

as a result of unloading trailers at work. He became aware of his condition sometime between late December 2003 and February 4, 2004. The employing establishment controverted the claim, asserting that appellant stated that his injury was not work related on two occasions and only filed the claim after he was dismissed.²

Appellant specified in an undated addendum that he woke up on the evening of February 4, 2004 to work the midnight shift, but was unable to move because of severe cramps. Thereafter, he experienced continuous neck and lower back symptoms such as pain, stiffness and diminishing range of motion (ROM), which worsened whenever he lifted, bent, sat or stood for prolonged periods. A March 4, 2004 employing establishment health unit form signed by Dr. Kevin Kikta, an osteopath specializing in emergency medicine, placed appellant off duty indefinitely on account of his neck and lower back.

OWCP informed appellant in a May 5, 2004 letter that his claim for traumatic injury was being developed as a claim for occupational injury, the evidence was insufficient to establish his claim, and additional evidence was needed. It requested a physician's reasoned opinion explaining how employment factors caused or aggravated an injury. Appellant did not respond.

By decision dated June 4, 2004, OWCP denied appellant's claim, finding the medical evidence insufficient to establish that the accepted employment activity of unloading trailers caused or contributed to a diagnosed condition.

Appellant's counsel requested reconsideration on January 26, 2005 and submitted additional medical evidence. In March 4, 2004 hospital triage and treatment records, Dr. Kikta related that appellant strained his lower back while lifting on the job approximately one month earlier. On examination, he observed mild lumbar tenderness and decreased lumbar ROM. Dr. Kikta assessed chronic lower back pain.

On February 21, 2008 OWCP denied modification of the June 4, 2004 decision.³

Appellant's counsel requested reconsideration on February 12, 2009. In a November 28, 2008 statement, appellant recalled that he was unloading trailers around the beginning of his shift on February 4, 2004 when his lower back gave out and he fell to the floor of the trailer. A February 23, 2004 emergency department report signed by a nurse noted that appellant complained of lower back pain and tenderness for approximately a month and advised that he visit a workers' compensation physician on February 24, 2004. An x-ray of the lumbar spine performed by Dr. Sandip Basak, a Board-certified diagnostic radiologist, was unremarkable.

In a January 21, 2009 report, Dr. Nicholas Diamond, an osteopath specializing in family medicine, related that appellant was unloading a trailer on February 4, 2004 when he suddenly felt pain in his lower back and fell to the floor. He further indicated that appellant was employed

² Appellant was terminated effective February 13, 2004.

³ OWCP originally issued a November 13, 2007 decision denying appellant's request for reconsideration on the basis that he did not present new evidence warranting further merit review. Following receipt of a November 21, 2007 request for reconsideration from appellant's counsel, OWCP found, in its February 21, 2008 decision, that the March 4, 2004 hospital records were new and pertinent evidence not previously of record.

as a bus driver for a private corporation, reinjured his back on June 17, 2004 and sometime in July 2008, and complained of lower back and bilateral lower extremity pain. A July 17, 2004 magnetic resonance imaging (MRI) scan revealed L3-L4 and L5-S1 herniated nuclei pulposi. On examination, Dr. Diamond observed left lumbar paravertebral muscle, iliolumbar ligamentous and posterior superior iliac spine tenderness, positive Travell trigger points, and hip flexor, adductor and abductor motor strength deficits. He diagnosed aggravated chronic post-traumatic lumbosacral strain and sprain, aggravated L3-L4 and L5-S1 herniated nuclei pulposi, preexisting lumbar osteoarthritis and left lumbar radiculitis. Dr. Diamond opined: “The work-related injury of February 4, 2004 was the competent producing factor for the claimant’s subjective and objective findings of today.”

On March 31, 2009 OWCP denied modification of the February 21, 2008 decision.

Appellant’s counsel requested reconsideration on January 5, 2010 and submitted additional evidence, including evidence previously of record. In a July 30, 2009 statement, appellant noted that he was presently unemployed and had chronic lower back and left leg pain stemming from his former federal employment. He detailed that his condition arose in January 2004 after a few days of unloading mailbags weighing above 50 pounds from trailers, but continued working. Appellant’s lower back and left leg symptoms worsened to such an extent that he took a two-day leave of absence starting on February 4, 2004.

A February 14, 2009 hospital medical chart, which did not contain a physician’s signature, noted that appellant presented with lower back and buttocks pain after he stood up from a sitting position three days earlier. He had spinal and paraspinal musculature tenderness on palpation as well as pain on spinal flexion and hyperextension. Appellant was diagnosed with chronic lower back pain and disc problems. A June 22, 2009 MRI scan report from Dr. Steven M. Schonfeld, a Board-certified diagnostic radiologist, showed multilevel degenerative changes from L3-L4 through L5-S1. In a July 1, 2009 progress note, Dr. Paul K. Ratzker, a Board-certified neurological surgeon, identified a five-year history of lower back pain and numbness due to manual labor and reviewed an MRI scan demonstrating an L4-L5 herniated nucleus pulposus. He examined appellant, found limited ROM, ruled out radiculitis and diagnosed lower back pain.⁴

In a September 27, 2005 report, Dr. David Weiss, an osteopath and Board-certified family practitioner, stated that appellant worked as a school bus driver and reported that, on June 17, 2004, he was crawling under branches when he suddenly felt a popping sensation in his lower back. He also pointed out that appellant had a preexisting lower back condition. An MRI scan performed on July 17, 2004 revealed herniated discs at L3-L4 and L5-S1 and a bulging disc at L4-L5. On examination, Dr. Weiss observed left lumbar paravertebral muscle, iliolumbar ligamentous and posterior superior iliac spine tenderness, restricted ROM on account of pain, positive left sitting root sign and bilateral straight leg raise, and a sensory deficit over the left L4 dermatome. He diagnosed chronic post-traumatic lumbosacral strain and sprain, L3-L4 and L5-S1 herniated nuclei pulposi, aggravated lumbar osteoarthritis and left lumbar radiculitis. Dr. Weiss attributed appellant’s condition to the June 17, 2004 incident.

⁴ A significant portion of Dr. Ratzker’s note was illegible.

On May 6, 2010 OWCP denied modification of the March 31, 2009 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 timely filed within the applicable time limitation period, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.⁵ 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.⁶

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁷ To establish fact of injury in an occupational disease claim, an employee 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 employment factors identified by the employee.⁸

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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 identified by the claimant.⁹

ANALYSIS

The evidence supports that appellant unloaded mailbags weighing above 50 pounds from trailers for the employing establishment for the period December 2003 to February 4, 2004. The record also contains firm diagnoses of chronic post-traumatic lumbosacral strain and sprain, L3-L4 and L5-S1 herniated nuclei pulposi, lumbar osteoarthritis and left lumbar radiculitis; but the medical evidence is insufficient to establish that appellant's job duties caused or aggravated a neck, lower back, left leg or hip condition.

⁵ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *See S.P.*, 59 ECAB 184, 188 (2007).

⁸ *See R.R.*, Docket No. 08-2010 (issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

⁹ *I.J.*, 59 ECAB 408 (2008); *Woodhams*, *supra* note 6.

In a January 21, 2009 report, Dr. Diamond obtained a history of injury indicating that appellant initially hurt his lower back while unloading a trailer on February 4, 2004 and subsequently reinjured the same area on June 17, 2004 and in July 2008. After conducting a physical examination and evaluating an MRI scan, he concluded that the February 4, 2004 incident aggravated his chronic post-traumatic lumbosacral strain and sprain, L3-L4 and L5-S1 herniated nuclei pulposi, preexisting lumbar osteoarthritis and left lumbar radiculitis. Although Dr. Diamond supported causal relationship, his opinion has limited probative value since he failed to provide medical rationale explaining how unloading trailers pathophysiologically caused or aggravated appellant's condition.¹⁰ The history of injury that was given to him by appellant conflicted with other narratives in the record citing a progressively-worsening condition that arose as early as December 2003.¹¹ The opinion of the physician does not appear to be based on a full medical history.

Dr. Kikta noted in March 4, 2004 medical records that appellant strained his lower back due to work-related lifting. Taking into consideration that these records were created within a few months of the onset of injury, he was likely associating appellant's condition with his federal employment. Nonetheless, Dr. Kikta's opinion is of diminished probative value because it lacked fortifying medical rationale, presented a vague and incomplete history of injury, and failed to identify the contributory employment factor that was described by appellant.¹² He did not explain the reasons why particular lifting activities at work caused or aggravated a diagnosed condition.

While Drs. Weiss and Dr. Ratzker provided a September 27, 2005 report and July 1, 2009 progress note, respectively, neither addressed whether the repetitive unloading of mailbags from December 2003 to February 4, 2004 caused or aggravated a neck, lower back, left leg or hip condition. Dr. Weiss did not note appellant's work as a mail handler and attributed his injury to crawling under branches on June 17, 2004. Dr. Ratzker attributed appellant's low back pain and numbness to manual labor but he did not show an awareness of appellant's duties as a mail handler during the period at issue. As neither physician noted an awareness of the history of the claimed injury¹³ or provided a specific opinion regarding whether appellant's work duties as a mail handler caused or aggravated a diagnosed condition,¹⁴ their reports are of diminished

¹⁰ *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994). *See also See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (a medical opinion not fortified by medical rationale is of little probative value).

¹¹ *See M.W.*, 57 ECAB 710 (2006); *James A. Wyrick*, 31 ECAB 1805 (1980) (medical opinions based on an incomplete or inaccurate history are of diminished probative value). In addition, the Board points out that Dr. Diamond did not specify that appellant had been unloading trailers for a federal employer. *See W.C.*, Docket No. 10-971 (issued January 10, 2011).

¹² *See John W. Montoya*, 54 ECAB 306, 309 (2003).

¹³ *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history have little probative value); *supra* note 11.

¹⁴ *See S.E.*, Docket No. 08-2214 (issued May 6, 2009) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

probative value. Similarly, diagnostic radiological reports from Drs. Basak and Schonfeld are of diminished probative value because they did not offer any opinion regarding the cause of injury.

The remaining evidence lacks evidentiary weight. A medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician.¹⁵ Because a nurse is not a “physician” as defined under FECA,¹⁶ the February 23, 2004 nursing report cannot constitute competent medical evidence. In addition, the February 14, 2009 hospital medical chart lacks probative value because it did not include an identifiable physician’s signature or provide any indication that it was completed by a physician.¹⁷

On appeal, appellant’s counsel submits two primary contentions. First, he argues that OWCP did not properly weigh the factual evidence, namely appellant’s statements concerning his work activities for the employing establishment. Second, he asserts that the medical evidence was sufficient to establish appellant’s claim in view of the precedent set forth in *Beth P. Chaput*¹⁸ and *Arnold Gustafson*.¹⁹ Neither the Board nor OWCP disputes that appellant’s past duties involved unloading mailbags from employing establishment trailers. Hence, the issue is medical in nature.

Counsel correctly cites *Chaput* and *Gustafson* for the proposition that an employee does not need to show that an employment factor significantly contributed to his or her condition to prevail.²⁰ However, this precedent does not relieve appellant of the burden to provide a physician’s rationalized opinion that is based on a complete factual and medical background, is of reasonable medical certainty, and pathophysiologically explains the causal relationship between appellant’s federal employment and a diagnosed condition.²¹ As addressed above, appellant’s medical evidence does not satisfy this standard. In the absence of well-reasoned medical opinion on causal relationship, appellant fails to meet his burden.

¹⁵ See *Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (medical opinion, in general, can only be given by a qualified physician).

¹⁶ 5 U.S.C. § 8101(2); *Humphrey*, *supra* note 8 at 242.

¹⁷ *R.M.*, 59 ECAB 690, 693 (2008).

¹⁸ 37 ECAB 158 (1985).

¹⁹ 41 ECAB 131 (1989).

²⁰ See *Chaput*, *supra* note 18 (remanding OWCP decision that based denial of a compensation claim on a physician’s opinion that the employee’s exposure to workplace fumes did not contribute significantly to a pulmonary condition); *Gustafson*, *supra* note 19 (remanding OWCP decision that improperly requested that a physician’s opinion clarify whether an employee’s job-induced emotional stress materially contributed to his coronary artery disease or myocardial infarction).

²¹ The Board further points out that the remand orders found in *Chaput* and *Gustafson* instructed a newly-appointed medical specialist to supply a rationalized opinion on causal relationship. See *Chaput*, *supra* note 18, at 161; *Gustafson*, *supra* note 19, at 134.

Appellant may submit new evidence or argument as part of a formal 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 did not establish that he sustained an occupational disease in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the May 6, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 13, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board