United States Department of Labor
Employees' Compensation Appeals Board

J.C., Appellant	)	
and	)	**Docket No. 11-532**
	)	**Issued: December 21, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Cincinnati, OH, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 30, 2010 appellant, through his attorney, filed a timely appeal from a November 17, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied his claim. Pursuant to the Federal Employees' Compensation Act[1] (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 injury in the performance of duty.

FACTUAL HISTORY

On March 15, 2010 appellant, then a 34-year-old mail processing clerk, filed an occupational disease claim alleging that he developed degenerative joint and disc disease of the

[1] 5 U.S.C. § 8101 *et seq.*

cervical spine and radiculopathy of the left upper extremity at work. He stated that his physician attributed his condition to the work he performed which included, keying mail on a parcel sorter machine, working mail from slides and lifting mail sacks. Appellant explained that his work duties aggravated a previous military neck injury. He first became aware of the condition on August 1, 1993 and first realized that it was caused or aggravated by his employment on February 18, 2010. Appellant also stopped work on that date.

In a letter dated March 18, 2010, Kelly James, a human resources specialist with the employing establishment, controverted the claim. She noted that appellant's injury of August 1, 1993 was 17 years earlier, and he did not file a claim until he needed a cervical spine fusion, which was scheduled for March 24, 2010.

In a March 15, 2010 statement, appellant noted that he was hired in 1995 as a "keyer" clerk. Prior to work as a keyer clerk, he was hired as a mail handler in late 1994 or early 1995 but advised that he was at risk while performing the duties of a mail handler due to his preexisting cervical condition from the military. Appellant alleged that his duties included lifting mail sacks up to 70 pounds, throwing mail and keying parcels exacerbated his condition. He explained that, after seeing his treating physician on February 18, 2010, he realized that his work duties affected his service-connected disability.

On March 25, 2010 OWCP received a February 1, 2010 rating decision from the Department of Veterans Affairs finding that appellant had no disability for service-connected left upper extremity radiculopathy; 10 percent disability for cervical degenerative disc and joint diseases; and 10 percent for headaches. The decision noted that he served in the United States Navy from 1984 to 1988 and 1990 to 1995. A December 2009 neck examination revealed that there was "no objective evidence of painful motion, spasm, weakness, tenderness and no findings following repetitive motion. Degenerative disc disease was diagnosed and the examiner expressed the opinion it is at least as likely as not related to your degenerative joint disease."

By letter dated March 29, 2010, OWCP advised appellant that additional factual and medical evidence was needed. It explained that a physician's opinion was crucial to his claim and allotted 30 days within which to submit the requested information.

In an April 14, 2010 statement, appellant described the duties he performed and noted a previous spinal fusion of the lumbar region in 2000 which was work related.

Appellant also submitted reports from Dr. Norberto Andaluz, a neurosurgeon. On March 24, 2010 Dr. Andaluz performed an anterior cervical discectomy at C6-7 to treat left side C7 radiculopathy. In a March 25, 2010 postoperative report, he advised that appellant had a history of a military neck injury while diving in the 1980s in which he had a 45-second episode of total body paralysis. In 1993, while in the military, intermittent left upper extremity radiculopathy began which became constant in March 2009. In an April 12, 2010 attending physician's report, Dr. Andaluz diagnosed cervical spondylosis without myelopathy. He noted that appellant had an original neck injury in 1993. Dr. Andaluz checked a box "yes" indicating that appellant's condition was caused or aggravated by work activity and added "persistent activity and lifting may have aggravated his condition." OWCP also received nursing notes.

By decision dated June 15, 2010, OWCP denied appellant's occupational disease claim. It found that he did not submit sufficient medical evidence to support a causal relationship between the accepted work-related activities and the diagnosed medical conditions.

On June 28, 2010 appellant's representative requested a telephonic hearing, which was held on September 20, 2010. Appellant testified that his regular work included lifting mail sacks, throwing mail and keying parcels on a sorting machine. He indicated that he remained off work. Appellant noted that he was originally injured on August 1, 1993 while in the Navy and also had a diving accident in 1987 while in naval service. He confirmed that he received a disability retirement. Appellant also clarified that August 1, 1993 was the date his neck was injured in the Navy. He explained that February 18, 2010 was when he became aware his work had affected his neck. Appellant confirmed that he underwent cervical spine surgery in March 2010.

On September 23, 2010 appellant's representative submitted additional medical evidence, which included a March 24, 2010 operative report from Dr. Andaluz, who performed an anterior cervical discectomy at C6-7 with allograft and plating.

Appellant also submitted a December 21, 2009 electromyography (EMG) scan read by Dr. Joseph A. Nicolas, a Board-certified neurologist, as abnormal and revealed left C7 radiculopathy. The nerve conduction studies were normal. A January 14, 2010 magnetic resonance imaging (MRI) scan of the cervical spine read by Dr. Charles Lee, a Board-certified diagnostic radiologist revealed mild, stable degenerative changes and foraminal narrowing at C6-7. OWCP also received several occupational therapy progress notes, including a July 28, 2010 note stating that appellant had chronic cervical pain and radiculopathy that "has been exacerbated by lifting a heavy mailbag." In an August 26, 2010 progress note, the occupational therapist related that appellant worked at the employing establishment lifting bags all day. He advised that appellant had recently returned to work two and a half weeks following an injury from lifting a 36-pound mailbag. The occupational therapist set forth appellant's work restrictions.

In a September 8, 2010 report, Dr. Muhammad Munir, a Board-certified anesthesiologist, noted that appellant had neck and left arm weakness that was ongoing for over a year, following a cervical fusion in March 2010. He advised that appellant's condition improved until June 2010 when he returned to work. Dr. Munir noted that appellant was lifting a bucket of mail weighing approximately 30 to 40 pounds and sustained a "pop" and "severe pain in his neck again with radiation down to the scapular region on the left side as well as to the left shoulder and occasionally into the left triceps." He diagnosed cervical postlaminectomy pain syndrome; lumbar spondylosis and lumbar postlaminectomy pain syndrome; cervical degenerative disc disease at multiple levels as well as a loss of lordosis from myofascial spasm. Dr. Munir stated that "considering his lumbar fusion, his cervical fusion and return of his symptoms along with further injury since his cervical fusion with his current job" it would be best to search for an alternate position as "continued and unexpected weight lifting in the current job may make his pain and condition worse."

In a letter dated October 4, 2010, Ms. James of the employing establishment noted that appellant began work on October 28, 1995 with a preexisting neck condition related to his prior

military service. She also noted that appellant filed a claim for a traumatic injury in June 2010 for a work-related aggravation of his neck condition, which was denied.[2]

In a letter dated October 14, 2010, appellant's representative asserted that the July 28, 2010 progress note supported that work factors, lifting the heavy mailbags, exacerbated appellant's chronic cervical pain.[3]

In a letter dated October 14, 2010, appellant explained that August 1, 1993 was the date of his injury while serving in the Navy, not the date of the claimed work injury. He indicated that the aggravation of a neck condition developed due to his work activities over several years. Appellant noted that, while an EMG in 1995 was normal, the same test in 2010 was positive for a cervical spine condition.

By decision dated November 17, 2010, OWCP's hearing representative affirmed the June 15, 2010 decision. He found that date of injury actually being claimed was February 18, 2010, and noted that appellant incorrectly entered August 1, 1993 as the date of injury.

LEGAL PRECEDENT

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 diagnosed condition is causally related to the employment factors identified by the claimant.[4]

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized medical 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 upon 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]

ANALYSIS

Appellant's work duties are not in dispute and the record indicates that such duties included keying mail, working mail from slides, and lifting mail sacks. However, he has not

[2] This claim is not before the Board on the present appeal.

[3] The record reflects that he was actually referring to the notes from the physical therapist.

[4] *Solomon Polen*, 51 ECAB 341 (2000); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[5] *Id.*

submitted sufficient medical evidence to indicate that his cervical spine condition was causally related to his employment.

Appellant provided reports from Dr. Andaluz. They included Dr. Andaluz' April 12, 2010 report, in which he diagnosed cervical spondylosis without myelopathy and noted an original neck injury in 1993 while on active duty. He checked the box "yes" to indicate that appellant's condition was caused or aggravated by an employment activity. Dr. Andaluz noted that "persistent activity and lifting may have aggravated his condition." Although he provided some support for causal relationship, his opinion that appellant's work "may have" aggravated his condition is couched in speculative terms. The Board has held that medical opinions which are speculative or equivocal in character have little probative value.[6] Dr. Andaluz did not provide a fully-rationalized opinion report in which he explained how particular work factors contributed to or aggravated appellant's condition.[7] The need for rationale is particularly important where the record shows that appellant's cervical condition began prior to his tenure at the employing establishment. Other reports from Dr. Andaluz did not specifically address whether particular work activities caused or aggravated appellant's condition. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[8]

In a September 8, 2010 report, Dr. Munir noted appellant's history which included neck and left arm weakness for over a year and a cervical fusion in March 2010. He noted that appellant's condition improved until June when he returned to work and was lifting a bucket of mail and sustained a "pop" and "severe pain in his neck again with radiation down to the scapular region on the left side as well as to the left shoulder and occasionally into the left triceps." Dr. Munir diagnosed cervical postlaminectomy pain syndrome; lumbar spondylosis and lumbar postlaminectomy pain syndrome; cervical degenerative disc disease at multiple levels as well as a loss of lordosis from myofascial spasm. He opined that "considering his lumbar fusion, his cervical fusion, and return of his symptoms along with further injury since his cervical fusion with his current job" it would be best to search for an alternate position as "continued and unexpected weight lifting in the current job may make his pain and condition worse." It appears that Dr. Munir largely addressed a traumatic incident that occurred in June 2010 instead of the occupational disease filed as February 18, 2010.[9] Furthermore, although Dr. Munir noted the history of appellant's condition and commented on the type of work he should do, he did not specifically provide his own opinion as to whether appellant's work duties caused or aggravated a diagnosed medical condition.

Appellant also provided several diagnostic reports. They included a December 21, 2009 EMG scan read by Dr. Nicolas and a January 14, 2010 MRI scan. However, these reports merely reported findings and did not contain a physician's opinion regarding the cause of the

[6] *Vaheh Mokhtarians*, 51 ECAB 190 (1999).

[7] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[8] *Michael E. Smith*, 50 ECAB 313 (1999).

[9] As noted, *supra* note 2, a claim for a June 2010 injury was developed separately by OWCP.

reported condition. Additionally, appellant provided occupational therapy reports and nurses notes. As occupational therapists and nurses are not physicians as defined by FECA, their opinions regarding the cause of appellant's condition are of no probative medical value.[10]

Appellant has not submitted rationalized medical evidence in which a physician explains the reasons why appellant's work duties have caused or contributed to his claimed conditions. The Board therefore finds that, as appellant did not submit medical evidence to establish that his neck and cervical spine condition was causally related to factors of employment, he has failed to meet his burden of proof.

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

Under the circumstances described above, the Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty.

[10] *See* 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238 (2005); *H.S.*, Docket No. 11-679 (issued October 6, 2011). *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

ORDER

IT IS HEREBY ORDERED THAT the November 17, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 21, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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