

accident.² Appellant first realized his current condition was related to his employment duties on May 30, 2010.

On July 15, 2010 OWCP advised appellant that the evidence submitted was insufficient to establish his claim and requested additional evidence. It requested detailed information regarding the activities he believed contributed to his condition and a comprehensive medical report with a diagnosis, results of examinations and tests and a physician's opinion with medical reasons on the cause of his condition.

In support of his claim for occupational disease, appellant submitted a copy of a February 29, 2004 traumatic injury claim alleging that on February 28, 2004 he sustained a lumbar strain and experienced low back pain when he was working on the tank deck and slipped off the ladder after the ship took a roll. He also submitted other documents pertinent to this accepted 2004 traumatic injury.

In February 29 and March 1, 2004 follow-up examinations, a medical services officer noted a February 2004 incident at work and stated that appellant felt much better. Examination revealed full range of motion at his waist with no pain and normal gait. No numbness, weakness, edema, erythema or ecchymosis was noted. Appellant was authorized to return to limited duty with no heavy lifting.

Appellant submitted a May 10, 2004 claim for recurrence of disability due to a back injury on and off since February 28, 2004. He was unable to perform his duties because when he tried to lift something heavy his back would start to hurt. Appellant related that on April 30, 2004 he woke up and could barely move. His supervisor noted that after the original injury he was assigned painting and advised to not do hard work.

In a January 4, 2005 injury report, it was noted that appellant hurt his back while lifting self-contained breathing apparatus (SCBA) bottles in the mid-ship truck tunnel. Appellant also submitted a January 4, 2005 traumatic injury claim alleging that on that day he sustained a trapezius muscle strain and experienced back pain as a result of lifting SCBA bottles. OWCP also accepted this claim for traumatic injury.

In May 1 and 30 and June 2, 2006 medical forms, a physician with an illegible signature examined appellant for upper and lower back pain and noted a history of tenderness of his thoracic and lumbar spine. X-rays were negative for fracture and dislocation. Appellant was diagnosed with thoracic lumbar sprain and was authorized to remain off work until May 31, 2006.

In a May 30, 2007 employee health record, a medical services officer noted that appellant suffered from a chronic low back pain condition.

In a June 17, 2010 statement, appellant explained that he was chipping rust on the tank deck of the USNS Kanawha in February 2004 when the ship took a roll causing the ladder he

² The record indicates that appellant has accepted claims for injuries sustained on February 28, 2004, January 4, 2005 and March 24, 2007.

was on to twist and fall from underneath him. He was left hanging from overhead on his safety harness and felt a sharp pain in his back. In April 2010, appellant woke up around 6:00 and could barely move due to pain in his lower back. He explained that his back would hurt on and off over the following months. Around May 2010, appellant's pain became excruciating and would shoot down his left leg and into his foot. He was examined by an orthopedic specialist and diagnosed with a deteriorating bulging disc.

In a June 1, 2010 form report, Dr. Lawrence Donato, an osteopathic physician specializing in sports medicine, stated a diagnosis of L5-S1 disc bulge v/s a questionable ruptured disc, prescribed prednisone, naprosyn, physical therapy and recommended that appellant not work for the next two weeks.

In a June 28, 2010 report, a physician's assistant stated that on May 30, 2010 appellant fell while painting and jarred his back by a safety harness. He diagnosed lumbar disc rupture and checked a box marked "yes" that appellant's condition was caused or aggravated by an employment activity.

In an undated statement received on August 16, 2010, appellant expressed his belief that the injury to his back was a direct result of the February 2004 injury. Over the past six years, his job required heavy-duty work such as responding to fire drills, wearing self-contained breathing apparatuses, working on hoses for their stations for underway replenishments, fixing and maintaining the trolleys and transferring heads on station rigs which took a toll on his back. Appellant took leave and rested for one to two months at a time to cope with his back pain and found that he needed longer and longer recuperation time. He related that he was examined by several physicians over the years but no one accurately diagnosed him with a ruptured disc until he was seen by an orthopedic specialist this year. Appellant also provided a description of his employment duties as a boatswain mate.

In a decision dated September 27, 2010, OWCP denied appellant's occupational disease claim finding insufficient medical evidence to establish that he sustained a back condition as a result of his work duties.

On October 26, 2010 appellant submitted a request for an oral hearing, which was held on February 2, 2011. He stated that he received medical care for his back injury from the medical services officer at his employing establishment or outside medical care for several years. The medical providers informed appellant that nothing was broken and that he probably just pulled a muscle. Appellant stated that he last received medical care for his back on the ship because he was on a deployment. He described a specific November 23, 2009 incident for which a Form CA-1 was filed, when he was going down to the helo deck for mustering the clearway and the ladder well was so damp that he slipped down it. Appellant believed that this incident reagravated the lower discs inside his back. The hearing representative reviewed his medical records and informed him that reports by a physician's assistant were not sufficient to establish his claim. Appellant also pointed out that the medical evidence attributed his condition to a 2004 injury, but he claims his injury resulted from the duties he performed for the past six years. He explained that he returned to regular duties after the 2004 injury without knowledge that his employment duties contributed to his worsening condition.

Following the hearing, appellant submitted an October 26, 2010 report by Dr. Timothy E. Budorick, a Board-certified orthopedic surgeon, who stated that appellant was recently treated in his practice by a physician's assistant and related a history that he suffered from back and leg symptoms since a 2004 work injury. Dr. Budorick believed that appellant's long-term symptoms had evolved and worsened to the point that recent surgery was required. He opined that this was related to appellant's prior work experience based on this history obtained.

In an October 26, 2010 work status report, a physician with an illegible signature noted a diagnosis of lumbar disc herniation.

In an April 12, 2011 report, Dr. Eric Goldberg, a Board-certified neurologist, stated that appellant sustained a work-related injury due to the physical nature of his job and experienced significant left low back pain, which prevented him from bending, pushing, pulling and carrying five pounds occasionally or frequently. Appellant underwent surgery in October 2010. Dr. Goldberg reported that appellant's condition was permanent and longstanding in nature and opined that he was unable to return to work any time soon due to his worsening symptoms. He noted that a magnetic resonance imaging scan report revealed granulation tissue pushing on the L5-S1 nerve root.

By decision dated April 26, 2011, an OWCP hearing representative affirmed the September 27, 2010 decision, finding insufficient medical evidence to establish that appellant sustained a back condition causally related to his employment duties.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his claim by the weight of the reliable, probative and substantial evidence³ including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.⁴ In an occupational disease claim, appellant's burden requires submission of the following: (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.⁵

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁶ Rationalized medical

³ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁴ *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *D.U.*, Docket No. 10-144 (issued July 27, 2010); *R.H.*, 59 ECAB 382 (2008) *D.I.*, 59 ECAB 158 (2007); *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁶ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *W.D.*, Docket No. 09-658 (issued October 22, 2009).

opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the specified employment factors or incident.⁷ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.⁸

The mere fact that work activities may produce symptoms revelatory of an underlying condition does not raise an inference of an employment relation. Such a relationship must be shown by rationalized medical evidence of a causal relation based upon a specific and accurate history of employment conditions which are alleged to have caused or exacerbated a disabling condition.⁹

ANALYSIS

The record reflects that OWCP has accepted that appellant sustained previous back injuries dating back to February 2004 in the performance of his federal employment. Appellant has submitted evidence that he received medical treatment for his back from 2004 to 2006 and again in 2009. He further alleged that he has suffered from a continuing back condition since the 2004 incident that was aggravated by his job duties as a boatswain mate. OWCP accepted that appellant's duties as a boatswain mate included heavy-duty work, responding to fire drills, wearing SCBAs, working on hoses, fixing and maintaining trolleys and transferring heads on station rigs but denied his claim finding insufficient medical evidence to establish that he sustained a back condition causally related those duties. The Board finds that appellant has failed to provide sufficient medical evidence to establish that he sustained an occupational back injury due to factors of his federal employment.

Dr. Donato diagnosed L5-S1 disc bulge or possible ruptured disc on June 1, 2010. He did not offer any opinion regarding the cause of appellant's current back condition. Dr. Donato's report is therefore of no probative value in establishing causal relationship.

In an October 26, 2010 report, Dr. Budorick noted that appellant was recently examined in his practice by a physician's assistant. He related that appellant suffered from back and leg symptoms since a 2004 work injury and stated that appellant's long-term symptoms had worsened to the point that required surgery. Dr. Budorick opined that this was all related to appellant's prior work experience from the best that he could determine in reviewing his situation and documentation. He did not, however, provide a firm diagnosis of appellant's back condition. Furthermore, Dr. Budorick related his back symptoms to a 2004 traumatic incident, not appellant's work duties, since his accepted traumatic injury. Although he refers to

⁷ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *D.S.*, Docket No. 09-860 (issued November 2, 2009); *B.B.*, 59 ECAB 234 (2007); *Solomon Polen*, 51 ECAB 341 (2000).

⁹ *Patricia J. Bolleter*, 40 ECAB 373 (1988).

appellant's prior work experience, he does not address specific work factors nor fully explain how appellant's work activities caused or aggravated any back condition. The Board finds that Dr. Budorick did not provide a fully-rationalized opinion that explained how appellant's particular work factors contributed to or aggravated his condition.¹⁰ An accurate description and explanation of the specific work factors that caused or aggravated appellant's back symptoms is especially warranted in this case where the record shows that he sustained several traumatic injuries from 2004 to 2009.

Similarly, Dr. Goldberg stated in his April 12, 2011 report that appellant sustained a work-related injury due to the physical nature of his job. He did not, however, address any specific work factors or explain how those factors were causally related to any back condition. Accordingly, these reports are insufficient to establish appellant's claim.

Appellant also submitted several medical reports that were unsigned or bore illegible signatures. He was examined for upper and lower back pain. The Board has previously held that reports that are unsigned or that bear illegible signatures cannot be considered as probative medical evidence because they lack proper identification.¹¹

On appeal and during his hearing, appellant listed specific injuries and contended that performing his job duties for the past six years worsened his back condition. While he has had previous traumatic injury claims accepted for back injury, he has not submitted sufficient medical evidence to establish that continued work duties worsened his back condition to cause occupational injury. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.¹² Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors is sufficient to establish causal relationship.¹³ Causal relationship can only be shown by reasoned medical opinion evidence, which appellant has not provided. As appellant has not provided such rationalized medical opinion in this case, he has failed to meet his burden to prove.

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 met his burden of proof in establishing that he sustained an occupational back injury causally related to factors of his federal employment.

¹⁰ See *J.C.*, Docket No. 11-532 (issued December 21, 2011).

¹¹ *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004); *Merton J. Sills*, 39 ECAB 572 (1988).

¹² *Roy L. Humphrey*, 57 ECAB 238, 242 (2005).

¹³ *Id.*; see also *Joe T. Williams*, 44 ECAB 518, 521 (1993).

ORDER

IT IS HEREBY ORDERED THAT the April 26, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 16, 2012
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