

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

A.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Corona, NY, Employer**

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**Docket No. 11-1802
Issued: April 10, 2012**

Appearances:

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 1, 2011 appellant, through his attorney, filed a timely appeal of a June 27, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) 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 his lumbar condition was causally related to his employment activities.

FACTUAL HISTORY

On August 26, 2010 appellant, then a 47-year-old modified sales service associate, filed a recurrence of disability claim alleging that on August 4, 2010 he stopped work due to a recurrence of back pain, right hip and thigh pain attributable to a March 10, 2009 original injury.

¹ 5 U.S.C. § 8101 *et seq.*

He stated that, upon returning to modified work on June 25, 2010, his pain became progressively worse. Appellant could not tolerate prolonged standing, sitting, bending or lifting and repetitively working has aggravated his pain symptoms. He stopped work the next day and has not returned. The recurrence was filed under claim number xxxxxx702.²

With his claim, appellant submitted information about social security benefits dated August 15, 2010; a July 2, 2010 magnetic resonance imaging (MRI) scan report and medical reports dated July 27 and August 9, 2010 and an August 16, 2010 disability note from Dr. Thomas J. Dowling, a Board-certified orthopedic surgeon, who diagnosed degenerative disc disease -- lumbar, disc displacement without myelopathy -- lumbar and right-sided sciatica. In the disability note, Dr. Dowling indicated that appellant could not work due to disc displacement without myelopathy -- lumbar.

In a September 30, 2010 letter, OWCP advised appellant that his claim would be developed as an occupational disease claim as he stated that his condition worsened as a result of work factors upon his return to work. It requested additional factual and medical information regarding his claim. OWCP noted that the medical evidence received in support of the current claim supported that appellant's current condition, degenerative disc disease, was a preexisting condition.

In response, appellant provided an October 26, 2010 statement, several claims for compensation, a description of his position from the employing establishment and additional medical evidence from Dr. Dowling.

On October 14, 2010 Dr. Dowling stated that appellant was totally disabled due to sciatica and lumbar disc displacement without myelopathy. In an October 12, 2010 report, he diagnosed disc displacement without myelopathy -- lumbar and lumbar degenerative disc disease and opined that appellant was totally disabled. Dr. Dowling noted that appellant was on social security disability and he returned to work for five weeks. Appellant had increasing pain with work with his last day at work August 4, 2010. Dr. Dowling stated that degenerative changes were age-related changes and that all men over age 50 years have this finding. He stated that appellant injured his back on March 10, 2009 and opined that there was a causal link between the accident date at work and his current symptomatology. Dr. Dowling further stated that the degenerative changes were obviously preexisting as appellant was in his 50s. In an October 25, 2010 report, he diagnosed disc displacement without myelopathy -- lumbar and lumbar degenerative disc disease and opined that appellant was totally disabled. Dr. Dowling noted that appellant denied any prior history of back problems prior to his two work injuries. He noted on March 10, 2009 that appellant had equipment fall on him and he eventually returned to work with progressive symptoms with his work requirements of lifting, bending, etc., which led him to go off his job and be listed as his second injury, August 4, 2010. Dr. Dowling noted objective findings including imaging studies revealed degenerative changes consistent with age and a herniated nucleus pulposus at L5-S1 on the right side. He noted that appellant was given work injury dates, March 10, 2009 and August 4, 2010. Dr. Dowling opined that the second injury was a reinjury with the same diagnosis. He noted that appellant was a smoker and indicated that

² Under file number xxxxxx702, appellant has an accepted condition for a lumbosacral radiculitis. That claim is not presently before the Board.

smokers have four times higher rate of disc degeneration and two times higher rate of disc herniation compared to nonsmokers.

By decision dated November 29, 2010, OWCP denied appellant's claim on the grounds that he failed to establish that his diagnosed medical conditions of lumbar degenerative disc disease and lumbar disc displacement without myelopathy were causally related to the accepted work events.

Appellant requested a telephonic hearing before OWCP's Branch of Hearing and Review, which was held on April 12, 2011. He testified that he returned to work in a modified position on June 25, 2010 and that he worked this position until August 4, 2010. Appellant stated that he had constant pain from the time he returned to work and that he saw his physician in August 2010 because he did not believe that he could continue to work.

A November 22, 2010 letter from the Office of Personnel Management (OPM) approving appellant's application for disability retirement was received. In addition, appellant submitted letters regarding his social security benefits; evidence predating the August 10, 2010 work injury and August 15, 2005 medical reports from Dr. Dowling.

On September 20, 2010 appellant's supervisor completed a statement in support of appellant's application for OPM benefits. He noted that appellant's "restrictions are such that he is unable to perform productive work."

In a November 29, 2010 form report, Dr. Dowling indicated that appellant was totally and permanently disabled due to sciatica, lumbar disc displacement without myelopathy and lumbar degenerative disc disease. Medical reports from him dated November 24 and December 7, 2010 and April 25, 2011 were also received. In his December 7, 2010 report, Dr. Dowling stated that appellant had degenerative changes consistent with age and a right-sided L5-S1 herniated nucleus pulposus causally related to his injury of March 10, 2009 and reagravated by an August 4, 2010 injury.

In an April 25, 2011 report, Dr. Dowling noted that appellant had two injuries at work. Appellant was first seen September 2009, after his March 2009 injury. He returned to work at the window by the end of June 2010 and was still in pain. Appellant was reinjured on August 4, 2010 and seen on September 9, 2010, when light duty was recommended. He stopped working on August 10, 2010 and went on social security disability. Dr. Dowling stated that appellant's underlying degenerative changes were due to age-related findings as are seen in all males after age 50 years. He also stated that appellant has mechanical back pain of a discogenic source. "[Appellant] did not give a specific injury that second date of injury on August 4, 2010, but now he tells me that he lifted a box that day and this caused increasing pain." Dr. Dowling opined that 10 percent of appellant's symptoms were due to the August 4, 2010 injury and 90 percent were due to the March 10, 2009 injury.

By decision dated June 27, 2011, an OWCP hearing representative affirmed the prior decision.

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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.³

ANALYSIS

While appellant filed a claim for a recurrence of disability, the Board finds that OWCP properly developed his claim as a new occupational disease. In his claim form, he implicated that his increased back pain was related to the modified limited duties he had been performing since a June 25, 2010 return to work which resulted in his current condition. As appellant attributed his condition to his modified work duties commencing June 25, 2010, his current claim was properly adjudicated as a new occupational disease claim.

OWCP does not dispute that appellant performed modified limited duties from June 25, 2010 until his work stoppage on August 4, 2010. The issue is whether his modified duties caused or aggravated his preexisting back conditions.

Appellant submitted reports from Dr. Dowling, who diagnosed lumbar degenerative disc disease and lumbar disc displacement without myelopathy. The medical reports prior to the August 10, 2010 work stoppage are insufficient to establish appellant's claim for an August 10, 2010 injury. In the October 12, 2010 report, Dr. Dowling noted that appellant was on social security disability and that he returned to work for five weeks with increasing pain and his last day at work was August 4, 2010. He opined that there was a causal link between the March 10, 2009 work injury and his current symptomatology. Dr. Dowling explained that the degenerative changes were obviously preexisting and an age-related change as appellant was in his 50s, but he did not diagnose any conditions that were caused or aggravated by work factors beginning June 25, 2010. In his October 25, 2010 report, he described appellant's March 10, 2009 work injury and noted that he eventually returned to work with work restrictions of lifting, bending, etc., which ultimately led him to go off his job. Dr. Dowling noted degenerative changes consistent with appellant's age and stated that he had a back injury at work. He opined that the second injury of August 4, 2010 was a reinjury of the March 10, 2009 work injury. Dr. Dowling also noted that appellant was a smoker and that smokers had a much higher rate of disc degeneration and disc herniation compared to nonsmokers. His opinion lacks adequate medical

³ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

rationale. Dr. Dowling did not explain how any of the specific modified duties beginning June 25, 2010 caused or aggravated the diagnosed conditions and offered no description of what he believed to be the mechanism of injury, how any specific physical demands affected appellant's spine or the conditions diagnosed. Causal relationship requires a sound medical explanation. Dr. Dowling did not explain how any of the abnormalities seen on appellant's imaging studies were caused or aggravated by his modified duties. Instead, he appears to state that appellant's diagnosed conditions were age and smoking related.

Dr. Dowling's April 25, 2011 report is also of diminished probative value as he does not relate an accurate history of the claimed injury or provide adequate medical rationale for his opinion. He stated that appellant was reinjured on August 4, 2010 and noted that appellant did not tell him about the August 4, 2010 box lifting incident until approximately April 7, 2011. Appellant indicated that he had increased pain after returning to modified limited duties on June 25, 2010. Dr. Dowling thus relied on an inaccurate history. Medical conclusions based on inaccurate or incomplete histories are of little probative value.⁴ Furthermore, Dr. Dowling did not explain how any of the specific modified duties caused or aggravated appellant's back conditions, which he stated were due to his age and that his mechanical back pain was of a discogenic source. Medical conclusions unsupported by rationale are also of little probative value.⁵

The other medical evidence of record, such as the medical form reports and objective testing, are insufficient to establish appellant's claim as they fail to provide a well-reasoned medical explanation of how his modified duties caused or contributed to physical injury to his spine.

The Board thus finds that appellant has not met his burden of proof to establish causal relationship.

On appeal, appellant's counsel contended that OWCP's decision is contrary to fact and law. For reasons stated above, the Board finds that the weight of the medical evidence does not establish that appellant's current back conditions are causally related to his employment activities. 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

The Board finds that appellant has not submitted the necessary medical opinion evidence to establish a causal relationship between his diagnosed back conditions and his implicated employment duties and has, therefore, failed to meet his burden of proof in establishing an occupational disease.

⁴ *James A. Wyrick*, 31 ECAB 1805 (1980) (the physician's report was entitled to little probative value because the history was both inaccurate and incomplete). *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

⁵ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

ORDER

IT IS HEREBY ORDERED THAT the June 27, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 10, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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