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R.F., Appellant)	
)	Docket No. 08-1484
and)	Issued: November 20, 2008
)	
U.S. POSTAL SERVICE, POST OFFICE,)	
Cols, OH, Employer)	
)	

Case Submitted on the Record

Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

On April 25, 2008 appellant filed a timely appeal from a March 27, 2008 decision of an Office of Workers' Compensation Programs' hearing representative who affirmed a September 19, 2007 decision denying his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

The issue is whether appellant has met his burden of proof in establishing that he developed a back condition while in the performance of duty.

On July 8, 2007 appellant, then a 38-year-old letter carrier, filed an occupational disease claim alleging that he developed a back condition while walking, lifting, casing and standing at

work. He became aware of his condition on October 1, 2003. Appellant stopped work on June 15, 2007.¹

Appellant submitted a July 23, 2007 attending physician's report from Dr. James H. Uselman, a Board-certified neurologist, who noted that appellant injured his back on October 1, 2003. Dr. Uselman diagnosed lumbar degenerative disc disease and low back pain. He advised that appellant was scheduled for an L4-5 laminectomy on August 3, 2007 and would be totally disabled from August 3 to December 1, 2007.

In a July 25, 2007 letter, the employing establishment controverted the claim noting that appellant indicated on his claim form that his injury did not occur on the job.

In a letter dated July 31, 2007, the Office advised appellant of the factual and medical evidence needed to establish his claim. It requested that he submit a physician's reasoned opinion addressing the relationship of his claimed back condition and specific employment factors.

Appellant submitted a statement indicating that his work duties included prolonged standing and walking, casing mail, bending, lifting and carrying a mailbag and repeatedly getting in and out of his mail truck. He submitted a January 30, 2001 lumbar spine x-ray which revealed mild spondylosis at L4-5. Appellant was treated by Dr. Edward S. Sadar, a Board-certified neurologist, for low back pain.

In reports dated February 16 and 27, 2001, Dr. Sadar noted that appellant underwent an electromyogram (EMG) which revealed left S1 root irritation and meralgia paraesthetica and he diagnosed degenerative disc disease and obesity. He was hesitant in recommending that appellant accept a new job with the employing establishment which included walking and carrying a bag, because neither activity was good for his back. On March 1, 2004 Dr. Sadar opined that appellant was 60 pounds overweight, which caused stress on his back, had increased lumbar lordosis and changed body posture. He recommended that appellant lose 60 pounds and strengthen his abdominal muscles which would help his low back condition. In a March 24, 2007 report, Dr. Uselman noted appellant's treatment for low back pain with radiation into his legs. He diagnosed degenerative disc disease at L4-5. Appellant reported working as a mail carrier and noted that carrying his mailbag aggravated his back pain. Dr. Uselman performed a discogram on June 15, 2007 which revealed normal discography at L3-4 and L5 and S1 with diffuse degenerative disc disease. A May 2, 2007 magnetic resonance imaging (MRI) scan of the lumbar spine revealed mild degenerative disc disease at L4-5 with mild right neural foraminal stenosis due to annular disc bulge and facet disease.

In a decision dated September 19, 2007, the Office denied appellant's claim, finding that the medical evidence was not sufficient to establish that his back condition was caused by his employment duties.

On October 3, 2007 appellant requested an oral hearing which was held on February 6, 2008. He submitted an August 3, 2007 operative report from Dr. Uselman, who

¹ Appellant noted on the CA-2 that his condition did not happen on the job.

performed an L4-5 bilateral transforaminal discectomy with interbody fusion. Dr. Uselman diagnosed degenerative disc disease at L4-5. On October 30, 2007 he noted appellant's fusion was coming along nicely but he experienced a minor setback when he stepped off a curb at church and jarred his back. Dr. Uselman advised that appellant was not ready to return to work carrying mail because it would cause significant stress on his low back. On February 19, 2008 he noted that appellant's physical examination revealed no weakness, intact reflexes and sensation and a reduction in back pain. Dr. Uselman advised the fusion surgery was a success. A computerized tomography (CT) scan of the lumbar spine dated February 14, 2008 revealed changes of fixation and fusion at L4-5 without evidence of complication, minimal central stenosis at L3-4 and facet arthropathy at L5-S1 with no significant spinal stenosis.

By decision dated March 27, 2008, the Office hearing representative affirmed the September 19, 2007 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act, that the injury was sustained 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. 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.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) 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 medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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 of the claimant, 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.³

² Gary J. Watling, 52 ECAB 357 (2001).

³ Solomon Polen, 51 ECAB 341 (2000).

ANALYSIS

It is not disputed that appellant's duties as a letter carrier included prolonged standing, walking, bending, lifting and carrying a mailbag. Appellant was diagnosed with degenerative disc disease. However, he has not submitted sufficient medical evidence to support that his degenerative disc disease was caused or aggravated by his employment factors. On July 31, 2007 the Office advised appellant of the medical evidence needed to establish his claim. Appellant did not submit a rationalized medical report from a physician addressing how specific employment factors may have caused or aggravated his claimed back condition.

Appellant submitted a July 23, 2007 attending physician's report prepared by Dr. Uselman, who noted that appellant injured his back on October 1, 2003. Dr. Uselman diagnosed lumbar degenerative disc disease and low back pain. Appellant advised that he was undergoing surgery and would be disabled commencing August 3, 2007. Dr. Uselman's report is insufficient to establish the claim as he did not provide a history of injury or specifically address whether appellant's employment activities had caused or aggravated a diagnosed medical condition.⁴ On March 24, 2007 he noted appellant's treatment for low back pain with radiation into his legs. Dr. Uselman again diagnosed degenerative disc disease at L4-5. Appellant reported working as a mail carrier and noted that carrying his mailbag aggravated his back pain. However, Dr. Uselman merely repeated the history of injury as reported by appellant without providing his own opinion addressing how appellant's back condition was work related.⁵ He failed to provide a rationalized opinion explaining how appellant's work caused or aggravated the diagnosed condition.⁶

On August 3, 2007 Dr. Uselman performed an L4-5 bilateral transforaminal discectomy and noted that appellant was progressing well postoperatively. He noted that appellant was not ready to return to work because it would cause significant stress on his low back. Dr. Uselman did not provide an opinion regarding the causal relationship of appellant's degenerative disc disease and the factors of employment believed to have caused or contributed to such condition. He did not explain the process by which activities such as carrying a mailbag would cause the diagnosed back condition and why such condition would not be due to nonwork factors such as the normal aging process. Therefore, these reports are insufficient to meet appellant's burden of proof.

Appellant submitted reports from Dr. Sadar dated February 16, 2001 to March 11, 2004. Dr. Sadar treated appellant for low back pain and diagnosed degenerative disc disease and obesity. He was hesitant in recommending that appellant accept a new job with the employing establishment which required him to walk and carry a bag because these activities were not good

⁴ A.D., 58 ECAB ____ (Docket No. 06-1183, issued November 14, 2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

⁵ *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

⁶ *See Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

for his back. Dr. Sadar noted that appellant was 60 pounds overweight which caused stress on his back, increased lumbar lordosis and changed body posture. He did not directly address causal relation and his restrictions on appellant's return to work are prophylactic in nature. The Board noted that fear of future injury is not compensable under the Act.⁷ Dr. Sadar also attributed appellant's back condition to his obesity and not his work duties. Therefore, these reports are insufficient to establish appellant's claim.

The remainder of the medical evidence, including x-ray of the lumbar spine dated January 30, 2001, an MRI scan of the lumbar spine dated May 2, 2007 and a CT scan of the lumbar spine dated February 14, 2008, fail to provide any opinion on causal relationship. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that the condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁸ Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence, and the Office therefore properly denied appellant's claim for compensation.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he developed an employment-related injury in the performance of duty.

⁷ See *Mary Geary*, 43 ECAB 300, 309 (1991); *Pat Lazzara*, 31 ECAB 1169, 1174 (1980) (finding that appellant's fear of a recurrence of disability upon return to work is not a basis for compensation).

⁸ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ORDER

IT IS HEREBY ORDERED THAT the March 27, 2008 and September 19, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 20, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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