

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

G.L., Appellant)

and)

U.S. POSTAL SERVICE, SIOUX CITY POST)
OFFICE, Sioux City, IA, Employer)

**Docket No. 24-0366
Issued: May 17, 2024**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On February 18, 2024 appellant filed a timely appeal from a September 13, 2023 merit decision 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 over the merits of this case.²

ISSUE

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

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the September 13, 2023 decision, OWCP received additional evidence. 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.*

FACTUAL HISTORY

On January 12, 2023 appellant, then a 54-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging that she experienced pain in her lower back and lower extremities due to factors of her federal employment. She noted that an increase in weight and volume of packages she had to deliver had aggravated her back and caused nerve pain in her legs. Appellant further indicated that she first became aware of the condition on November 1, 2013, and subsequently became aware of the relationship to her federal employment on January 11, 2023. On the reverse side of the claim form, the employing establishment indicated that appellant first reported her condition on January 12, 2023.

A magnetic resonance imaging (MRI) scan report of the lumbar spine dated July 12, 2022 by Dr. Kevin M. McDonnell, a Board-certified diagnostic radiologist, indicated multilevel degenerative disc disease, most conspicuous at L5-S1.

In a narrative dated January 11, 2023, Dr. Christopher Manley, a chiropractor, recounted his treatment of appellant from December 13, 2022 to January 11, 2023. On December 13, 2022 appellant was first seen by Dr. Marc Obbink, a chiropractor, in Dr. Manley's office. She related acute, severe lower back pain with radiation to the left leg. Appellant indicated that the pain buildup was gradual "over the last several weeks" due to "increasingly heavy mail loads" during the holidays. She further indicated that the heavy delivery of mail required her to do "more" repetitive bending, lifting, twisting, and sitting, which "caused" an acute exacerbation of lower back pain and leg pain. Physical examination showed significant limited range of motion in the lumbar spine by over 50 percent in all directions, and multiple level joint sUBLuxation especially at L3, L5, and left SI joint. Dr. Manley further reviewed the July 14, 2022 lumbar spine MRI scan report. He diagnosed multiple level disc bulging and herniation at L2-3, L3-4, L4-5, and L5-S1, as well as degenerative disc disease most pronounced at L5-S1. Dr. Manley opined that appellant's "current injury" is a "direct result" of and was "aggravated" by her current employment. He further noted that appellant's specific work duties of repetitive bending, lifting, twisting, and sitting "would be a significant factor" in causing her new lumbar spine injury, "especially considering her increased workload." On December 19, 2022 appellant was seen by Dr. Manley. sUBLuxation was noted at L3, L5, and left SI joint. Appellant was off work through January 3, 2023. On December 21 and 28, 2022 appellant returned for continued treatment. On January 5, 2023 she related an exacerbation of pain, and Dr. Manley kept her off work through January 9, 2023 with work restrictions thereafter. On January 11, 2023 tenderness and joint sUBLuxation was noted in L3, L5, and S1.

In a narrative statement received on January 12, 2023, appellant summarized her injury and medical treatment course. She indicated an onset of low back pain starting November 1, 2013 and that she was receiving chiropractic care, noting that she had "just a few flare ups" up until the last few months. Appellant further indicated there was "never" a traumatic injury.

In a letter dated January 13, 2023, the employing establishment controverted appellant's claim. It noted the absence of a detailed description of employment factors believed responsible for the condition, and a medical report providing a rationalized physician's opinion regarding causal relationship.

In a development letter dated February 1, 2023, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond. In a separate development letter of even date, it requested that the employing establishment provide additional information regarding the claim.

In a duty status report (Form CA-17) dated January 11, 2023, Dr. Manley reiterated his diagnosis and advised appellant to return to work with restrictions.

On January 26, 2023 appellant was seen by Dr. Hendrik B. Klopper, a Board-certified neurosurgeon. Appellant related that she had been dealing with her symptoms “for almost a decade” and she did not recall any specific injury or incident that set off her pain, and that her employment involved repetitive lifting and twisting which aggravated her symptoms. Prolonged sitting also aggravated her symptoms. Appellant indicated that the pain was initially in her lower back but “over the last year or so” has radiated down to her lower extremities. She had also undergone epidural steroid injections. Dr. Klopper diagnosed lumbar radiculopathy and opined that there were some findings on the lumbar spine MRI dated July 12, 2022 that “could” explain appellant’s left leg symptoms. He further opined that the left leg symptoms appeared to be more persistent and severe than the right.

On February 9, 2023 appellant was seen by Dr. Paul D. Peterson, a Board-certified family medicine osteopath. She related a work-related “back strain” starting December 12, 2022 and indicated that “repetitiveness” and “extra weight load” caused pain that radiated down to her hips and thighs. Appellant further related difficulty in going up and down stairs, lifting, pulling, and arising from a kneeling position. Dr. Peterson reviewed an MRI scan dated July 14, 2022 and concurred with Dr. Klopper’s evaluation. He diagnosed multilevel degenerative disc disease, lumbar radiculopathy, and myelopathy.

In a completed questionnaire received on February 15, 2023, appellant indicated job duties of organizing and delivering mail and packages, which included lifting, bending, twisting, standing, walking, and exiting and reentering her vehicle. She related that in November 2022 the number of packages she delivered per day increased from 50 to 75 pounds to 100 to 150 pounds.

An MRI scan report of the cervical spine dated February 24, 2023 and signed by Dr. Farhad Sani, a Board-certified diagnostic radiologist, indicated mild-to-moderate degenerative changes to lower lumbar spine with mild central canal stenosis at C5-6, as well as bilateral neural foraminal stenosis at C5-6 and C6-7.

By decision dated March 2, 2023, OWCP denied appellant’s occupational disease claim, finding that she had not established a medical condition causally related to the accepted employment factors.

On March 20, 2023 appellant was seen by Dr. Peterson for a follow-up. Dr. Peterson indicated that appellant had lumbar radiculopathy and a multilevel degenerative disc disease which was exacerbated by a work injury on December 12, 2022.

OWCP received a position description form on March 24, 2023 describing appellant’s duties as a letter carrier. The form indicated movements of twisting, turning, carrying, lifting,

pushing, and pulling. Appellant's duties included handling trays of mail at least 50 pounds, and parcels that were at most 70 pounds. She also carried a satchel with up to 35 pounds of mail on her route.

On March 24, 2023 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated September 13, 2023, OWCP's hearing representative affirmed the March 2, 2023 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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.⁴ 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.⁵

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.⁶

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁷ 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.⁸ Neither the mere fact that a disease or condition manifests

³ *Supra* note 1.

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

⁵ *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).

⁶ *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).

⁷ *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).

⁸ *D.S. id.*; *D.J.*, Docket No. 19-1301 (issued January 29, 2020).

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.⁹

ANALYSIS

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

Appellant submitted treatment notes from Drs. Manley and Obbink, chiropractors, from December 13, 2022 to January 11, 2023. The Board notes that section 8101(2) of FECA provides that the term physician, as used therein, includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulations by the Secretary.¹⁰ OWCP's implementing federal regulations at 20 C.F.R. § 10.5(bb) defines subluxation as an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrated on x-ray.¹¹ The Board has reviewed the reports from Drs. Manley and Obbink and finds that the reports do not diagnose a subluxation as demonstrated by x-ray. While Dr. Manley did review MRI scans, the Board has explained that a chiropractor's opinion which is based on an MRI scan rather than an x-ray does not constitute competent medical evidence.¹² As these reports did not diagnose subluxation as demonstrated by x-ray, these reports do not constitute competent medical evidence.¹³

On January 26, 2023 Dr. Klopper diagnosed lumbar radiculopathy. He opined that there were some findings on the lumbar spine MRI scan dated July 12, 2022 that "could" explain appellant's left leg symptoms. Dr. Klopper further opined that the left leg symptoms appeared to be more persistent and severe than the right. However, this report failed to provide an opinion regarding the cause of appellant's diagnosed conditions. 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.¹⁴

On February 9 and March 20, 2023 Dr. Peterson concurred with Dr. Klopper and diagnosed multilevel degenerative disc disease, lumbar radiculopathy, and myelopathy. He reported that appellant had sustained a work-related "back strain" starting December 12, 2022 and indicated that "repetitiveness" and "extra weight load" caused pain that radiated down to her

⁹ *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).

¹⁰ 5 U.S.C. § 8101(2).

¹¹ *Id.*; 20 C.F.R. § 10.311.

¹² *See W.K.*, Docket No. 07-2350 (issued March 14, 2008).

¹³ *See J.A.*, Docket No. 22-0869 (issued July 3, 2023); *L.M.*, Docket No. 22-0667 (issued November 1, 2022); *T.H.*, Docket No. 17-0833 (issued September 7, 2017); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

¹⁴ *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

hips and thighs. The Board finds, however, that he failed to provide a well-rationalized medical opinion of how the accepted work factors appellant identified in her claim physiologically caused or aggravated appellant's diagnosed lumbar conditions.¹⁵ Thus, the Board finds that this evidence is of diminished probative value and is, therefore, insufficient to establish appellant's claim.

Appellant submitted multiple diagnostic reports. However, the Board has also held that diagnostic studies, standing alone, lack probative value as they do not address whether the employment factors caused the diagnosed condition(s).¹⁶ Therefore, these reports are insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish causal relationship between medical condition and the accepted employment factors, the Board finds that appellant 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 a medical condition causally related to the accepted factors of her federal employment.

¹⁵ See *J.A.*, Docket No. 22-0869 (issued July 3, 2023); *M.M.*, Docket No. 20-1538 (issued December 27, 2022); *J.K.*, Docket No. 22-0945 (issued December 16, 2022).

¹⁶ *A.O.*, Docket No. 21-0968 (issued March 18, 2022); see *M.S.*, Docket No. 19-0587 (issued July 22, 2019).

ORDER

IT IS HEREBY ORDERED THAT the September 13, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 17, 2024
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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