



neurosurgeon, provided well-rationalized medical opinion supporting causal relationship between appellant's condition and factors of his federal employment.

### **FACTUAL HISTORY**

On August 26, 2009 appellant, then a 54-year-old geodetic technician, filed an occupational disease claim (Form CA-2) alleging an aggravation of cervical and lumbar sacral spine conditions which he attributed to factors of his federal employment. He noted that driving cross-country on nonexistent roads and other work activities conducted while in the performance of duty resulted in back surgery. The employing establishment advised that appellant had been off work since February 25, 2008 due to mycobacterium gordonae disease. In July 2008, appellant informed his supervisor that he had developed back problems that required surgery.

By letter dated September 9, 2009, OWCP requested additional evidence from appellant to support his claim and allotted 30 days for submission.

Appellant submitted medical reports, radiological reports, progress notes and a narrative statement dated October 7, 2009. He explained that he had worked at the employing establishment for 20 years and his job duties included driving across undeveloped cross-country areas covering approximately 700 thousand acres, manual labor involved in setting up test equipment, carrying equipment and working around contaminated impact zones.

On January 12, 1999 Dr. Paul Lampert, a Board-certified radiologist, diagnosed degenerated discs at L4-5 and L5-S1. He indicated that the L5-S1 disc was herniated centrally causing mild mass effect on the thecal sac while there was a mild bulge at L4-5.

In a July 11, 2007 report, Dr. Gregory Fenzl, a Board-certified radiologist, diagnosed L4-5 disc extrusion which extended inferiorly into the right lateral recess effacing and mildly displacing the descending right L5 nerve root and contributing to a moderate degree of right lateral recess stenosis. He listed stable chronic disc bulge with endplate spurring at the L5-S1 spinal level without evidence for moderate or high-grade central canal or neural foraminal stenosis and further diagnosed multilevel lumbar spondylosis and facet arthrosis. Dr. Fenzl reported that appellant had chronic low back pain which had progressively worsened over the last two months and radiated into the right lower extremity. He noted that appellant reported a motor vehicle accident two years ago.

In a September 23, 2008 report, Dr. Ciacci diagnosed multilevel degenerative changes throughout the cervical spine. He found that the intervertebral discs were diffusely desiccated with disc space narrowing and there were disc osteophyte complexes at C4-5, C5-6 and C6-7. On September 25, 2008 Dr. Ciacci diagnosed cervical stenosis and questionable mycobacterium gordonae. On September 30, 2008 he diagnosed cervical spondylosis and scheduled a posterior cervicothoracic fusion.

On September 30, 2008 appellant underwent posterior cervical decompression from fourth through seventh cervical disc laminectomy, instrumentation from fourth cervical level to first thoracic level and posterolateral fusion from fourth cervical disc to first thoracic disc.

In a March 4, 2009 report, Dr. Javors opined that appellant was disabled due to cervical spine surgery and L4-5 laminectomy.

By decision dated October 19, 2009, OWCP denied appellant's claim finding that the medical evidence submitted did not establish that his back condition was causally related to the implicated employment factors.

On October 13, 2010 appellant's counsel requested reconsideration and submitted a report by Dr. Javors, with an illegible date. Dr. Javors opined that appellant's work-related injury was clearly due to his many years of driving over unimproved land. In reports dated February 12 and April 16, 2009, Dr. Ciacci diagnosed paraspinous pain and spasm and agreed with Dr. Javors's opinion that appellant's condition was most likely work related and that it was likely that the trauma from his occupation significantly contributed to the spinal degeneration. He advised that appellant could not work until his cervical fusion was solid.

In a November 9, 2010 statement, the employing establishment indicated that in a 10-hour workday geodetic technicians typically drove one to four hours on mostly paved roads and spent the majority of their time doing surveying work which consisted of standing, walking, driving, marking hubs, note keeping and computing.

On January 5, 2011 appellant's counsel submitted statements from appellant and one of his coworkers, Joe Elias, with maps. In a December 1, 2010 narrative statement, appellant noted that he had worked at the employing establishment since 1988 when the roads were not always well paved and he was required to use all-terrain vehicles to be able to get to the sites he was mapping and grading. In an undated statement, Mr. Elias reported that he worked as a geodetic technician at the employing establishment from 1960 to 2000. In the late 1980's and early 1990's work was requested from the geodetic section to locate and survey remote areas of desert where dirt roads required the use of four-wheel drive vehicles, which on some occasions became disabled due to the rough terrain.

By decision dated January 14, 2011, OWCP denied modification of the October 19, 2009 decision. The evidence submitted was not sufficient to establish that appellant's back condition was causally related to factors of his federal employment.

On January 20, 2011 appellant's counsel requested reconsideration and submitted a February 4, 2010 report by Dr. Javors who certified that appellant had been under her care during the last two years, underwent lumbosacral surgery on August 28, 2008 and cervical surgery on September 30, 2008. Dr. Javors opined that appellant's medical problems were a direct result of his employment as the bouncing and strain and stress endured by traveling on unimproved and nonexistent road materially contributed to the degeneration of his spine during the last 20 years. She stated that he was not physically or cognitively able to work.

By decision dated April 18, 2011, OWCP denied modification of the January 14, 2011 decision on the basis that the medical evidence submitted was not sufficient to establish a causally-related neck and/or back condition.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>2</sup> 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 timely filed within the applicable time limitation period of FECA, and that an injury<sup>3</sup> was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit 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.<sup>5</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. Rationalized medical 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 implicated employment factors.<sup>6</sup> 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.<sup>7</sup>

## ANALYSIS

The Board finds that appellant failed to meet his burden of proof to establish that he developed a back condition in the performance of duty. The record reflects that appellant has degenerative changes of the cervical and lumbar spine and that his federal employment required repetitive and cumulative driving cross-country on underdeveloped roads. Appellant did not establish that the degenerative changes of his cervical and lumbar spine are causally related to any of the factors of his federal employment.

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> OWCP’s regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

<sup>4</sup> See *J.C.*, Docket No. 09-1630 (issued April 14, 2010). See also *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>5</sup> *Id.* See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

<sup>6</sup> See *D.N.*, Docket No. 10-1762 (issued May 10, 2011).

<sup>7</sup> See *D.E.*, Docket No. 07-27 (issued April 6, 2007). See also *Victor J. Woodhams*, 41 ECAB 345 (1989).

In support of his claim, appellant submitted a March 4, 2009 report by Dr. Javors who opined that appellant was disabled due to cervical spine surgery and L4-5 laminectomy. On January 20, 2011 Dr. Javors opined that appellant's medical problems were a direct result of his employment as the bouncing and strain and stress endured by traveling on unimproved and nonexistent road materially contributed to the degeneration of his spine during the last 20 years. She stated that he was not physically or cognitively able to work. Dr. Javors failed to directly address the issue of causal relationship as she did not provide a rationalized medical opinion explaining how factors of appellant's federal employment, such as repetitive and cumulative driving cross-country on underdeveloped roads, caused or aggravated his neck and/or back condition. The Board has held that the mere fact that appellant's symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between appellant's condition and his employment factors.<sup>8</sup> Lacking thorough medical rationale on the issue of causal relationship, the medical reports of Dr. Javors are insufficient to establish that appellant sustained an employment-related injury.

In a series of reports, Dr. Ciacci diagnosed multilevel degenerative changes throughout the cervical spine, cervical stenosis, questionable mycobacterium gordonae, cervical spondylosis and paraspinous pain and spasm. On April 16, 2009 Dr. Ciacci indicated that he agreed with Dr. Javors's opinion that appellant's condition was most likely work related and that it was likely that the trauma from his occupation significantly contributed to the spinal degeneration. Although Dr. Ciacci provided firm diagnoses, he did not provide a rationalized medical opinion explaining how factors of appellant's federal employment, such as repetitive and cumulative driving cross-country on underdeveloped roads, caused or aggravated his neck and/or back condition. Moreover, his opinion was couched in equivocal terms thereby further reducing the probative value of his report.

Similarly, Drs. Lampert and Fenzl provided firm diagnoses on x-ray examination. However, due to the diagnostic nature of these reports, the physicians did not address causal relationship. As such, the Board finds that they are insufficient to establish appellant's claim.

As appellant has not submitted any rationalized medical evidence to support his allegation that he sustained an injury causally related to the indicated employment factors, he failed to meet his burden of proof to establish a claim.

On appeal appellant's attorney contends that the reports of Drs. Javors and Ciacci provided well-rationalized medical opinion supporting causal relationship between appellant's condition and factors of his federal employment. For the reasons stated above, the Board finds the attorney's argument is not substantiated.

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.

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<sup>8</sup> *Id.* See also *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

**CONCLUSION**

The Board finds that appellant failed to meet his burden of proof to establish that he developed a neck and/or back condition in the performance of duty causally related to factors of his federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 18, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 6, 2012  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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