

FACTUAL HISTORY

On May 14, 2011 appellant, then a 52-year-old manual clerk, filed an occupational disease claim alleging that his employment duties caused a lower lumbar degenerative condition. He referenced a 1988 employment injury, stating that he returned to work in a permanent light-duty position.² Appellant stopped work on May 12, 2011. In attached statements, he stated that since his 1988 injury he had continued back problems. Appellant indicated that the constant turning, bending and lifting tubs of mail caused his condition.

In a May 19, 2011 letter, the employment establishment indicated that appellant had been working in a permanent light-duty position since 1990 due to a back condition previously deemed to be nonwork related by OWCP. Appellant's light duty included a lifting restriction of no more than 15 pounds at a time and no repetitive lifting of greater than 7.5 pounds.

By letter dated May 23, 2011, OWCP informed appellant of the type evidence needed to support his claim. Appellant submitted medical evidence dated March 2, 1985 to April 18, 2011. An April 3, 1986 employment establishment clinic report stated that he had been in an off-the-job motor vehicle accident on March 26, 1986. Dr. Robert P. Campbell, Board-certified in occupational medicine, performed a fitness-for-duty examination on May 2, 1988. He stated that appellant would not consent to a physical examination and noted that he was ambulatory and able to sit and stand without difficulty and demonstrated considerable back flexibility. Dr. Campbell recommended that appellant not return to his regular duties, based on his subjective complaints and insistence on disability and concluded that he could perform sedentary duty. On August 22, 1988 Dr. Edward A. Grossenbacher, Board-certified in orthopedic surgery, diagnosed lumbar strain and advised that appellant was unemployable because of physical and psychological factors involved in an injury to his lower back. On December 14, 1989 Dr. Thomas Martens, a Board-certified orthopedic surgeon, diagnosed chronic low back and leg pain by history with no objective orthopedic or neurologic abnormality and severe functional overlay. In a December 5, 1989 form report, Dr. Leslie Naman, a Board-certified internist, diagnosed lumbosacral strain, severe and degenerative joint disease of the back and advised that appellant was totally disabled.

On January 10, 1995 appellant reported that he had been in a car accident on January 7, 1995. On April 22, 1997 Dr. Merrit L. Quarum, advised that he had degenerative disc disease resulting in chronic back pain. An April 9, 1998 computerized tomography (CT) scan of the lumbar spine noted no evidence of disc protrusion. By report dated September 12, 2000, Dr. Carl Shrader noted that appellant was in a motor vehicle accident on July 30, 2000. He provided physical examination findings and diagnosed chronic cervical strain with arthritic changes and chronic lumbar pain.

In reports dated April 1, 2003 to March 6, 2006, Dr. John Alferes, Jr., Board-certified in internal medicine, advised that appellant had been treated in his clinic for the past 10 years for recurrent back pain secondary to degenerative facet disease as demonstrated on a magnetic resonance imaging (MRI) scan. He provided restrictions to appellant's physical activity. On

² The record indicates that appellant sustained an employment injury to the low back on March 11, 1988.

April 5, 2007 and April 14, 2008 Dr. Alferes advised that appellant's back pain was progressing and recommended additional physical restrictions at work. A May 30, 2008 telephone memorandum indicated that appellant was being accommodated under the National Reassessment Process (NRP). On April 13, 2009 Dr. Alferes reported that appellant described worsening back pain due to work activities and recommended work accommodations of lifting restricted to 15 pounds occasionally and 7.5 pounds continuously. In reports dated April 14, 2010 and April 18, 2011, he repeated these restrictions and advised that he did not know how much longer appellant would be able to continue to work. In treatment notes dated May 13 and June 6, 2011, Dr. Alferes provided physical examination findings, reporting that appellant was moving freely, with no tenderness on back examination, a negative straight leg raising and no weakness. He diagnosed chronic intermittent back pain and noted that a previous MRI scan study was unremarkable. In the latter report, Dr. Alferes advised that appellant's condition was more chronic and he was hoping to be disabled due to this.

In a May 17, 2011 report, Dr. Rachel C. Fischer, Board-certified in preventive and occupational medicine, noted appellant's report of the history of injury and that he was in a motor vehicle accident in 1996. She stated that he described his job duties and complained that he had pain and tingling down his right leg since the 1988 employment injury. Dr. Fisher provided physical examination findings, noting good back range of motion, a negative straight leg test and that appellant was able to fully squat and that he reported decreased sensation to right foot along the lateral right foot and toes. She diagnosed chronic low back pain, noting that he stated that this was aggravated by his job duties. Dr. Fisher concluded that she had a long discussion with appellant and told him she was unable to give him restrictions because he demonstrated good strength and reflexes.

On July 19, 2011 Dr. Alferes advised that appellant was unable to work at his previously activity levels and physical work requirements. In a July 28, 2011 report, he reported that appellant had some degenerative changes in his low back, "but I believe by [appellant's] history, the more severe episodes of disabling back pain are clearly directly related to his required work activities that put excessive stress on his back." Dr. Alferes advised that appellant needed significant work modifications.

Employing establishment forms, dated from June 21, 1995 to April 19, 2011, described appellant's limitations. The April 18, 2012 form advised that lifting was limited to no more than 15 pounds with repeated lifting at 7.5 pounds. Bending, twisting and prolonged awkward positioning were to be avoided. In July 2011, the employing establishment informed OWCP that appellant had submitted an application for disability retirement.

By decision dated August 5, 2011, OWCP denied appellant's claim on the grounds that the medical evidence did not establish that the claimed medical condition was caused by his federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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, that an injury was sustained 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. These are the essential elements of each and every compensation claim, regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.³

OWCP regulations define the term “occupational disease or illness” as a condition produced by the work environment over a period longer than a single workday or shift.”⁴ 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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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.⁵

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁶ Rationalized medical evidence is medical evidence which includes a physician’s rationalized medical opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. 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.⁷ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁸

ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish that he sustained an additional low back injury caused by his federal employment because the medical evidence is insufficient to establish causal relationship.

³ *Roy L. Humphrey*, 57 ECAB 238 (2005).

⁴ 20 C.F.R. § 10.5(ee).

⁵ *Roy L. Humphrey*, *supra* note 3.

⁶ *D.G.*, 59 ECAB 734 (2008).

⁷ *Id.*

⁸ *Roy L. Humphrey*, *supra* note 3.

The April 9, 1988 CT scan of the lumbar spine did not provide a cause of any diagnosed conditions and medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁹ The various medical reports dated March 2, 1985 to September 12, 2000 and Dr. Fischer's May 17, 2011 report, likewise, do not include an opinion as to the cause of any diagnosed condition.

Dr. Alferes, an attending internist, submitted a number of reports dated from April 1, 2003 to July 28, 2011 and advised that appellant had back pain secondary to progressive degenerative disc disease of the lumbar spine. While he reported on April 18, 2011 that appellant's condition was worsening and that he did not know how much longer appellant could work, in reports in May and June 2011, he indicated that appellant was moving freely, with no tenderness on back examination and had a negative straight leg raising and no weakness. Dr. Alferes diagnosed chronic intermittent back pain and noted that a previous MRI scan study was unremarkable. In the latter report, he advised that appellant's condition was more chronic and he was hoping to be disabled due to this. On July 28, 2011 Dr. Alferes stated that appellant had some degenerative changes in his low back and opined that the more severe episodes of disabling back pain were directly related to his required work activities that put excessive stress on his back. Medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value.¹⁰ The Board finds Dr. Alferes' reports insufficient to meet appellant's burden as he did not provide an explanation or opinion as to how the employment factors caused his degenerative back condition, did not demonstrate knowledge of his job duties and did not explain the impact of the three motor vehicle accidents on his back condition. The record contains medical reports from Drs. Campbell, Grossenbacher, Martens, Naman, Quarum and Shrader, which were authorized between 1988 through 2000. These reports are also insufficient to meet appellant's burden of proof.

The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to his federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.¹¹ It is appellant's burden to establish that his claimed back condition is causally related to factors of his federal employment. In this case, he submitted insufficient evidence to show that he sustained a degenerative lumbar condition caused by his employment duties.

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.

⁹ *Willie M. Miller*, 53 ECAB 697 (2002).

¹⁰ *Frank Luis Rembisz*, 52 ECAB 147 (2000).

¹¹ *A.D.*, 58 ECAB 149 (2006).

CONCLUSION

The Board finds that appellant did not establish that he sustained a back condition causally related to factors of his federal employment in this occupational disease claim.

ORDER

IT IS HEREBY ORDERED THAT the August 5, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 24, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board