. 22-0301 (issued July 25, 2022); *M.D.*, Docket No. 19-0510 (issued August 6, 2019); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1988).

¹³ *L.H.*, Docket No. 24-0326 (issued May 7, 2024); *D.L.*, Docket No. 23-0853 (issued November 15, 2023).

As the medical evidence of record is insufficient to establish causal relationship between appellant's diagnosed conditions and her accepted employment factors, the Board finds that she has not met her burden of proof.

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 right hip and lower back conditions causally related to the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the February 1, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 29, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board