

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

P.S., Appellant)	
)	
and)	Docket No. 16-0683
)	Issued: June 3, 2016
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Los Angeles, CA, Employer)	
)	

Appearances:
Appellant, pro se
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 17, 2016 appellant filed a timely appeal from a November 2, 2015 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 has met his burden of proof to establish an injury causally related to factors of his federal employment.

FACTUAL HISTORY

On October 27, 2014 appellant, then a 42-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging back injuries from heavy lifting while loading and unloading

¹ 5 U.S.C. § 8101 *et seq.*

trucks. He reported that he became aware of the condition and its relationship to employment as of July 2, 2010. The supervisor's report on the reverse of the claim form revealed that the claim appeared to be untimely, and appellant was no longer employed as of July 13, 2013.²

By letter dated October 27, 2014, the employing establishment controverted the claim for compensation. A human resources specialist indicated that appellant had never reported the alleged injuries to a supervisor and he waited almost four years to file the claim. An SF-50 (notification of personnel action) dated August 19, 2013 indicated that appellant's last day in pay status was July 13, 2012. The notice indicated that a prior notice of removal dated July 12, 2010 had been reduced to a time-served suspension.

OWCP requested that appellant submit additional evidence with respect to his claim in a letter dated November 14, 2014. It indicated that there was no evidence regarding timely notification of injury, establishment of employment factors, or medical evidence establishing causal relationship. Appellant was afforded 30 days to submit the additional evidence.

On December 9, 2012 an employing establishment supervisor reported in a November 30, 2014 e-mail correspondence that a mail handler's job duties included loading and unloading trucks. The supervisor indicated that the claim was controverted because appellant waited four years to submit his claim. On December 12, 2014 OWCP received a note from appellant indicating the last day he was exposed to the identified employment factors was July 13, 2012.

With respect to medical evidence, the record contains "work status" reports from Kaiser Permanente physicians for intermittent dates in July 2010 and March through June 2012. In a report dated April 24, 2014, for example, Dr. Calvin Wood, Board-certified in emergency medicine, diagnosed chronic low back pain and indicated appellant was placed off work April 24 and 25, 2012.

By decision dated January 26, 2015, OWCP denied the claim for compensation. It found the claim was timely filed. However, OWCP determined that the medical evidence did not establish an injury causally related to the identified employment factors.

Appellant requested a review of the written record on February 11, 2015 before a Branch of Hearings and Review hearing representative. He submitted medical evidence, which included treatment reports for his back from Kaiser Permanente from February 29, 2009 through April 11, 2013. With respect to reports from physicians,³ the evidence included a report dated November 11, 2010 from Dr. Bharti Nachnani, a Board-certified family practitioner, who provided a history that appellant had low back muscle spasms since February, "probably related to his work as a mail handler." Dr. Nachnani provided results on examination and diagnosed low back pain.

² The actual last date of employment was July 13, 2012. The Board notes that the record contains a second CA-2 form, received by OWCP on October 27, 2014, also claiming a back injury due to loading and unloading trucks. The date appellant was aware of the condition and its relationship to employment was reported as May 24, 2010.

³ The evidence submitted included reports from nurse practitioners, medical assistants, and physical therapists.

In a report dated July 20, 2011, Dr. Darren Shimabukuro, a Board-certified internist, reported appellant had chronic back pain “due to occupation, lifts heavy loads” more often since a cut back in staff.

In a report dated March 25, 2012, Dr. Anjum Sameena, a Board-certified family practitioner, reported that appellant had complained of low back pain for two days. He noted that appellant did heavy lifting at work and had a history of back problems. Dr. Sameena provided results on examination and diagnosed low back pain.

On April 15, 2012 Dr. Wendell Osborne, a Board-certified family practitioner, noted that lumbar x-rays dated August 4, 2010 showed moderate narrowing of the L3-4 disc space with spurring representing degenerative disc disease.

By decision dated July 28, 2015, the hearing representative affirmed the January 26, 2015 OWCP decision. The hearing representative found the medical evidence was insufficient to establish the claim.

Appellant requested reconsideration on August 24, 2015. He argued that based on Board case law the medical evidence he submitted was sufficient to establish the claim.

In a decision dated November 2, 2015, OWCP reviewed the merits of the claim and denied modification. It found the evidence and argument submitted was not of sufficient probative value to warrant modification of the July 28, 2015 decision.

LEGAL PRECEDENT

A claimant seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.⁵

To establish that an injury was sustained in the performance of duty, a claimant must submit: (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 diagnosed condition is causally related to the employment factors identified by the claimant.⁶

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁷ A physician’s opinion on the issue of whether there is a

⁴ 5 U.S.C. §§ 8101-8193.

⁵ 20 C.F.R. § 10.115(e), (f) (2005); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁶ *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁷ See *Robert G. Morris*, 48 ECAB 238 (1996).

causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant.⁸ Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.⁹

ANALYSIS

In the present case appellant filed a claim on October 27, 2014 alleging that he sustained a back condition causally related to his repetitive work duties including loading and unloading trucks.

It is appellant's burden of proof to submit rationalized medical evidence on causal relationship between a diagnosed condition and the identified employment factors. The Board notes that in 5 U.S.C. § 8101(2) a physician includes, "surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law."¹⁰ The Board finds that reports from nurse practitioners, medical assistants, or physical therapists are of no probative medical value because they are not considered physicians under FECA.¹¹

With respect to treatment reports from physicians, none of the medical reports in the record of evidence provides a rationalized medical opinion based on a complete factual background. The physicians from Kaiser Permanente, including Drs. Nachnani, Shimabukuro, Sameena, and Osborne, do not provide a complete factual and medical history. There are brief references to lifting at work, but without any additional description such as the duration or of the amounts lifted. Moreover, there are no opinions, supported by medical rationale, on causal relationship between a diagnosed condition and the identified employment factors.

It is appellant's burden of proof to establish the claim for compensation. Appellant has not submitted a medical report with a complete factual and medical background, and a rationalized medical opinion on causal relationship between a diagnosed back condition and the identified employment activity. The Board accordingly finds that he did not meet his burden of proof in this case.

On appeal, appellant submitted copies of OWCP decisions that provide a heading title of "employee" and list appellant's name. He argues this shows he was an employee at the time of the decision. However, the remaining issue in this case is medical in nature. Appellant did not submit sufficient medical evidence to establish the claim. While he also asserts that he never

⁸ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁹ *Id.*

¹⁰ 5 U.S.C. § 8101(2).

¹¹ *See V.N.*, Docket No. 16-0238 (issued March 1, 2016).

received a hearing with the Branch of Hearings and Review, the record indicates that appellant requested and received a review of the written record by a hearing representative.

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 not met his burden of proof to establish 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 November 2, 2015 is affirmed.

Issued: June 3, 2016
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board