

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

D.L., Appellant)

and)

DEPARTMENT OF AGRICULTURE,)
BIGHORN NATIONAL FOREST,)
Sheridan, WY, Employer)

Docket No. 15-158
Issued: April 17, 2015

Appearances:

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 5, 2014 appellant, through counsel, filed a timely appeal of an August 4, 2014 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 the case.

ISSUE

The issue is whether appellant established that he sustained an injury causally related to factors of his federal employment.

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

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 7, 2013 appellant, then a 51-year-old engineering equipment operator, filed an occupational disease claim alleging that he had degenerative disc disease, scoliosis, and a herniated disc causally related to factors of his federal employment. He noted that he had been an equipment operator for nearly 35 years, and that, beginning April 8, 2013, he started experiencing worsening low back pain. The employing establishment noted that appellant retired voluntarily on May 31, 2013.

In a May 21, 2013 certificate of medical examination, Dr. Tracy Coe, an internist with a Board-certified subspecialty in medical oncology, listed appellant's medical restrictions due to right leg weakness and neuropathic pain.

By letter dated September 10, 2013, OWCP instructed appellant to submit further evidence in support of his claim. Appellant did not submit a timely response.

By decision dated December 2, 2013, OWCP denied appellant's claim as he failed to establish fact of injury. It explained that he did not submit any medical evidence containing a medical diagnosis in connection with his employment.

An April 26, 2013 magnetic resonance imaging (MRI) scan of the lumbar spine was interpreted by Dr. Elliot Sandberg, a Board-certified radiologist, as evincing status post posterior decompression at L4-5; foraminal compromise at multiple levels, borderline canal stenosis L3-4; and herniated nucleus pulposus L2-3; and bulging annulus at L1-2. He noted that there does not appear to be significant progression when compared to the previous study.

On July 31, 2014 appellant, through his attorney, requested reconsideration. In support of his request, he submitted a June 27, 2014 statement wherein he explained that the majority of his job involved operating a D-5 bulldozer in rocky, mountainous terrain which resulted in constant jolting and jarring to his body. Appellant also noted that the job required frequent heavy lifting as well as other strenuous activities. He noted that he usually operated the bulldozer from late April into November and then performed annual maintenance on all the fleet trailers during the winter months as well as snow removal and shoveling. Appellant noted that the trailer maintenance also required a lot of lifting of tires mounted on wheels which had a combined weight of 50 pounds or more. Also submitted were various treatment notes from medical providers.

In a January 3, 2014 progress note, Dr. Coe noted that appellant had a herniated disc at L3-4 pending surgery. In a February 10, 2014 addendum, he noted borderline osteopenia.

In a January 24, 2014 radiology report, Dr. Richard Oh, a Board-certified radiologist, noted a stable examination of appellant's lumbosacral spine, with no significant change in severe multilevel degenerative disc disease of the lumbar spine.

In a January 28, 2014 progress note, Dr. James A. Ulibarri, a Board-certified orthopedic surgeon, noted that appellant had probable right L3-4 radiculopathy secondary to stenosis at L3-4, as well as foraminal stenosis on the right hand side and some disc component. He believed that the diagnosis could use a little clarification, and recommended diagnostic studies.

Dr. Ulibarri assessed appellant with spinal stenosis of the lumbar region and lumbar herniated nucleus pulposus.

Appellant also submitted notes by nurses and physicians assistants.

By decision dated August 4, 2014, OWCP denied modification of the December 2, 2013 decision.

LEGAL PRECEDENT

An employee seeking compensation under FECA² has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence,³ including that he or she is an “employee” within the meaning of FECA⁴ and that he or she filed his or her claim within the applicable time limitation.⁵ The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.⁶ 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.⁷

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, 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 issue⁹ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician’s rationalized opinion on whether there is a causal relationship between the claimant’s diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,¹⁰ must be one of reasonable medical certainty,¹¹

² 5 U.S.C. §§ 8101-8193.

³ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

⁴ *See M.H.*, 59 ECAB 461 (2008); *see* 5 U.S.C. § 8101(1).

⁵ *R.C.*, 59 ECAB 427 (2008); *Kathryn A. O’Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

⁶ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁸ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁹ *Mary J. Briggs*, 37 ECAB 578 (1986).

¹⁰ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹¹ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.¹²

ANALYSIS

Appellant asserts that he sustained an occupational disease in the performance of his work duties. OWCP denied his claim as it found that he did not establish a medical diagnosis in connection with his federal employment and thus failed to establish fact of injury. However, appellant submitted doctor's reports interpreting diagnostic studies which clearly showed a medical condition. Dr. Sandberg found that based on the April 26, 2013 MRI scan appellant had foraminal compromise at multiple levels, borderline canal stenosis L3-4 and a herniated nucleus pulposus L2-3. Dr. Oh noted that based on his radiology report, appellant had severe multilevel degenerative disc disease of the lumbar spine. In addition, Dr. Coe noted in a January 3, 2014 progress note that appellant had a herniated L3-4 and borderline osteopenia. Accordingly, appellant has established a medical diagnosis.

However, appellant's claim must still be denied as he failed to establish that his medical condition was causally related to the accepted factors of his federal employment. Drs. Ulibarri and Coe do not discuss any factors of appellant's employment duties. Moreover, neither physician opines that appellant's medically diagnosed condition was causally related to accepted factors of his federal employment.

Furthermore, none of the physicians interpreting appellant's radiology reports, *i.e.*, Drs. Oh and Sandberg, address any of appellant's employment factors. As these reports are diagnostic in nature, they were not intended to address the causal relationship between the diagnosed conditions and appellant's employment factors.

Appellant also submitted reports from nurses and physician assistants. However, reports of nurses and physician assistants do not constitute medical evidence as they are not physicians under FECA.¹³ Thus, they are insufficient to establish appellant's claim.

As appellant has not submitted any rationalized medical evidence to support his allegation that he sustained an injury causally related to the accepted factors of his employment, he failed to meet his burden of proof to establish a claim for compensation.¹⁴

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.

¹² See *William E. Enright*, 31 ECAB 426, 430 (1980).

¹³ 5 U.S.C. § 8101(2); see also *K.S.*, Docket No. 14-1470 (issued October 21, 2014); *G.G.*, 58 ECAB 389 (2007); *Jerré R. Rinehart*, 45 ECAB 418 (1994).

¹⁴ See *L.S.*, Docket No. 14-1699 (issued January 22, 2015).

CONCLUSION

The Board finds that appellant has not established that he sustained an injury causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 4, 2014 is affirmed, as modified herein.

Issued: April 17, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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