

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

H.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Hartford, CT, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 11-656
Issued: November 2, 2011**

Appearances:
Neil P. Ryan, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 19, 2011 appellant filed a timely appeal from a December 1, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a traumatic injury in the performance of duty on April 14, 2009.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 2, 2010 appellant, then a 59-year-old mail handler, filed a traumatic injury claim alleging that he sustained lower back pain on April 14, 2009 due to bending and removing items from a postal container.² He returned to work on June 29, 2009.

OWCP informed appellant in an April 13, 2010 letter that additional evidence was needed to establish his claim. It gave him 30 days to submit a statement detailing the April 14, 2009 employment incident and medical reports offering a physician's reasoned opinion as to how the incident contributed to the alleged injury. Appellant furnished an April 14, 2009 hospital record diagnosing work-related back pain.³

In an April 21, 2010 letter, the employing establishment controverted the claim, asserting that the medical evidence was deficient.

By decision dated May 18, 2010, OWCP denied appellant's claim, finding the evidence insufficient to establish that the April 14, 2009 occurred as alleged.

Appellant requested reconsideration on August 31, 2010 and submitted new evidence. In April 23 and May 8, 2009 medical notes, Dr. Todd W. Maily, a Board-certified orthopedic surgeon, related that appellant experienced persistent back discomfort and right radicular symptoms. In a May 26, 2009 note, he specified that a magnetic resonance imaging (MRI) scan performed on May 19, 2009 exhibited stable, multilevel degenerative disc disease in the lower lumbar spine, facet arthropathy and right foraminal narrowing, particularly at the L5-S1.⁴ Dr. Maily released appellant to modified duty. He acknowledged in an August 31, 2009 report that he "[did] not know much about what happened" on April 14, 2009 and opined that appellant sustained "a gradual spontaneous worsening of his lumbar spine condition" that was not unusual for his age. Dr. Maily later remarked in a February 8, 2010 note that appellant's condition was worsening.

In a June 29, 2010 report, Dr. Thomas J. Stevens, a Board-certified orthopedic surgeon, related that appellant had chronic back pain that resurfaced on April 14, 2009. He also mentioned that appellant's job duties included the unloading of mail. On physical examination, Dr. Stevens observed depressed deep tendon reflexes and minor discomfort during the straight leg raise maneuver. X-rays of the lumbar spine and pelvis showed mild spondylotic L5-S1

² Appellant originally filed a traumatic injury claim related to an August 31, 1995 work incident, which was accepted by OWCP for temporary aggravation of a lumbar strain. On April 27, 2009 he submitted a notice of recurrence alleging that he reinjured his back on April 14, 2009 while removing mail from a postal container. By decision dated September 4, 2009, OWCP denied the claim. At a December 9, 2009 telephonic hearing, OWCP's hearing representative advised appellant to file a (Form CA-1) with respect to the April 14, 2009 event. She thereafter affirmed the denial of the recurrence of disability claim on February 25, 2010. OWCP combined the two claims for administrative purposes.

³ The author's signature was illegible.

⁴ The evidence of record includes a May 19, 2009 MRI scan report from Dr. Stephen I. Zink, a Board-certified diagnostic radiologist.

changes. In an August 10, 2010 report, Dr. Stevens diagnosed chronic lumbar strain causally related to appellant's employment.

On December 1, 2010 OWCP modified the May 18, 2010 decision to reflect that the April 14, 2009 employment incident occurred as alleged, but denied the claim on the grounds that the medical evidence did not sufficiently establish that the accepted incident led to appellant's lower back condition.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his claim by the weight of reliable, probative and substantial evidence,⁵ including that he is an "employee" within the meaning of FECA and that he filed his claim within the applicable time limitation.⁶ The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.⁷

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁸

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's 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, 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.⁹

ANALYSIS

The evidence of record supports that appellant removed mail from a postal container on April 14, 2009. The Board finds, however, that the medical evidence was insufficient to establish that this employment incident caused appellant's lower back injury.

⁵ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

⁶ *R.C.*, 59 ECAB 427 (2008).

⁷ *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ *T.H.*, 59 ECAB 388 (2008).

⁹ *I.J.*, 59 ECAB 408 (2008).

In a June 29, 2010 report, Dr. Stevens indicated that appellant sustained chronic back pain and was symptomatic on April 14, 2009. He also pointed out that appellant's work for the employing establishment involved the unloading of mail. Following a physical examination and review of x-ray results, Dr. Stevens found mild spondylotic L5-S1 changes. In an August 10, 2010 report, he diagnosed chronic lumbar strain related to appellant's employment. While Dr. Stevens supported causation, his opinion did not contain sufficient medical rationale explaining how removing mail from a postal container pathophysiologically caused the lumbar condition.¹⁰ Moreover, he did not base his opinion on a complete factual background as he did not obtain a detailed history of the April 14, 2009 incident.¹¹

Conversely, Dr. Maily opined in an August 31, 2009 report that appellant's "gradual spontaneous worsening" of his lumbar condition, which entailed multilevel degenerative disc disease, facet arthropathy and right foraminal narrowing, was characteristic of aging. He added that he was unaware of the details surrounding the April 14, 2009 incident. As Dr. Maily's opinion did not attribute appellant's injury to his federal employment, it cannot establish his claim.

The remaining evidence lacked probative value as none offered an opinion addressing the cause of appellant's lower back condition.¹² In the absence of well-reasoned medical opinion on the issue of causal relationship, appellant failed to meet his burden.

Appellant contends on appeal that OWCP improperly developed his claim as a new traumatic injury rather than a recurrence of the accepted August 31, 1995 temporary lumbar strain aggravation. A recurrence of disability means "an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."¹³ In the present case, appellant did not allege a spontaneous change in his condition. Instead, he clearly explained in the Form CA-1 that intervening employment activity on April 14, 2009, more than 13 years after the original injury, contributed to lower back pain. Therefore, OWCP properly developed the matter as a claim for a new traumatic injury.

Appellant may submit new evidence or argument as part of a formal 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.

¹⁰ *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994). *See also See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (a medical opinion not fortified by medical rationale is of little probative value).

¹¹ *See M.W.*, 57 ECAB 710 (2006); *James A. Wyrick*, 31 ECAB 1805 (1980) (medical opinions based on an incomplete or inaccurate history are of diminished probative value). The Board notes that Dr. Stevens identified the unloading of mail as one of appellant's job duties in the June 29, 2010 report. However, he did not specify that appellant performed this activity on April 14, 2009.

¹² *See J.F.*, Docket No. 09-1061 (issued November 17, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹³ *J.F.*, 58 ECAB 124 (2006); 20 C.F.R. § 10.5(x).

CONCLUSION

The Board finds that appellant did not establish that he sustained a traumatic injury in the performance of duty on April 14, 2009.

ORDER

IT IS HEREBY ORDERED THAT the December 1, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 2, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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