

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

J.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
St. Louis, MO, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 15-375
Issued: April 2, 2015**

Appearances:

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 9, 2014 appellant, through counsel, filed a timely appeal from the July 17, 2014 merit 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 this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an occupational disease in the performance of duty.

FACTUAL HISTORY

On January 16, 2013 appellant, then a 39-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained a strain due to the performance of his repetitive work duties. He indicated that he first became aware of his claimed condition on October 16, 2012 and that he first realized that it was caused or aggravated by his employment

¹ 5 U.S.C. §§ 8101-8193.

on January 3, 2013. Appellant did not stop work around the time he filed his claim but he continued performing light-duty work.

In a January 3, 2013 “work ability” form report, Dr. James M. Daniels, an attending Board-certified family medicine physician, diagnosed “atypical back pain since October” and indicated that appellant could return to work on January 3, 2013 with restrictions, including no lifting, pushing, or pulling more than 20 pounds. X-ray testing of appellant’s lumbar spine obtained on January 3, 2013 showed no acute fracture or vertebrae subluxation, but did show minimal degenerative disc disease. Dr. Daniels diagnosed “atypical back pain” in a January 11, 2013 “work ability” form report and chronic “facet symptoms” in a January 17, 2013 narrative report. He continued to indicate that appellant could work with restrictions, including no lifting, pushing, or pulling more than 20 pounds. On January 28, 2013 Dr. Daniels noted that appellant had been complaining of back pain for a “number of months” as well as pain going into his buttocks and stated, “He did prior to this work in landscaping and did a lot of heavy work, and he also did a lot of weightlifting. We told him this probably can cause some increased degenerative changes in his back. We told him most of all it [i]s most likely due to the fact that he smokes.”

Appellant also submitted January 7, 8, and 10, 2012 reports of Todd Watterkotte, an attending physical therapist, who diagnosed lumbago and lumbar region sprain.

In a February 13, 2013 letter, OWCP requested that appellant submit additional factual and medical evidence in support of his claim for a work-related occupational disease claim.

In an undated narrative statement received by OWCP on March 12, 2013, appellant stated that his claimed work injury was due to the performance of his work duties over time, including repeatedly bending over to fill his mailbag, inserting mail into mailboxes, getting parcels out of his vehicle, carrying parcels up and down hills and flights of stairs, and carrying a mailbag weighing more than 25 pounds on his shoulder. He indicated that, while collecting mail over the prior three years, he constantly bent over to retrieve full tubs of mail out of collection boxes, exited and entered his mail vehicle with full tubs of mail, and lifted full tubs of mail and parcels.

In a March 1, 2013 report, Dr. Daniels indicated that he “offered today to let [appellant] back to full duty” but that he did not want to do that. He noted that appellant “more or less has a facet problem” and discussed the possibility of performing additional testing to determine if he had a spinal disc herniation.

In an April 1, 2013 decision, OWCP denied appellant’s claim because he did not submit sufficient probative medical evidence to establish that he sustained an occupational disease in the performance of duty. It found that the physical therapy reports appellant submitted did not constitute medical evidence and determined that he did not submit medical evidence relating his claimed occupational disease to work factors. OWCP stated, “You have established that you are a federal civilian employee who filed a timely claim, and the evidence supports that the injury and/or event(s) occurred as described; however, your claim for compensation is denied because the medical component of the third basic element, fact of injury, has not been met.”

In an August 1, 2013 memorandum, counsel, on behalf of appellant, requested reconsideration. He stated that appellant indicated that he should have filed a Form CA-1 for a traumatic injury rather than a Form CA-2 for an occupational disease, and that the actual date of

injury was October 17, 2012 (rather than October 16, 2012). Counsel noted that appellant stated that he was carrying a loaded mailbag over his shoulder when he felt a sharp pain shoot up his back and down his leg.

Appellant submitted a June 3, 2013 report in which Dr. Daniels noted that he reported that “back in October [2012] he was carrying some letters and started having pain in his low back and maybe his hip area.” He indicated that appellant’s complaint was low back pain and that the neurological examination was intact with no evidence of any type of long tract signs. There was increased lordosis of the lumbosacral spine and more pain on back extension than flexion. Under the diagnosis portion of the report, Dr. Daniels stated, “Nonspecific low back pain most likely facet syndrome. Pain was atypical. We did do a metabolic workup and x-ray.” Regarding causal relationship, Dr. Daniels noted:

“In my medical opinion, the facts of the injury are the direct and proximate cause of the diagnosis I cited above. This is based on reasonable medical probability. There may be other causes for this medical problem, but one of the causes is clearly the activities of work described by the patient and described above.”

Appellant submitted additional physical therapy notes of Mr. Watterkotte dated between January 15 and 25, 2013 as well as copies of previously submitted medical reports.

By decision dated July 17, 2014, OWCP affirmed its April 1, 2013 decision denying appellant’s claim for an occupational disease, finding that the new medical evidence submitted by appellant did not contain a rationalized medical opinion that he sustained a specific medical condition due to work factors. It noted that appellant appropriately filed a claim for an occupational disease as he claimed that his medical condition was due to exposure to work factors over the course or more than one day or work shift.²

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 of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

² OWCP stated, “If you are attributing your condition to an injury occurring on October 17, 2012, you should file a [Form] CA-1, Notice of Traumatic Injury, and pursue a claim for a traumatic injury.

³ *B.B.*, 59 ECAB 234 (2007); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ See *Delores C. Ellyett*, 41 ECAB 992 (1990); *Ruthie M. Evans*, 41 ECAB 416 (1990). A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift. 20 C.F.R. § 10.5(ee), (q); *Brady L. Fowler*, 44 ECAB 343 (1992).

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.

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the compensable 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.⁵

Physical therapists are not physicians under FECA and therefore their opinions do not constitute medical opinion evidence and have no weight or probative value on medical matters.⁶

ANALYSIS

On January 16, 2013 appellant filed an occupational disease claim alleging that he sustained a strain due to the performance of his repetitive work duties over time, including repeatedly bending over to fill his mailbag, inserting mail into mailboxes, getting parcels out of his vehicle, carrying parcels up and down hills and flights of stairs, carrying a mailbag weighing more than 25 pounds on his shoulder, bending over to retrieve full tubs of mail out of collection boxes, exiting and entering his mail vehicle with full tubs of mail, and lifting full tubs of mail and parcels. He indicated that he first became aware of his claimed condition on October 16, 2012 and that he first realized that it was caused or aggravated by his employment on January 3, 2013.

The Board finds that appellant did not submit sufficient probative medical evidence to establish that he sustained an occupational disease in the performance of duty.

In reports dated beginning in January 2013, Dr. Daniels, an attending Board-certified family medicine physician, discussed appellant's back complaints and diagnosed such conditions as "atypical back pain since October" and chronic "facet symptoms." He recommended light-duty work with restrictions, including no lifting, pushing, or pulling more than 20 pounds.

In a June 3, 2013 report, Dr. Daniels noted that appellant reported that "back in October [2012] he was carrying some letters and started having pain in his low back and maybe his hip area." He indicated that appellant's complaint was low back pain and that the neurological

⁵ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁶ *C.E.*, Docket No. 14-710 (issued August 11, 2014); *Jane A. White*, 34 ECAB 515 (1983).

examination was intact. Dr. Daniels diagnosed, “[n]onspecific low back pain most likely facet syndrome” and noted that his pain was atypical. He stated, “In my medical opinion, the facts of the injury are the direct and proximate cause of the diagnosis I cited above.... There may be other causes for this medical problem, but one of the causes is clearly the activities of work described by the patient and described above.”

The Board notes that the June 3, 2013 report of Dr. Daniels is of little probative value regarding appellant’s occupational disease claim because he did not provide a rationalized medical opinion relating a specific diagnosed condition to appellant’s performance of his work duties over time. Dr. Daniels did not provide a clear opinion on appellant’s medical condition in that he provided diagnoses such as “atypical pain” and nonspecific low back pain which was “most likely facet syndrome.”⁷ Appellant provided a detailed description of his work duties but Dr. Daniels did not show that he had a complete understanding of these duties as he merely noted that appellant reported pain after “carrying some letters” in October 2012. Dr. Daniels did not describe any medical process through which appellant’s particular work duties could have caused a specific medical condition. Moreover, he did not adequately explain why appellant’s pain complaints were not due to some nonwork-related condition such as the natural progression of degenerative disc disease or nonwork-related activities.⁸ The record contains diagnostic testing showing some degenerative disc disease of the low back and, in fact, Dr. Daniels suggested in a January 28, 2013 report that activities unrelated to federal employment, such as weightlifting and landscaping, could have aggravated this preexisting condition.

Appellant submitted notes of Mr. Watterkotte, a physical therapist, dated between January and 25, 2013. However, these reports are of no probative value on the relevant issue of the present case because physical therapists are not considered physicians under FECA and their opinions do not constitute medical opinion evidence. Therefore, their reports have no weight or probative value on medical matters.⁹

For these reasons, appellant did not establish that he sustained an occupational disease in the performance of duty.¹⁰ 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 meet his burden of proof to establish that he sustained an occupational disease in the performance of duty.

⁷ See *C.F.*, Docket No. 08-1102 (issued October 10, 2008 (finding that pain is a symptom, not a compensable medical diagnosis)).

⁸ See *Chris Wells*, 52 ECAB 445 (2001) (finding that entitlement to compensation is shown when a factor of employment aggravates, accelerates, or otherwise combines with a preexisting, nonoccupational pathology).

⁹ See *id.*

¹⁰ In a reconsideration letter, counsel suggested that appellant actually sustained a traumatic injury on October 17, 2012. However, appellant implicated a number of work duties performed over a period of time as causing his claimed condition and OWCP appropriately developed the case as a claim for a work-related occupational disease.

ORDER

IT IS HEREBY ORDERED THAT the July 17, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 2, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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