

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

E.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Greensboro, NC, Employer**

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**Docket No. 09-499
Issued: September 10, 2009**

Appearances:

*Daniel F. Read, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 10, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated January 18 and October 6, 2008 which denied modification of a decision denying his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant met his burden of proof in establishing that his back condition is causally related to factors of his federal employment.

FACTUAL HISTORY

On August 12, 2004 appellant, then a 59-year-old maintenance mechanic, filed an occupational disease claim alleging that he developed a back condition as a result of the work he

was performing following a March 3, 1995 injury, wherein he alleged he injured his back.¹ He stated that the pain medication he was taking allowed him to work full duty until June 25, 2002, when he was placed on light duty. Appellant stated that he became aware of the relationship between his condition and his employment on June 24, 2002. He stated that his back had deteriorated to the point that he needed surgery. The employing establishment noted that appellant did not stop work and that he had worked light duty for about two years.

On October 4, 2004 the Office advised appellant of the type of evidence needed to establish his claim, particularly requesting a physician's reasoned opinion addressing the relationship of his claimed condition and specific work factors and recognizing that he had been on light duty since 2002. In response, it received a January 3, 2005 duty status report from Dr. Joseph D. Stern, a Board-certified neurosurgeon, who noted the history of the March 3, 1995 injury and diagnosed lumbar degenerative disc disease.

By decision dated December 1, 2004, the Office denied the claim finding that appellant had not established his occupational disease claim.

Appellant requested a review of the written record. The Office received an April 11, 2005 statement, a magnetic resonance imaging (MRI) scan of the lumbar spine dated July 3, 2002 and August 11, 2004, as well as medical reports. In an April 20, 2004 report, Dr. Jeffrey Chicoine, a chiropractor, noted that appellant was first seen on August 23, 1996 for complaints of low back pain, leg and foot pain, upper back pain and neck pain. Appellant reported that something fell on him at work and that he was hospitalized for one to two weeks. He also reported that he had nerve damage to his leg as a result. Dr. Chicoine opined that appellant's chief complaint in 1996 was most likely due to a prior injury.

Medical reports and treatment notes from 2004 to 2005 were received from Dr. Stern. In a March 22, 2005 report, Dr. Stern noted that he reviewed extensive materials and medical notes regarding the March 3, 1995 work injury to appellant's low back, when a 700-pound load hit him from behind when he was crouched at a drive unit of a conveyor and drove him into the steel cage. He noted that appellant reported he was treated for visible damages only and his back was not checked and no x-rays were obtained. Dr. Stern stated that the medical notes were very extensive and discussed appellant's lumbar degenerative disc disease and spondylosis as well as his multiple medical opinions and his surgical treatment. He stated that appellant's history has been exhaustively documented and he believed that the causal relationship of his injury and his progressive impairment were related to his initial injury.

On September 14, 2005 the Office affirmed the December 1, 2004 decision.

On September 14, 2006 appellant requested reconsideration. Medical reports were received from Dr. Stern. These included duty status reports dated September 14, 2005 and August 16, 2006 in which Dr. Stern noted the history of the March 3, 1995 work injury and

¹ The Office accepted the March 3, 1995 injury under claim number xxxxxx577 for contusions of the rib, right elbow and right knee. Appellant indicated that he had filed a recurrence claim in that case. Any matter pertaining to that claim is not before the Board on the present appeal.

diagnosed lumbar degenerative disc disease. In a September 14, 2005 report, Dr. Stern noted that appellant should continue working with restrictions.

In a September 14, 2006 report, responding to questions from appellant's attorney, Dr. Stern advised that the work injury of March 1995 was the start of his low back problems and was consistent with his medical records. Dr. Stern opined that appellant's degenerative disc disease and spondylosis were work related as they were consistent with his work and injury history. He advised that appellant's spondylolisthesis, a slippage of one vertebra on another, was due to deterioration in his back. Dr. Stern stated that appellant had spondylolisthesis of L5 on S1, retrolisthesis of L4 on L5 with stenosis at L4-5 and disc degeneration and spondylosis, which caused a pinched nerve and significant pain. He stated that appellant had decompression and fusion surgery initially in September 2004, which subsequently had to be revised because the bones did not fuse completely, but which eventually resulted in a good fusion. Dr. Stern stated that the historical information supported that the work injury was the cause of appellant's pain syndrome and which eventually led to his surgery. He indicated that appellant was not aware of any intervening causes or major trauma since 1995, which needed to be taken into consideration. In response to the question that appellant did not realize the extent of his 1995 work injury until he went off pain medication in 2001, Dr. Stern stated that he had significant pain related to other injuries and was taking a large amount of pain medication which may have allowed him to tolerate significant deterioration in his back for a longer period of time.

On November 15, 2006 the Office denied modification of its prior decision finding that causal relationship between appellant's current back condition and factors of his federal employment had not been established.

On October 31, 2007 appellant requested reconsideration and submitted a September 19, 2007 report from Dr. Stern, who noted treating him for over seven years and found him to be a reliable and honest historian. Dr. Stern diagnosed spondylolisthesis at L5-S1 and retrolisthesis at L4-5 with associated degenerative disc disease and spinal stenosis, which was verified on multiple objective MRI scans as well as lumbar spine surgery. He noted reviewing appellant's medical records since 1995 and his work history and advised that he was able to work full duty as a mechanic from 1995 to 2002 with no indication of an intervening traumatic injury to his lumbar spine. Dr. Stern stated that a 2002 MRI scan showed a "pars defect" in the posterior element of a vertebra, which meant the posterior element was split into two pieces causing instability. He noted that, while pars defects may result from several causes, appellant had no youthful back problems or chronic bone disease diagnosis. Dr. Stern concluded the pars defect was probably the result of stress or trauma. He opined that appellant's pars defect was directly related to the slippage of the vertebra that accompanied the disc rupture that he experienced requiring surgery. Dr. Stern stated that, while it was normal for the spine to deteriorate and demonstrate degenerative disc disease with aging, it was his opinion that the ordinary natural process was significantly accelerated by the 1995 work injury. He opined that the repeated stress of doing industrial mechanic work from 1995 through 2002 further accelerated the degenerative process in appellant's back. Dr. Stern concluded that appellant's disc injuries were work related and explained that there were no other reports of traumatic injury of the lumbar spine between 1995 and 2002. He advised that appellant's work was physically demanding after his injury and pain medications he used tended to obscure the low back pain. Dr. Stern noted that appellant's disc injury and pars defects typically do not heal over time. Thus, he opined that appellant's disc

injuries were the direct and natural result of the traumatic injury 1995, which was amplified and sustained by the physically demanding work he did over the intervening years before he was finally diagnosed in 2002.

By decision dated January 18, 2008, the Office denied modification of the November 15, 2006 decision. It found that Dr. Stern's September 19, 2007 opinion was based on an incorrect history as a review of the claims of file with the Office revealed appellant had a motor vehicle accident on July 5, 1999 that caused a fractured sternum and various documents of record supported a history of back conditions such as degenerative disc disease of the lumbar and cervical spine.

In a July 15, 2008 letter, appellant, through his attorney, requested reconsideration of the Office's January 18, 2008 decision.

In a June 16, 2008 report, Dr. Stern advised that he was aware of appellant's intervening trauma of a motor vehicle accident in 1999 when he fractured his sternum, but remained unaware of any trauma to his lumbar spine between 1995 and 2002. He advised that, while the motor vehicle accident may have contributed somewhat to his lumbar problem, he remained of the opinion that the initial 1995 work injury never really healed and was aggravated and compounded by heavy physical work until 2002, when low back pain became a clinical problem.

By decision dated October 6, 2008, the Office denied modification of the January 18, 2008 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act, that the 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit the following: (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.³

² *Gary J. Watling*, 52 ECAB 357 (2001).

³ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on whether there is a causal relationship between the employee'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 employee, 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 employee.⁴

ANALYSIS

The record reflects after appellant had a March 3, 1995 work injury, he worked full duty as a mechanic until June 25, 2002, when he was placed on light duty because of his back condition. It is also not disputed that he has been diagnosed with multiple conditions of his lumbar spine, *i.e.*, spondylolisthesis and retrolisthesis of the lumbar spine with associated degenerative disc disease and spinal stenosis as well as a pars defect. Appellant has not submitted sufficient medical evidence; however, to establish that he sustained a new injury or aggravation of an existing condition causally related to specific employment factors or conditions. The Office advised appellant of the type of medical evidence needed to establish his claim. Appellant did not submit a rationalized medical report from a physician addressing how specific employment factors after March 3, 1995 may have caused or aggravated his claimed condition.

Appellant submitted multiple medical reports from Dr. Stern, who noted the history of the March 3, 1995 work injury as well as his degenerative disc disease and conditions of the lumbar spine. In Dr. Stern's March 22, 2005 report, he first opined that appellant's progressive back conditions were causally related to the 1995 work injury. In duty status reports dated September 14, 2005 and August 16, 2006, he provided a diagnosis based on the March 3, 1995 work injury. However, these reports are not relevant to the current claim as they fail to discuss whether appellant's back condition is causally related to employment factors or conditions, which arose after the 1995 work injury.

In subsequent reports dated September 14, 2006, September 19, 2007 and June 16, 2008, Dr. Stern opined that appellant's degenerative back conditions, which were part of the ordinary natural process of aging, were significantly accelerated by the 1995 work injury, which never fully healed, and the repeated stress of doing physically demanding industrial mechanic work from 1995 through 2002. To the extent that these reports support that appellant's condition is due to the 1995 work injury, they are not germane to the issue of whether he has established a new occupational disease claim due to work factors subsequent to the 1995 work injury. On September 19, 2007 Dr. Stern explained that appellant's degenerative process in his back was due to work activities from 1995 to 2002 as there were no reports of traumatic injury to his spine between 1995 and 2002 and he performed physically demanding work. He noted that medication obscured the pain after the 1995 work injury, which allowed appellant to tolerate significant deterioration in his back. Dr. Stern further opined that appellant's pars defect was

⁴ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

probably the result of trauma or stress as he had no history of earlier back problems or chronic bone disease. In his June 16, 2008 report, he advised that he was aware of appellant's July 5, 1999 motor vehicle accident, which resulted in a fractured sternum, but emphasized there were no reports of additional trauma to his lumbar spine between 1995 through 2002. Dr. Stern's opinion is insufficient as he did not provide medical rationale to explain why specific work duties from the period 1995 through 2002 caused or aggravated a diagnosed medical condition.⁵ He did not explain the process by which appellant's degenerative back conditions were caused or aggravated by particular work activities after March 3, 1995. For example, Dr. Stern indicated that appellant performed physically demanding tasks as an industrial mechanic work from 1995 to 2002, but he did not identify such tasks and explain why particular tasks would cause or aggravate one of the diagnosed conditions. In none of his reports does he explain how particular work duties caused or aggravated a diagnosed back condition. Therefore, these reports are insufficient to meet appellant's burden of proof.

Appellant also submitted an April 20, 2004 report from Dr. Chicoine, a chiropractor. In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is a physician under section 8101(2) of the Act. A chiropractor is not considered a physician under the Act unless it is established that there is a spinal subluxation as demonstrated by x-ray to exist.⁶ As Dr. Chicoine failed to provide any diagnosis in his April 20, 2004 report to determine whether or not appellant had a subluxation as demonstrated by x-ray, he is not a physician, as defined, and his report is of no probative medical value.

Furthermore, reports of diagnostic testing, such as the MRI scan reports of record, are insufficient to establish appellant's claim as they do not provide a physician's opinion on the causal relationship between his job factors and a diagnosed medical condition.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that the condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁷ Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied his claim for compensation.

On appeal, appellant's attorney asserts the Office applied the incorrect burden of proof as appellant need only prove that the work factors were a significant contributing factor and not a primary contributing factor. Appellant's argument misinterprets the Office's decision. He identified his work duties as a maintenance mechanic following his March 3, 1995 injury through June 25, 2002 as the employment factors contributing to his injury. The Office has accepted that appellant performed those employment duties until he was placed on light duty on June 25, 2002. It is appellant's burden to submit rationalized medical evidence establishing a

⁵ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

⁶ *Paul Foster*, 56 ECAB 208 (2004); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁷ *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

diagnosed condition causally related to the identified employment factors. The evidence before the Office does not contain a medical report with a rationalized medical opinion on causal relationship explaining how appellant's back conditions were caused or aggravated particular work duties. Thus, the Office denied appellant's claim.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof in establishing that his back condition is causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the October 6 and January 18, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 10, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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