

FACTUAL HISTORY

The case was before the Board on a prior appeal.² As the Board noted, appellant had filed an occupational disease claim (Form CA-2) on August 12, 2009 alleging that he sustained a cervical herniated disc causally related to repetitive motion in his federal employment as a distribution clerk. The medical evidence included a September 8, 2009 report from Dr. Andre Fontana, an orthopedic surgeon, which stated that appellant “was working with the mail boxes and was using repetitive movements and also working at the window region and pushing for the mail when he became more symptomatic in his neck associated with disc problems.” The Board affirmed an April 13, 2010 OWCP decision denying the claim for compensation, finding the medical evidence did not provide a rationalized opinion on causal relationship between a diagnosed neck condition and employment factors. The additional history of the case as provided in the Board’s prior decision is incorporated herein by reference.

In a letter dated February 11, 2011 appellant, through his representative, requested reconsideration. Appellant submitted a May 27, 2010 report from Dr. Fontana, who stated that appellant had remained under his care for a work-related herniated cervical disc. Dr. Fontana stated that over the last few months appellant had an exacerbation of his problems, for which he had undergone treatment. He noted the results of past MRI scans and indicated that appellant was back to work with limitations. Dr. Fontana concluded, “The patient’s work activity includes moving and handling mail material, pushing and pulling which can aggravate his cervical conditions.”

By decision dated September 2, 2011, OWCP reviewed the merits of the claim for compensation. It denied the claim on the grounds that the medical evidence was insufficient to establish the claim.

LEGAL PRECEDENT

A claimant seeking benefits under FECA³ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.⁴

To establish that an injury was sustained in the performance of duty, a claimant must submit: (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 diagnosed condition is causally related to the employment factors identified by the claimant.⁵

² Docket No. 10-1578 (issued February 2, 2011).

³ 5 U.S.C. §§ 8101-8193.

⁴ 20 C.F.R. § 10.115(e), (f) (2005); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁵ *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁶ 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 must be based on a complete factual and medical background of the claimant.⁷ Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.⁸

ANALYSIS

As the Board noted in its prior decision, the September 8, 2009 report from Dr. Fontana was insufficient to establish the claim because it did not provide a complete background or a rationalized medical opinion on causal relationship between a diagnosed cervical condition and the employment factors. The May 27, 2010 report from Dr. Fontana is similarly deficient in this regard. While Dr. Fontana provided additional references to MRI scan results, he did not provide a complete medical and factual history. Dr. Fontana refers briefly to appellant's work activity as including pushing and pulling, without discussing when this occurred or providing other detail showing he understood appellant's work history. In addition, his opinion that the work activity can aggravate a cervical condition is speculative and unaccompanied by supporting medical rationale. It is well established that medical opinions based on an incomplete history or opinions that are speculative in character are of diminished probative value.⁹ Dr. Fontana provided no explanation of how appellant's specific work activities aggravated his condition, or a discussion of the nature, extent and duration of such aggravation.

It is appellant's burden of proof to establish the claim for compensation. The Board finds appellant did not meet his burden of proof in this case.

CONCLUSION

The Board finds appellant did not establish a cervical condition causally related to factors of his federal employment.

⁶ See *Robert G. Morris*, 48 ECAB 238 (1996).

⁷ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁸ *Id.*

⁹ See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 2, 2011 is affirmed.

Issued: April 20, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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