United States Department of Labor
Employees' Compensation Appeals Board

P.C., Appellant	)	
and	)	**Docket No. 11-509**
	)	**Issued: September 29, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Brooklyn, NY, Employer	)	

Appearances:
Thomas S. Harkins, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 27, 2010 appellant filed a timely appeal from an October 7, 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 May 15, 2009.

FACTUAL HISTORY

On May 20, 2009 appellant, then a 46-year-old sales and service associate, filed a traumatic injury claim alleging that he sustained severe lower back pain on May 15, 2009 due to twisting, bending, lifting and pulling mail trays from postal containers. He stopped work on

[1] 5 U.S.C. § 8101 *et seq.*

May 15, 2009 and did not return. The employing establishment controverted the claim, asserting that appellant did not promptly report the injury and had a preexisting condition.

OWCP informed appellant in a May 27, 2010 letter that additional evidence was needed to establish his claim. It gave him 30 days to submit a physician's report offering a reasoned opinion explaining how the May 15, 2009 incident caused an injury.

Appellant submitted various medical records. A July 9, 2004 magnetic resonance imaging (MRI) scan report from Dr. Steven S. Ham, a Board-certified diagnostic radiologist, exhibited a central L5-S1 disc herniation. In a June 9, 2009 note, Dr. Rajesh K. Patel, a Board-certified anesthesiologist, related that appellant experienced chronic lower back pain since 2001 and more recently complained of bilateral hip and thigh symptoms. On examination, he observed lumbar paraspinal muscle and left sacroiliac joint tenderness and positive straight left leg raise results. Dr. Patel diagnosed L5-S1 disc bulge.[2] Appellant also provided an illegible June 24, 2009 attending physician's report.

By decision dated July 2, 2009, OWCP denied appellant's claim, finding the medical evidence insufficient to establish that the accepted May 15, 2009 employment incident caused or aggravated an injury.

Appellant furnished additional medical evidence. In a June 24, 2009 report, Dr. Steven L. Goodman, a Board-certified orthopedic surgeon, noted that appellant developed back pain as a result of moving mail and twisting repetitively. He added that appellant had a prior history of intermittent back problems. Dr. Goodman observed tenderness on palpation along the thoracolumbar junction and sacroiliac joints and left hip discomfort during range-of-motion (ROM) evaluation. X-rays of the lumbar region demonstrated degenerative changes to the thoracolumbar junction and mild vertebral wedging. Dr. Goodman assessed lumbar radiculopathy and osteoarthritis. Appellant continued to complain of back pain in July 15 and August 12, 2009 follow-up reports.

In a report dated September 16, 2009, Dr. Goodman commented that a recent MRI scan showed a left L5-S1 lateral extruded disc herniation, which caused mild stenosis in the left lateral recess,[3] and observed mild lateral bending and rotation discomfort. He diagnosed low back pain and lumbar radiculopathy. Dr. Goodman reiterated his findings in a November 4, 2009 follow-up report.

Appellant requested an oral hearing, which was held on November 18, 2009. He testified that he had minor problems with his back before the May 20, 2009 incident and had not yet returned to work. Following the hearing, appellant provided December 1, 2009 medical records from Dr. Leo E. Batash, a physiatrist, who related that he was injured on the job and checked "yes" in response to a form question asking whether this incident was the competent cause. Dr. Batash noted a history of lower back, bilateral thigh and knee pain and a previous left knee

[2] While Dr. Patel duplicated this diagnosis in a subsequent June 12, 2009 note, he assessed lumbar disc herniation in a June 11, 2009 letter to OWCP requesting authorization of medical treatment.

[3] The record indicates that an MRI scan was performed on September 9, 2009.

arthroscopy. On examination, he observed an antalgic gait, difficulties tip toeing, heel walking and squatting, left knee tenderness, crepitation and hematoma and thoracolumbar pain and tenderness. Dr. Batash diagnosed lumbosacral sprain, chronic pain and left hip contusion.

On December 31, 2009 OWCP's hearing representative affirmed the July 2, 2009 decision.

Appellant's counsel filed a brief in support of reconsideration on August 9, 2010. He attached as an exhibit a June 7, 2010 report from Dr. Batash specifying that appellant's lower back, left hip and bilateral knee symptoms stemmed from moving trays of mail on May 15, 2009, which entailed lifting, bending and twisting. On examination, Dr. Batash observed lumbosacral spinal and paraspinal muscle pain, spasms and tenderness as well as limited ROM secondary to pain. Appellant also exhibited an antalgic gait and difficulties tip toeing, heel walking and squatting while palpation revealed pain in the left hip joint and socket extending into the greater trochanteric muscle area and mediolateral tenderness, crepitation and limited ROM of the knees. Dr. Batash pointed out that September 9 and December 3, 2009 MRI scans showed an L5-S1 disc herniation and a torn left medial meniscus, respectively.[4] Based on these findings, he diagnosed traumatic lumbosacral sprain and radiculitis with an L5-S1 disc herniation, left hip contusion and greater trochanteric bursitis, left knee internal derangement with a medial meniscal tear and right knee sprain and strain. Dr. Batash opined that appellant's injuries were causally related to the May 15, 2009 incident and were susceptible to premature degenerative changes. Concerning the back condition, he detailed:

> "[T]he sudden forceful violent impact caused by the accident exerted tremendous pressure upon the annulus fibrosis, nucleus pulposus and facet joints of the lumbosacral spine, with herniation of the disc material which encroaches upon the spinal nerve roots, causing excruciating pain and discomfort to the patient on the sensitive nerves whose vital functions are impaired…. The loss of full range of motion of the lumbosacral spine will give rise to calcification in the form of arthritic deposits which tend to further limit motion. The connective tissue has been stretched and torn causing it to lose its tonicity and become lax, giving rise to spinal instability, allowing misalignment of the vertebral bodies and posterior joints with the result of compression of the posterior nerve roots at the involved spinal segments."

With respect to appellant's left knee, Dr. Batash explained that appellant had "rotational insult … with subsequent devascularization and accumulation of edema fluid with deposition of dense collagen and reticulin fibers compressing the capillary circulation and resulting in healing by scar tissue which adds more limitation to the knee's [ROM]." He concluded that[,] although appellant's left hip and right knee contusions and abrasions had resolved, these members still experienced intermittent pain.[5]

[4] The record contains a December 3, 2009 MRI scan report from Dr. Howard J. Gelber, a Board-certified diagnostic radiologist.

[5] Appellant also submitted Dr. Batash's medical records from December 1, 2009 to August 17, 2010. These documents contained findings that were incorporated into in the June 7, 2010 report.

On October 7, 2010 OWCP denied modification of the December 31, 2009 decision.[6]

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,[7] including that he is an "employee" within the meaning of FECA and that he filed his claim within the applicable time limitation.[8] 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.[9]

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.[10]

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.[11]

ANALYSIS

The Board finds that the case is not in posture for decision.

An employee who claims benefits under FECA has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or work factors. As part of this burden, the employee must present rationalized medical opinion evidence based on a complete and accurate factual and medical background. However, it is well established that proceedings

[6] The Board notes that appellant submitted new evidence after issuance of this decision. The Board lacks jurisdiction to review such evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

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

[8] *R.C.*, 59 ECAB 427 (2008).

[9] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[10] *T.H.*, 59 ECAB 388 (2008).

[11] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While an employee has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence and has the obligation to see that justice is done.[12]

The evidence supports that appellant lifted and pulled mail trays from postal containers on May 15, 2009 and that such activity involved twisting and bending. OWCP denied his traumatic injury claim, finding the medical evidence insufficient to establish that the accepted employment incident contributed to a back, hip or knee condition.[13]

Reports from Dr. Goodman for the period June 24 to November 4, 2009 diagnosed lumbar radiculopathy and osteoarthritis and attributed appellant's condition due to moving mail and twisting repetitively. However, Dr. Goodman's opinion did not sufficiently establish causal relationship because he failed to explain how lifting and pulling mail trays from postal containers pathophysiologically caused or aggravated appellant's back condition.[14] The need for medical rationale is particularly important in this case as Dr. Ham's July 9, 2004 MRI scan report indicated a preexisting injury. In addition, Dr. Patel's June 2009 notes diagnosing L5-S1 disc bulge and herniation were of limited probative value as they did not address whether appellant's federal employment caused or aggravated his injuries.[15]

Dr. Batash's initial December 1, 2009 medical records included an affirmative checkmark response to a form question asking whether a workplace incident was the competent cause of his lower back and left hip injuries. A checkmark response, without further explanation or fortifying rationale, is of diminished probative value on the issue of causal relationship.[16] In a subsequent June 7, 2010 report, after examining appellant and reviewing previous records, Dr. Batash clarified that appellant's diagnosed traumatic lumbosacral sprain and radiculitis with an L5-S1 disc herniation, left hip contusion and greater trochanteric bursitis, left knee internal derangement with a medial meniscal tear and right knee sprain and strain were due to the lifting, bending and twisting motions involved with moving mail trays on May 15, 2009. Although he described appellant's ongoing left hip and bilateral knee pathologies, he did not specify how they were caused by the employment incident. Dr. Batash detailed that the "sudden forceful impact caused by the accident exerted tremendous pressure upon the annulus fibrosis, nucleus pulposus and facet joints of the lumbosacral spine," leading to disc herniation, nerve root compression, restricted ROM, prospective calcification and vertebral body and posterior joint misalignment, *inter alia*. This explanation, however, conflicts with appellant's account of the May 15, 2009

[12] *William J. Cantrell*, 34 ECAB 1233 (1983); *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

[13] The Board notes that appellant initially filed for a back condition only. However, the evidence of record indicates that he amplified and expanded his claim to include allegations of hip and knee injuries related to the May 15, 2009 work event. *See Wilfred M. Hamilton*, 41 ECAB 524 (1990).

[14] *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994). The Board also notes that Dr. Goodman did not identify the date of injury. *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).

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

[16] *Alberta S. Williamson*, 47 ECAB 569 (1996). *See also George Randolph Taylor*, 6 ECAB 986, 988 (1954).

incident, which only depicted twisting, bending, lifting and pulling mail trays. These activities did not implicate a collision or anything else suggestive of a "sudden forceful impact."[17]

The Board therefore finds that the medical evidence was not sufficiently rationalized to meet appellant's burden of proof as none of the reports offered a sound pathophysiological explanation of causal relationship.[18] Nonetheless, Dr. Batash's June 7, 2010 report raised an uncontroverted inference of causal relationship with respect to appellant's back injury and the accepted May 15, 2009 employment incident, which is sufficient to require further medical development by OWCP.[19] On remand OWCP should prepare a statement of accepted facts and develop the medical evidence by referring appellant to an appropriate Board-certified specialist for a rationalized medical opinion regarding whether appellant's job duties caused or aggravated his low back condition. After conducting such further development as it may find necessary, it shall issue an appropriate merit decision.

CONCLUSION

The Board finds that the case is not in posture for decision and must be remanded for further development of the record.

[17] *See Robert P. Bourgeois*, 45 ECAB 745 (1994); *Kenneth J. Deerman*, 34 ECAB 641 (1983) (medical evidence required to prove causal relation is that necessary to convince the adjudicator that the conclusion drawn is rational, sound and logical).

[18] The Board points out that the illegible June 24, 2009 attending physician's report lacked probative value because it cannot be determined whether the report was signed by a qualified physician as defined in section 8101(2) of FECA. *R.M.*, 59 ECAB 690, 693 (2008).

[19] *See John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

ORDER

IT IS HEREBY ORDERED THAT the October 7, 2010 decision of the Office of Workers' Compensation Programs is affirmed in part. The case is remanded for further action consistent with this decision of the Board.

Issued: September 29, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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