

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

V.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Kearny, NJ, Employer**

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**Docket No. 11-1883
Issued: April 5, 2012**

Appearances:
James D. Muirhead, Esq., 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 August 15, 2011 appellant, through his attorney, filed a timely appeal of a June 8, 2011 Office of Workers' Compensation Programs' (OWCP) merit decision denying an injury. 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 has met his burden of proof to establish that his cervical conditions are causally related to his employment activities.

FACTUAL HISTORY

On April 20, 2010 appellant, then a 47-year-old mail handler, filed a notice of recurrence of disability claim under claim number xxxxxx089 alleging that on February 1, 2010 he sustained a recurrence of disability of his August 13, 1986 injury. He stated that while moving

¹ 5 U.S.C. § 8101 *et seq.*

trays of mail from tray cart to the top of the postcon he started to feel tightness and then pain in the right side of his neck and shoulder with pain shooting down into his right arm. Appellant indicated that the more trays of mail he moved, the more severe the pain got. He stopped work on February 1, 2010. Appellant eventually returned to full-duty work. No evidence was submitted in support of appellant's claim.

In a May 3, 2010 letter, OWCP informed appellant that as he had identified new work factors, moving trays of mail, he was describing a new traumatic injury rather than a recurrence of disability. Accordingly, the claim for recurrence of disability was developed as a new traumatic injury claim and assigned claim number xxxxxx827. Also in a May 3, 2010 letter, OWCP advised appellant of the deficiencies in his claim and asked that he provide additional factual and medical evidence, which included a rationalized medical opinion on whether the diagnosed condition was caused or related to the work incident, to support his claim.

In response, OWCP received a May 6, 2010 statement, diagnostic tests, February 1, 2010 after care instructions from Saint Barnabas Medical Center, return to work and prescription slips, and medical reports and medical notes. Return to work slips dated February 8 and 24 and March 3 and May 12, 2010 contained diagnosis of arthritis and cervical sprain and strain. In a February 5, 2010 report, Dr. Nizar Souayah, a Board-certified psychiatrist and neurologist, noted the history of the 1986 work injury and that since that time appellant has experienced right shoulder and right neck pain. An assessment of C-spine disc herniation, extended degenerative joint disease, radiculopathy without myelopathy and chronic lumbosacral spine disc degenerative disease with radiculopathy or peripheral length-dependent sensory neuropathy was provided.

Reports from Dr. Robert A. Marini, a Board-certified physiatrist, were received. In a March 23, 2010 report, Dr. Marini noted that appellant had progressive cervical pain since a 1986 injury while lifting a heavy box. An impression of cervical neck pain and cervical degenerative joint disease was provided. In a May 18, 2010 report, Dr. Marini indicated that appellant initially presented on January 23, 2010. Appellant related that while moving trays of mail from a cart he experienced acute discomfort to the cervical spine referred to the right shoulder and right upper extremity. Dr. Marini stated that during the interim appellant underwent a series of cervical facet injections with some response. He noted evaluation findings of May 12, 2010 and recommended bilateral cervical radiofrequency to the C4-5 and C5-6. Dr. Marini opined that appellant was disabled due to acute cervical derangement. He further opined that the injury sustained to the cervical spine appeared to be causally related to the February 1, 2010 work incident.

By decision dated June 7, 2010, OWCP denied appellant's claim on the grounds that the medical evidence was insufficient to establish that the identified medical conditions were causally related to the accepted work event.

On June 11, 2010 appellant requested reconsideration. Evidence submitted included duplicative evidence already of record plus new evidence that included a June 8, 2010 statement from appellant, a picture of the body with a pain scale with different areas highlighted to show pain, a February 17, 2010 diagnostic test and a June 9, 2010 excuse slip from Dr. Marini diagnosing cervical radiculopathy.

In a June 9, 2010 report, Dr. Marini diagnosed cervical root lesion, not elsewhere classified; degeneration cervical intervertebral disc and cervicgia.

By decision dated July 6, 2010, OWCP denied modification of the June 7, 2010 decision.

On August 4, 2010 appellant requested reconsideration. Evidence previously of record was provided along with new evidence that included letters from appellant, an August 25, 2010 medical report from Charles Kutzer, a podiatrist, discussing a prior foot injury, prescription slips from Dr. Marini dated June 30, 2010 and a June 30, 2010 excuse slip from Dr. Marini diagnosing cervical radiculitis/neuropathy.

In progress reports dated June 30 and July 21, 2010, Dr. Marini diagnosed the conditions of cervical root lesion, not elsewhere classified; degeneration of cervical intervertebral disc and cervicgia. No opinion regarding the relationship of the diagnosed conditions to the February 1, 2010 injury was provided. In a July 28, 2010 report, Dr. Marini noted that appellant stated that he injured his cervical spine from lifting trays of mail from a lower bin to waist high on February 1, 2010. He diagnosed cervical derangement and cervical radiculopathy secondary to C4-5 herniated disc. Dr. Marini opined that appellant had an injury to the cervical spine as a result of the February 1, 2010 incident while he was working.

By decision dated September 28, 2010, OWCP denied modification of the July 6, 2010 decision.

On November 4, 2010 appellant requested reconsideration. He submitted copies of evidence already of record along with statements, requests for authorization, prescriptions for therapy and physical therapy notes.

In progress reports dated December 7, 2010 and January 4 and February 9, 2011, Dr. Ismail Alhamrawy, a Board-certified physiatrist, noted that appellant was working at his job on February 1, 2010 where he lifted and twisted while carrying a tray weighing about 30 pounds and he experienced severe neck pain and radicular pain at the right side of the arm. He advised that neck pain was triggered by lifting the tray at work and resulted in cascading effects. Dr. Alhamrawy noted that appellant has been seeing Dr. Marini for the same reason since March 2010. He noted that appellant started his job about two months earlier on full duty and has done well with physical therapy. An assessment of cervical root lesion, not elsewhere classified, and degeneration of cervical intervertebral disc was provided.

By decision dated June 8, 2011, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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 filed within applicable time limitation;

² 5 U.S.C. §§ 8101-8193.

that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.⁴

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.⁵ In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged.⁶

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁷ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁸ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.⁹

ANALYSIS

There is no dispute that appellant was moving trays of mail from a tray cart at work on February 1, 2010. However, the Board finds that the medical evidence of record is insufficient to establish that his cervical condition was caused or aggravated by the February 1, 2010 employment incident.

Numerous reports were received from Dr. Marini. In his May 18, 2010 report, Dr. Marini noted the February 1, 2010 work incident and opined that appellant's acute cervical derangement appeared to be causally related to the February 1, 2010 work incident. In his July 28, 2010 report, Dr. Marini diagnosed cervical derangement, cervical radiculopathy secondary to herniated disc at C4-5 and opined that appellant sustained an injury to his cervical spine on

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 3.

⁵ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁶ *Linda S. Jackson*, 49 ECAB 486 (1998).

⁷ *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined).

⁸ *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

⁹ *Charles E. Evans*, 48 ECAB 692 (1997).

February 1, 2010. These reports are of diminished probative value because Dr. Marini failed to provide medical rationale explaining how the accepted work incident of moving trays of mail caused or aggravated the above-stated diagnosed conditions.¹⁰ Dr. Marini's March 23, 2010 report attributed appellant's condition to the 1986 injury that is not before the Board on the present appeal. Other reports and records from Dr. Marini are insufficient as they also did not provide a medical opinion addressing the causal relationship between appellant's neck condition and the accepted February 1, 2010 employment incident. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.¹¹ For the stated reasons, the Board finds that Dr. Marini's reports are insufficient to establish appellant's claim.

Progress reports from Dr. Alhamrawy are also insufficient to establish the claim. Dr. Alhamrawy noted the history of the February 1, 2010 incident and opined that appellant's neck pain was triggered by lifting the tray at work and resulted in cascading effects. But he did not explain why lifting the tray at work caused or aggravated diagnosed conditions nor did he specifically explain how this caused cascading effects. Dr. Alhamrawy failed to provide a medical opinion addressing whether the diagnosed cervical conditions were causally related to the February 1, 2010 employment incident. Thus, his reports are insufficient to establish the claim as he did not provide clear medical reasoning that supported his conclusion on causal relationship.

Dr. Souayah diagnosed C-spine disc herniation, extended degenerative joint disease, signs of radiculopathy without myelopathy and chronic lumbosacral spine disc degenerative disease with radiculopathy or peripheral length-dependent sensory neuropathy. He failed to note the February 1, 2010 work incident or provide a medical opinion addressing the causal relationship between appellant's diagnosed conditions and the accepted incident. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.¹²

The August 25, 2010 report from Charles Kutzer, a podiatrist, is insufficient to establish the claim as it does not address appellant's current claim regarding his cervical conditions. Other medical evidence, such as diagnostic test reports, are also insufficient as they do not specifically address how the February 1, 2010 work incident caused or aggravated a diagnosed condition. Physical therapy records are also insufficient as they do not constitute competent medical evidence since a physical therapist is not a physician as defined under FECA.¹³

¹⁰ See *Gloria J. McPherson*, 51 ECAB 441 (2000) (the opinion of the physician must be based on 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).

¹¹ *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

¹² See *id.*

¹³ See 5 U.S.C. § 8101(2); *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

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

On appeal, appellant's attorney contended that Dr. Marini's July 28, 2010 report should have been sufficient to establish causal relationship. As stated, this evidence does not provide a rationalized medical opinion explaining the causal relationship between appellant's diagnosed cervical conditions and the accepted February 1, 2010 employment incident.

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 failed to establish that he sustained a cervical condition in the performance of duty on February 1, 2010 as alleged.

ORDER

IT IS HEREBY ORDERED THAT the June 8, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 5, 2012
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