

his recurrence claim, he alleged that he sustained pain up and down his arms, spine, and back while he was casing mail. Appellant stopped work on October 8, 2011.²

By letter dated December 27, 2011, OWCP advised appellant that his case would be converted to a claim for a traumatic injury given the description provided by him on the Form CA-2a constituted a new injury. In a January 27, 2012 decision, it denied his claim that he sustained a medical condition in the performance of duty. Regarding the reason for the denial, OWCP stated that appellant had not established the factual component of his claim. It stated, "Specifically your case is denied because the evidence is not sufficient to establish that the event(s) occurred as you described. The reason for this finding is that you did not submit a statement describing in detail how your injury occurred. It is unclear what workplace incident caused your claimed condition." Appellant requested reconsideration.

In a January 16, 2012 report, Dr. Sebastian Lattuga, Board-certified in orthopedic surgery, reported that appellant had daily, constant, and persistent complaints of neck, back, arm, and leg pain with upper and lower extremity radiation and associated numbness, tingling, and dysesthesias noting these complaints stemmed from a work-related head, neck, and back injury he sustained on January 28, 2011. He advised that appellant had been severely symptomatic since the accident and rated the pain as an eight on a scale of 1 to 10. Appellant related that the pain was aggravated by daily activities such as lifting, carrying, bending, standing/sitting for prolonged periods of time, and ascending/descending stairs. Dr. Lattuga diagnosed cervical spine sprain, radiculopathy, and a herniated nucleus pulposus. He prescribed continued chiropractic care and physical therapy and discussed possible surgical intervention with appellant.

Appellant submitted a February 20, 2012 statement in which he asserted that he returned to limited-duty work in September 2011. He noted that, due to the damaged disc in his lower back, the sitting and standing required by this job was causing the disc in his back to rub against the spine. Appellant further stated that reaching up and down to sort and case mail made his neck hurt and sent sharp pains to his head.

In a May 31, 2012 decision, OWCP affirmed its January 27, 2012 decision, noting, "Your statement does not support that you suffered a head, back, or neck condition due to a specific work incident on October 8, 2011.... While you did provide a new statement, you still have not described a specific work incident on October 8, 2011. Nor does the medical evidence of file diagnose a condition in connection with the claimed incident. As such, it cannot be established that an incident occurred at the time, place, and in the manner alleged." Appellant again requested reconsideration.

In a December 6, 2012 statement, appellant indicated that his job required him to sort and case mail before delivery. He stated that these tasks required him to stand, sit, reach up, bend down, reach up from side to side, and look up and down constantly. Appellant complained that because of the previously damaged disc in his lower back and neck, performing these activities

² At the time of his work stoppage, appellant was working four hours a day in a limited-duty job after he sustained back, neck, and upper extremity injuries at work on January 28, 2011, case file number xxxxxx561, when snow fell on him and knocked him to the ground.

caused the discs in his back and neck to rub against the spinal cord. He asserted that reaching up and down to sort and case the mail made his neck hurt and sent sharp pains to his head. Appellant stated that on October 8, 2011 he decided that he could not continue to perform such work and that his attending physician indicated that he should stop work.

In an August 12, 2013 decision, OWCP affirmed its May 31, 2012 decision denying appellant's claim for a work-related injury. It cited Board precedent stating that an employee has not met his or her burden of proof to establish a work-related condition where there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. OWCP stated, "The evidence is not sufficient to modify the decision dated May 31, 2012 because your statement of December 6, 2012 differs from the original statement surrounding the circumstances of your claim dated February 20, 2012 therefore there is doubt surrounding the circumstances surrounding your claim."

In an April 18, 2014 decision,³ the Board set aside OWCP's August 12, 2013 decision, finding that it improperly denied appellant's claim finding that he did not establish the factual component of his claim for a work-related condition. The Board further found that, although appellant initially filed his claim on an inappropriate claim form, one for a recurrence of disability, this was not a valid basis for the denial of his claim. The Board noted that, while OWCP had converted the claim to one for traumatic injury, contrary to OWCP's assertions, appellant consistently submitted statements in which he claimed that he sustained an occupational disease due to the duties he performed over an extended period after returning to limited-duty work in September 2011. The Board found that appellant did in fact establish the above-described work factors in connection with a claim for a work-related occupational disease and that, as OWCP denied appellant's claim on a factual basis, it failed to adequately evaluate the medical evidence in light of these established work factors. The Board therefore remanded the case to OWCP to consider the medical evidence and determine whether appellant had sustained an occupational disease due to the accepted work factors. The complete facts of this case are set forth in the Board's April 18, 2014 decision and are incorporated herein by reference.

By decision dated May 15, 2014, OWCP denied appellant's claim, finding that he failed to submit sufficient medical evidence in support of his claim that he sustained a neck or lower back injury in the performance of duty on October 8, 2011.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing that 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 an 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.⁴ These are essential elements of each and

³ Docket No. 14-94 (issued April 18, 2014).

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

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 medical evidence required to establish causal relationship is usually rationalized medical 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.⁶

Appellant has the burden of establishing by the weight of the substantial, reliable, and probative evidence, a causal relationship between his claimed lower back and neck conditions and his federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁷

ANALYSIS

In the instant case, appellant has failed to submit any medical opinion containing a rationalized, probative report which relates his claimed neck and lower back conditions to the factors of his employment he alleges caused the progression of his condition. For this reason, he has not discharged his burden of proof to establish his claim that these conditions were sustained as an occupational disease in the performance of duty.

Dr. Lattuga's January 16, 2012 report noted appellant's complaints of neck and upper and lower extremity pain and presented diagnoses of cervical spine sprain, radiculopathy, and herniated nucleus pulposus and only generally attributed these conditions to employment factors. He advised that appellant had been severely symptomatic since his January 28, 2011 accident and rated his pain as an eight on a scale of 1 to 10. Dr. Lattuga related that appellant had daily, constant, and persistent complaints of neck, back, arm, and leg pain with upper and lower extremity radiation and associated numbness, tingling, and dysesthesias. Appellant asserted that

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *Id.*

⁷ *See Nicolea Brusio*, 33 ECAB 1138, 1140 (1982).

the pain was aggravated by daily activities such as lifting, carrying, bending, standing/sitting for prolonged periods of time, and ascending/descending stairs.

Dr. Lattuga's report did not provide a probative, rationalized medical opinion that the claimed conditions or disability were causally related to employment factors. His opinion on causal relationship is of limited probative value as it does not contain any medical rationale as to how or why appellant's claimed neck and lower back conditions were currently affected by or related to factors of employment.⁸ Dr. Lattuga did not sufficiently describe appellant's job duties or explain the medical process through which such duties would have been sufficient to cause the claimed conditions. His opinion is of limited probative value as it does not contain any medical rationale explaining how appellant's job duties physiologically caused the diagnosed neck and lower back conditions over a period of exposure to those duties. Dr. Lattuga's January 16, 2012 report thus did not constitute adequate medical evidence to establish that appellant's claimed neck and lower back conditions were causally related to his employment.

OWCP advised appellant of the evidence required to establish his claim. However, appellant failed to submit such evidence. Consequently, he has not met his burden of proof to establish that his claimed neck and lower back conditions were causally related to his employment.

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 meet his burden of proof to establish that his claimed neck and lower back conditions were sustained in the performance of duty.

⁸ *William C. Thomas*, 45 ECAB 591 (1994).

ORDER

IT IS HEREBY ORDERED THAT the May 15, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 29, 2015
Washington, DC

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

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

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