

¹ 5 U.S.C. § 8101 *et seq.*

In a letter dated September 9, 2011, OWCP requested additional factual and medical evidence from appellant and allowed 30 days for a response. Appellant submitted a report dated July 14, 2011 from Dr. Brandon Nguyen, an osteopath and a Board-certified anesthesiologist, who reported appellant's complaints of low back and right leg pain following twisting his back at work on June 23, 2011. Dr. Nguyen noted that appellant had back surgery in 1985 for disc protrusion and laminectomy L4-5. He performed a physical examination and diagnosed lumbago and right lumbar radiculopathy.

On September 2, 2011 Dr. William Baumgartl, a Board-certified anesthesiologist, diagnosed lumbar radiculopathy with stenosis of L3-4. He noted that appellant had no leg numbness, that his gait was steady and that he could both heel and toe walk.

Dr. Sudhir Khemka, a Board-certified anesthesiologist, examined appellant on August 19, 2011 due to lower back and left shoulder pain. He found lumbar spine tenderness, positive lumbar paraspinous spasms and decreased range of motion of the lumbar spine. Dr. Khemka diagnosed lumbago, lumbar radiculopathy and left shoulder pain. Appellant underwent a magnetic resonance imaging (MRI) scan of his lumbar spine on August 26, 2011 which demonstrated moderate central canal stenosis at L3-4 with a diffuse annular bulge and facet arthropathy as well as moderate disc osteophyte complex at L4-5 and L5-S1.

By decision dated November 14, 2011, OWCP denied appellant's claim on the grounds that he had not established a causal relationship between his diagnosed conditions and his accepted employment activities.

On November 19, 2011 appellant requested a review of the written record before an OWCP hearing representative and submitted an October 31, 2011 electromyogram and nerve conduction studies which demonstrated the formation of chronic neurogenic firing pattern on needle examination of L4-5 innervated muscles on the left. He also requested reconsideration on November 19, 2011. In a letter dated December 2, 2011, OWCP requested that appellant clarify which appeal right he wished to follow. On December 16, 2011 the Branch of Hearings and Review noted that appellant withdrew his request for a review of the written record.

In a report dated December 13, 2011, Dr. Aury N. Nagy, a Board-certified neurosurgeon, noted appellant's history of back surgery during the 1980's and his shoulder injury in 2009 which resulted in surgery. He reported appellant's complaints of low back pain and the MRI scan results which demonstrated lumbar stenosis with disc protrusion at L3-4. Dr. Nagy noted that appellant attributed his back and leg pain to work and that he stated that his pain had resolved after he stopped work. He stated, "It may be the case that if [appellant] had a more sedentary job that would have allowed him the kind of rest that he is getting now that he is at home, he would not have had the pain that he was in, so it is possible that this recurrent work exacerbated his issues from the 1980s, but hard to say for sure he does have significant degenerative changes in his lumbar spine." Dr. Nagy noted that appellant did not provide a particular inciting event as causing his back pain. He diagnosed low back pain with rest.

By decision dated March 8, 2012, OWCP reviewed the merits of appellant's claim and denied modification of its prior decision. It stated that Dr. Nagy's report did not provide an

opinion on the causal relationship between appellant's diagnosed conditions and his implicated employment duties.

LEGAL PRECEDENT

OWCP's regulations define an occupational disease as "a condition produced by the work environment over a period longer than a single workday or shift."² To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; 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. The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.³

ANALYSIS

Appellant alleged that he developed lumbar radiculopathy due to his employment duties of throwing mail, bending and twisting. He submitted a report diagnosing lumbago and right lumbar radiculopathy. OWCP accepted that appellant had established the first two elements of his occupational disease claim, but denied his claim on the grounds that he failed to submit medical opinion evidence establishing a causal relationship between his diagnosed condition and his accepted employment duties.

Dr. Nguyen examined appellant on July 14, 2011 and reported appellant's complaints of low back and right leg pain following twisting his back at work on June 23, 2011. He diagnosed lumbago and right lumbar radiculopathy. Dr. Nguyen did not attribute appellant's condition to his alleged employment duties, but instead to a specific employment incident on June 23, 2011. This history of injury does not comport with that appellant provided to OWCP and if accurate would result in a traumatic injury rather than an occupational disease claim. While Dr. Nguyen did indicate that appellant believed he injured his back at work, he did not provide an independent medical opinion describing how the twisting incident resulting in his diagnosed conditions. Due to this deficiency, this report is not sufficient to meet appellant's burden of proof.

In a report dated September 2, 2011, Dr. Baumgartl diagnosed lumbar radiculopathy with stenosis of L3-4. He did not provide a history of injury and did not attribute appellant's condition to his employment. Without an accurate factual background and an opinion that

² 20 C.F.R. § 10.5(q).

³ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

appellant's condition was due to factors of employment, this report does not provide the necessary medical opinion evidence to establish a causal relationship between his current back condition and his employment. This report is not sufficient to meet appellant's burden of proof in establishing an occupational disease claim.

On August 19, 2011 Dr. Khemka examined appellant on August 19, 2011 and found lumbar spine tenderness, positive lumbar paraspinal spasms and decreased range of motion of the lumbar spine. He diagnosed lumbago, lumbar radiculopathy and left shoulder pain. This report does not contain a factual history describing appellant's accepted employment duties and does not contain any medical opinion evidence attributing his diagnosed conditions to his federal job. Without the necessary description of a causal relationship between appellant's diagnosed back conditions and job duties, this report cannot meet his burden of proof to establish an occupational disease.

Dr. Nagy examined appellant on December 13, 2011 and provided appellant's history of back surgery during the 1980's and his shoulder injury and resulting surgery in 2009. He noted that appellant attributed his back and leg pain to work and that he stated that his pain had resolved after he stopped work. Dr. Nagy suggested that appellant might have avoided his pain with a more sedentary job, but also noted that appellant's symptoms could be attributed to his degenerative lumbar condition. While he provided a history including appellant's prior back surgery and mentioned the accepted employment factors of twisting and bending, he did not provide a clear opinion attributing appellant's current back condition to his employment. Dr. Nagy offered an equivocal opinion regarding whether appellant's recent back condition was due to his employment duties or to his nonemployment-related degenerative condition. Without a clear statement attributing appellant's condition to his work duties this report is not sufficient to meet his burden of proof. The Board also notes that Dr. Nagy did not provide a definitive diagnosis, instead merely diagnosing low back pain. The Board has held that the mere diagnosis of "pain" does not constitute the basis for payment of compensation.⁴ As the report lacks the necessary elements of a diagnosis and a clear opinion on causal relationship, this report is not sufficient to meet appellant's 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 did not submit sufficient medical opinion evidence to establish a causal relationship between his employment and his diagnosed condition to establish an occupational disease claim.

⁴ *Robert Broome*, 55 ECAB 339 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 8, 2012 and November 14, 2011 are affirmed.

Issued: November 14, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board