

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

C.A., Appellant)

and)

**U.S. POSTAL SERVICE, NETWORK)
DISTRIBUTION CENTER, Memphis, TN,)
Employer)**

**Docket No. 11-28
Issued: September 23, 2011**

Appearances:
Aubrey Grant, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 4, 2010 appellant filed a timely appeal from a July 20, 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 an occupational disease in the performance of duty.

FACTUAL HISTORY

On December 8, 2009 appellant, then a 53-year-old mail handler, filed an occupational disease claim alleging that he sustained back pain and muscle spasms due to repetitive heavy

¹ 5 U.S.C. § 8101 *et seq.*

lifting over a period of time in nonmachinable operations. He became aware of his condition on November 30, 2009 and its relationship to his employment on December 7, 2009.² Appellant did not incur anytime loss from work.

OWCP informed appellant in a December 16, 2010 letter that additional evidence was needed to establish his claim. It gave him 30 days to submit a statement describing the employment factors that contributed to his condition and a physician's report offering a reasoned opinion explaining how these factors caused his condition. Appellant submitted an incomplete, unsigned duty status report.

By decision dated February 10, 2010, OWCP denied appellant's claim, finding the evidence insufficient to establish that he experienced the alleged employment factors.

Appellant detailed in a January 13, 2010 statement that he worked for the employing establishment for approximately 29 years. His job duties included lifting and carrying mail weighing up to 70 pounds, pushing and pulling containers weighing several hundred pounds, bending, stooping and twisting for eight hours each day. On November 30, 2009 appellant was performing these tasks when he experienced pain in his back and chest. Thereafter, his symptoms worsened whenever he lifted, pulled, pushed or walked.³

In a December 11, 2009 report, Dr. Charles E. Brown, a Board-certified internist, related that appellant sustained progressive back pain as a result of bending and stooping. He also noted that appellant worked for the employing establishment. On examination, Dr. Brown observed paraspinous muscle tenderness in the thoracolumbosacral region and pain on range of motion (ROM). He diagnosed thoracic and lumbar sprains. Dr. Brown restated his diagnosis in January 4 and 25, 2010 duty status reports and released appellant to modified duty. With respect to the January 4, 2010 report, he did not check "yes" or "no" in response to a form question asking whether appellant's handwritten description of the mechanism of injury, namely "back pain over repeatedly lifting of heavy mail," remained consistent.⁴

Appellant requested a telephonic hearing, which was held on June 2, 2010. He testified that he was presently an equipment operator for the employing establishment and reiterated his former job duties.

On July 20, 2010 OWCP's hearing representative affirmed the February 10, 2010 decision with modification, finding the medical evidence insufficient to establish that repetitive lifting of heavy mail caused or aggravated a back condition.

² Appellant provided emergency department discharge forms dated December 7, 2009.

³ Appellant noted a history of left hand, right elbow, left knee and rotator cuff injuries. These conditions are not at issue before the Board.

⁴ In addition, appellant furnished Dr. Brown's illegible January 4, 2010 progress note, an unsigned medical checklist and an unsigned April 5, 2010 work status form pertaining to a left knee condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 FECA, that the claim was timely filed within the applicable time limitation period, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.⁵ 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.⁶

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁷ To establish fact of injury in an occupational disease claim, an employee must submit: (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.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 supports that appellant routinely lifted and carried mail weighing up to 70 pounds, pushed and pulled containers weighing several hundred pounds, bent, stooped and twisted for approximately 29 years. The medical evidence also presented a firm diagnosis of thoracic and lumbar sprains. The Board finds that the medical evidence was insufficient to establish that the accepted employment factors caused appellant's back condition.

In a December 11, 2009 report, Dr. Brown diagnosed appellant with thoracic and lumbar sprains based on clinical findings and attributed these injuries to bending and stooping. He subsequently restated his diagnosis in January 4 and 25, 2010 duty status reports. Dr. Brown

⁵ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *See S.P.*, 59 ECAB 184, 188 (2007).

⁸ *See R.R.*, Docket No. 08-2010 (issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

⁹ *I.J.*, 59 ECAB 408 (2008); *Woodhams*, *supra* note 6.

failed to explain how appellant's federal employment pathophysiologically caused the back condition.¹⁰ He failed to identify twisting, lifting heavy mail and moving heavy containers as contributing factors.¹¹ Regarding Dr. Brown's January 4, 2010 duty status report, which contained appellant's handwritten description of how he sustained his condition due to his work, the Board has held that a medical issue such as causal relationship can only be resolved through the submission of probative medical opinion evidence and that such evidence must generally be given by a qualified physician.¹² Therefore, this portion of the report lacked probative value.¹³

The remaining evidence lacked probative value as none offered an opinion addressing the cause of appellant's back condition.¹⁴ In the absence of well-reasoned medical opinion on the issue of causal relationship, appellant failed to meet his burden.

Appellant reiterates on appeal that he routinely performed heavy lifting at work for 29 years and thereafter sustained muscle spasms.¹⁵ His work activities are not in dispute. As noted, the medical evidence did not adequately explain how lifting and carrying mail, pushing and pulling containers, bending, stooping and twisting caused or contributed to thoracic and lumbar sprains.

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.

CONCLUSION

The Board finds that appellant did not establish that he sustained an occupational disease in the performance of duty.

¹⁰ *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994). The Board points out that although Dr. Brown noted that appellant worked for the employing establishment, he never specified that appellant's bending and stooping were part of his job activities. See *W.C.*, Docket No. 10-971 (issued January 10, 2011).

¹¹ *John W. Montoya*, 54 ECAB 306, 309 (2003). See also *C.G.*, Docket No. 10-1853 (issued May 4, 2011).

¹² See *Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949).

¹³ See also *P.K.*, Docket No. 08-2551 (issued June 2, 2009) (an award of compensation may not be based on appellant's belief of causal relationship).

¹⁴ See *J.F.*, Docket No. 09-1061 (issued November 17, 2009). The Board notes that Dr. Brown's January 4, 2010 progress note was illegible.

¹⁵ Appellant also requested an oral argument before the Board, which was scheduled for August 18, 2011. He did not appear for the scheduled oral argument.

ORDER

IT IS HEREBY ORDERED THAT the July 20, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 23, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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