United States Department of Labor
Employees' Compensation Appeals Board

C.B., Appellant	)	
and	)	**Docket No. 13-1805**
	)	**Issued: January 30, 2014**
U.S. POSTAL SERVICE, NILES POST OFFICE, Niles, MI, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On July 29, 2013 appellant, through his attorney, filed a timely appeal from the February 21, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant established a neck injury causally related to factors of his federal employment.

On appeal, counsel contends that OWCP's decision is contrary to fact and law.

FACTUAL HISTORY

On May 7, 2012 appellant, then a 55-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that on March 6, 2012 he first became aware of his cervical

[1] 5 U.S.C. § 8101 *et seq.*

degeneration and headaches and realized that his conditions were caused by his federal employment. He stated that he had been treated by Dr. Toby Mitchell, a chiropractor, for the past six or seven years as a result of surgery stemming from a car accident that occurred on June 11, 1989 and another car accident that occurred on December 2, 2002 or December 2, 2003 while he was delivering mail.

In a May 30, 2012 narrative statement, appellant related that eight or nine years ago he experienced neck pain for which he received medical treatment. He noted Dr. Mitchell's opinion that, as a result of his two rear-end car collisions at work, repetitive motions of the neck such as, left and right rotation, aggravated his cervical degeneration. Appellant stated that, as a letter carrier with a mounted route, he performed the left and right repetitive motions eight hours a day, five days a week.

In a March 27, 2012 medical report, Dr. Jack Henry, a radiologist, advised that an x-ray of the cervical spine revealed spinal biomechanical alterations, uncovertebral and facet arthrosis of the mid and lower cervical spine and mild spondylosis of the mid-cervical spine with severe disc narrowing at the C5 level. He suspected posterior osteophyte formation at the C5 disc level for which clinical correlation was recommended. Dr. Henry advised that a swim lateral view may be helpful. He stated that an x-ray of the thoracic spine showed spinal biomechanical alterations and spondylosis with developmental wedging. Dr. Henry reported that an x-ray of the lumbar spine demonstrated biomechanical alterations, hip arthrosis, anterolisthesis of the isthmic variety at the L3 level and less than five percent on the L4 level, facet tropism at the L5 junction, facet arthrosis and mild spondylosis at the mid and lower lumbar spine with severe disc narrowing at L4 and a lesser degree at the L3 level. In a report dated April 23, 2012, he advised that appellant suffered from cervical degeneration that was most prominent at the C5 level. Appellant also had characteristics of osteophytic formation, hypertrophy, joint space narrowing and subchondral sclerosis. Dr. Mitchell stated that repetitive motions of the neck aggravated appellant's condition. He noted that the only trauma appellant relayed to him to explain his degeneration was the two rear-end car accidents that occurred while he was working at the employing establishment.

In a May 29, 2012 letter, Postmaster Fred Bergman stated that on May 26, 2012 appellant was issued a letter of removal effective May 21, 2012. Appellant never informed management that he was in pain until he did so during a final investigative interview even though he had multiple opportunities to do so over the last year. He did not bring it up until he was faced with removal. Postmaster Bergman contended that the documentation submitted by appellant did not substantiate the dates he claimed to have had severe pain.

By letter dated June 7, 2012, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested additional factual and medical evidence. OWCP also requested that the employing establishment submit any medical evidence regarding treatment appellant received at its medical facility.

In a June 8, 2012 letter, Patricia M. Schaefer, a health and resource management specialist, challenged appellant's claim, noting that on May 26, 2012 and following issuance of a letter of removal to him in April 2012, he handed Larry Cohn, a supervisor, a Form CA-2 for an occupational illness that stemmed from two automobile accidents while working at the employing establishment. The first accident occurred on June 11, 1987 and the second one

occurred in December 2002 or 2003. Ms. Schaefer stated that appellant did not report any injury or illness to his supervisors and he did not file a claim or submit any medical evidence until after his termination. She noted Dr. Mitchell's findings and stated that despite his treatment of appellant for six to seven years there was no record or evidence that his injury was work related. Ms. Schaefer concluded that appellant should not be accepted as this was merely an attempt to keep his position.

In a July 12, 2012 decision, OWCP denied appellant's occupational disease claim. It found that the medical evidence was insufficient to establish that he sustained a medical condition causally related to the established employment factors.

On July 26, 2012 appellant requested an oral hearing before an OWCP hearing representative.

In an April 18, 2012 restriction and limitation form, Dr. Mitchell advised that appellant could return to work no more than eight hours a day. In a May 16, 2012 report, he reiterated his diagnoses of cervical degeneration that was most prominent at the C5 level, characteristics of osteophytic formation, hypertrophy, joint space narrowing and subchondral sclerosis and opinion as to the aggravation of appellant's conditions. Dr. Mitchell also reiterated his opinion regarding appellant's work restriction. In a July 6, 2012 report, he noted a history of his treatment of appellant beginning on March 19, 2012 and his two car accidents. Dr. Mitchell listed findings on physical and x-ray examination. He diagnosed cervical, lumbar, sacral and thoracic subluxations, myalgia and myositis. Dr. Mitchell opined that the previous automobile-related trauma sustained while appellant was working the employing establishment coupled with his aggravating left and right cervical rotational movement required by his job for several years was consistent with the degenerative patterns found in his neck from the x-ray analysis and physical examination. All of the subjective and objective findings were consistent with a repetitive stress disorder affecting the biomechanics of his cervical column and caused vertebral subluxation. Dr. Mitchell stated that subluxation of the spinal column would explain all of the physical complaints reported by appellant, as well as, all the objective findings. He concluded that barring the absence of dramatic evidence of another causative agent, the likelihood of appellant's dysfunction being the result of work-related activities was extremely high and the most reasonable conclusion available. On December 21, 2012 Dr. Mitchell reiterated his diagnoses of cervical, thoracic, lumbar, sacral and iliac subluxations, myalagia and myositis.

In a July 2, 2012 report, Dr. Allison M. Lamont, a Board-certified radiologist, advised that a magnetic resonance imaging (MRI) scan of the cervical spine revealed degenerative disc disease that was most pronounced at the C5-6 level where an asymmetric disc bulge was identified focally flattening the right-hand aspect of the cervical cord at this level and giving rise to right-sided neural foraminal narrowing.

In a July 9, 2012 report, Dr. William N. Farabaugh, a Board-certified family practitioner, noted appellant's complaints of neck pain. He obtained a history of appellant's family, social background and medical treatment. Dr. Farabaugh listed findings on physical and neurological examination. He diagnosed chronic neck pain and advised that appellant's arthritic conditions most likely resulted from work-related repetitive movements and less so from his whiplash injuries.

An unsigned report dated July 12, 2012 contained the typed name of Dr. Stephen M. Smith, a Board-certified neurosurgeon. The report provided a history that appellant had a long history of neck pain which started after a 2003 car accident at work and findings on physical examination. A cervical MRI scan revealed disc bulge and degenerative disc disease. Causality was impossible to note from an MRI scan only. There were certainly degenerative changes that were expected at appellant's age of 56 years old. The significance of his motor vehicle accident that occurred at work would be entirely related to the history of those incidents as provided by him.

In an undated letter, appellant again attributed his neck injury to the two rear-end car collisions as supported by Dr. Mitchell's opinion and x-ray findings. In this letter and a December 24, 2012 letter, he contended that his CA-2 form was timely filed.

The employing establishment submitted an August 2, 2012 investigative report which challenged appellant's claim. It found that he engaged in physical activities that contradicted his stated restrictions and claimed affliction or condition. Appellant only filed the claim after being advised to do so by his attorney during a discussion regarding his removal for failing to follow instructions.

In a February 21, 2013 decision, an OWCP hearing representative affirmed the July 12, 2012 decision, finding that Dr. Mitchell's reports were not sufficiently rationalized to establish that appellant sustained a cervical subluxation and, thus, he was not a physician as defined under FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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 filed within the applicable time limitation; that an injury was sustained while 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.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[4]

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.

[2] 5 U.S.C. §§ 8101-8193.

[3] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *S.P.,* 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable certainty and must be supported by medial rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[5] Neither the fact that appellant's condition became apparent during a period of employment nor, his belief that the condition was caused by his employment is sufficient to establish a causal relationship.[6]

ANALYSIS

OWCP accepted appellant's factors of federal employment as a letter carrier. It denied his claim, however, on the grounds that the evidence failed to establish a causal relationship between those activities and his diagnosed conditions. The Board finds that the medical evidence of record is insufficient to establish that appellant developed a neck condition causally related to factors of his federal employment.

In a July 6, 2012 report, Dr. Mitchell, a chiropractor, found that it was extremely "likely" that appellant's cervical, lumbar, sacral and thoracic subluxations, myalgia and myositis as diagnosed by x-rays resulted from his work-related activities, automobile trauma and repetitive cervical rotational movements. He stated that appellant's subjective complaints and his objective findings were consistent with a repetitive stress disorder affecting the biomechanics of his cervical column and caused vertebral subluxation. The Board has held that a chiropractor is a physician as defined under FECA only to the extent that the reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.[7] As Dr. Mitchell diagnosed spinal subluxations as demonstrated by x-rays, he is a physician as defined under FECA. The Board finds, however, that his opinion concerning the causal relationship between appellant's current conditions and the established employment factors is speculative and is, therefore, of diminished probative value. Dr. Mitchell did not sufficiently explain how the established employment factors caused the diagnosed conditions. Medical opinions that are speculative and not supported by medical rationale are generally entitled to little probative value and are insufficient to meet appellant's burden of proof.[8] Dr. Mitchell's April 23, 2012 report found that appellant suffered from cervical degeneration that was most prominent at the C5 level. He also found that appellant had characteristics of osteophytic formation, hypertrophy, joint space narrowing and subchondral sclerosis. While Dr. Mitchell advised that repetitive motions of the neck aggravated appellant's condition, he failed to explain how the diagnosed neck conditions were caused by the established employment factors. Medical reports without adequate rationale on causal relationship are of

---

[5] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams, id.,* at 351-52.

[6] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

[7] 5 U.S.C. § 8102(2); *see Sean O Connell*, 56 ECAB 195 (2004); *Mary A. Ceglia*, 55 ECAB 626 (2004). 20 C.F.R. § 10.311(a). *Cf., D.S.*, Docket No. 09-860 (issued November 2, 2009).

[8] *Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

diminished probative value and are insufficient to meet an employee's burden of proof.[9] The opinion of a physician supporting causal relationship must be based on a complete factual and medical background with affirmative evidence. The opinion must address the specific factual and medical evidence of record and explain the relationship between the diagnosed condition and the established incident or factor of employment.[10] In addition, Dr. Mitchell noted that the only trauma appellant relayed to him to explain his degeneration was the two rear-end car accidents that occurred while he was working at the employing establishment. Appellant's assertion does not constitute medical evidence as he is a lay person and is not competent to render a medical opinion.[11] The remaining reports from Dr. Mitchell do not address whether appellant's diagnosed cervical, thoracic and lumbar conditions and work restriction were caused by his federal employment. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[12]

Similarly, Dr. Lamont's July 2, 2012 diagnostic test results are insufficient to establish appellant's claim. He did not provide a medical opinion addressing whether appellant's diagnosed cervical conditions were caused by the established employment factors.[13] The Board finds, therefore, that Dr. Lamont's report is insufficient to establish appellant's claim.

Dr. Farabaugh's July 9, 2012 report found that appellant had chronic neck pain that was most "likely" due to his work-related repetitive movements and less from his whiplash injuries. It is well established that pain is a description of a symptom and not considered a compensable medical diagnosis.[14] Further, Dr. Farabaugh's opinion on causal relation is speculative in nature and, thus, of diminished probative value.[15] He failed to sufficiently explain how the established employment factor caused appellant's pain. The Board finds, therefore, that Dr. Farabaugh's report is insufficient to meet appellant's burden of proof.

The unsigned report which contained Dr. Smith's typed name has no probative value in establishing that appellant sustained a cervical injury causally related to the established employment factors, as it is not clear whether a physician under FECA prepared the report. It is well established that medical evidence lacking proper identification is of no probative medical value.[16]

---

[9] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

[10] *See Lee R. Haywood*, 48 ECAB 145 (1996).

[11] *James A. Long*, 40 ECAB 538, 542 (1989).

[12] *See K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

[13] *Id.*

[14] *B.P.*, Docket No. 12-1345 (issued November 13, 2012); *C.F.*, Docket No. 08-1102 (issued October 8, 2008).

[15] *Ricky S. Storms*, *supra* note 8.

[16] *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004); *Merton J. Sills*, 39 ECAB 572 (1988).

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a cervical condition causally related to the accepted employment factors. Appellant did not meet his burden of proof.

On appeal, appellant's attorney contended that OWCP's decision was contrary to fact and law. For reasons stated above, the Board finds that the weight of the medical evidence does not establish that appellant sustained a cervical condition causally related to the established employment factors.

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 failed to establish that he sustained a neck injury causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the February 21, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 30, 2014
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