

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

N.B., Appellant)	
)	
and)	Docket No. 11-1968
)	Issued: June 21, 2012
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS ADMINISTRATION MEDICAL)	
CENTER, North Chicago, IL, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 25, 2011 appellant filed a timely appeal from a February 28, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 this case.

ISSUE

The issue is whether appellant has established a back injury causally related to factors of his federal employment.

FACTUAL HISTORY

The case was before the Board on a prior appeal. By order dated April 6, 2009, the Board remanded the case to OWCP for a proper decision based on all the evidence of record.²

¹ 5 U.S.C. § 8101 *et seq.*

² Docket No. 09-34 (issued April 6, 2009).

OWCP had issued a September 16, 2008 decision finding that appellant's occupational claim dated May 15, 2008 was untimely filed under 5 U.S.C. § 8122. The Board directed OWCP to consider the evidence received on September 15, 2008.

By decision dated September 8, 2009, OWCP again denied the claim on the grounds it was not timely filed under 5 U.S.C. § 8122. An OWCP hearing representative, by decision dated April 13, 2010, vacated the September 8, 2009 decision and found the claim was timely filed. The case was remanded for an appropriate decision on the merits of the claim for compensation.

With respect to the underlying claim for compensation, appellant had submitted a statement describing his federal work history through 2002.³ He indicated that he worked from 1978 to 1979 as a letter carrier, from 1980 to 1984 and again from 1987 to 1991 as an electronics mechanic, from 1991 to 2000 as a boiler plant operator and from 2001 to 2002 as an electronics mechanic. Appellant generally described his duties in these positions. According to him, on October 10, 1996 he felt something pull in his back at work, but did not file a claim. Appellant stated that on May 25, 1999 he lifted a heavy manhole cover and filed a compensation claim. The record also indicates that he filed a claim for back injury on November 13, 2002. This claim was accepted for lumbar strain, aggravation of lumbar stenosis and aggravation of neurogenic claudication. Appellant received compensation through July 28, 2007, when his compensation was terminated based on the medical evidence. The Board affirmed the termination of compensation.⁴

With respect to medical evidence, appellant submitted a March 6, 2008 report from Dr. John Ellis, Board-certified in family medicine, who provided a history of a 1996 incident when appellant felt a pop in his back while working, and he also noted a 1999 lifting of a manhole cover incident and a 2002 incident when appellant fell due to weakness in his legs.⁵ Dr. Ellis provided results on examination and diagnosed lumbar strain/sprain, disc derangement with central canal narrowing at L4-5, disc derangement L5-S1 with left lateral and left foraminal protrusion, lumbar spondylosis at L4-5 and L5-S1 aggravated by chronic lumbar strain/sprain, and severe facet disease bilaterally at L3-4, L4-5, secondary to lumbar strain/sprain. He opined that "the injuries and impairments set forth in my diagnosis and this report arose out of and in the course of the employee's employment with the above employers and that said employment and work duties aggravated and/or caused said injuries and impairments. In addition, Dr. Ellis also stated that "the multiple injuries to his lumbar spine that occurred in 1996, 1999 and 2002 caused the structural damage to the lumbar spine that resulted in the disc derangement with central canal narrowing, the disc derangement with foraminal protrusion and the lumbar spondylosis, which also resulted in central anal nerve impingement at L4-5 as well as nerve root impingement at L5-S1."

By decision dated July 30, 2010, OWCP denied the claim for compensation. It found the medical evidence was insufficient to establish a diagnosed condition causally related to work factors.

³ The claim form indicated that appellant had stopped working on November 13, 2002.

⁴ Docket No. 09-35 (issued April 6, 2009). OWCP's file for the November 13, 2002 claim indicated that appellant did file a claim for a 1999 back injury, but the claim was denied.

⁵ This appears to be a reference to the November 13, 2002 incident.

On August 25, 2010 appellant requested a hearing before an OWCP hearing representative. On August 26, 2010 he submitted numerous medical reports regarding back treatment. The evidence included reports from Dr. Debbie Miller, an internist, from April 10, 1997 to September 10, 1998, Dr. Yogendra Bharat, an anesthesiologist, from December 3, 2002 to January 6, 2003, Dr. Steven Pagano, a neurologist, from October 9, 2002 to April 8, 2003, Dr. Rafi Rafiullah, a neurosurgeon, from June 17, 2003 to February 23, 2004, Dr. Derek Turner, an internist, from July 27, 2004 to January 26, 2005, and Dr. Lisa Wolf, a family practitioner, from February 24 to September 28, 2005. In his February 24, 2004 report, Dr. Rafiullah stated that appellant had chronic pain secondary to injuries in 1997 and 1999.

A hearing was held on December 7, 2010. On February 1, 2011 appellant submitted additional medical evidence, including the following: a June 8, 2007 report from Dr. Iftqar Syed, an anesthesiologist, a July 15, 2008 report from Dr. J. Keith Preston, a neurologist, reports from August 18, 2008 to September 3, 2010 from Dr. Norberto Vargas, a physiatrist, a January 7, 2009 report from Dr. Gregg Diamond, a physiatrist, and a December 2, 2010 report from Dr. J.P. Benavides, an osteopath. The reports provide results on examination with respect to treatment for pain. Appellant also submitted reports from a nurse practitioner.

By decision dated February 28, 2011, OWCP reviewed the case on its merits and denied modification. It found the medical evidence was insufficient to establish the claim.

LEGAL PRECEDENT

A claimant seeking benefits under FECA⁶ 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.⁷

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.⁸

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁹ 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.¹⁰

⁶ 5 U.S.C. §§ 8101-8193.

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

⁸ *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁹ See *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

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.¹¹

ANALYSIS

In the present case, the record indicates that appellant had stopped working in November 2002 and filed a traumatic injury claim for a back injury. Appellant received wage-loss compensation through July 2007. That claim is not before the Board on the current appeal. The issue in the current claim is whether appellant sustained a back condition causally related to work duties from 1978 through 2002 at jobs that included letter carrier, boiler plant operator and electronics mechanic. Appellant has also stated that he felt back pain at work on October 10, 1996, and described a May 25, 1999 incident where he lifted a manhole cover and filed a compensation claim. OWCP indicated that the 1999 claim was denied.

The medical issue is whether there is a rationalized medical opinion, based on a complete and accurate background, between the identified employment factors and a diagnosed medical condition. Although appellant submitted numerous medical reports, it is not the number of medical reports but the probative value of the evidence to the issue presented that determines whether he has met his burden of proof.¹² The Board has reviewed the medical evidence and finds that it does not contain a rationalized medical opinion based on a complete and accurate factual and medical history.

In his March 6, 2008, Dr. Ellis did not provide a complete history. He did not, for example, discuss any of appellant's job duties or his work history. Dr. Ellis noted a 1996 employment incident, for which appellant did not file a claim, and a 1999 employment incident, which was a claim denied by OWCP. He then provides numerous diagnoses, ranging from lumbar strain/sprain, disc derangement, lumbar spondylosis and facet disease. With respect to causal relationship, Dr. Ellis stated broadly that appellant's "employment and work duties aggravated and/or caused" these diagnoses. As noted above, he did not discuss work duties. In addition, aggravation and direct causation are different concepts and Dr. Ellis did not explain his statement as to aggravation "and/or" causation. He then refers to the "multiple injuries" occurring in 1996, 1999 and 2002 as causing structural damage to the lumbar spine. The only accepted employment injury was November 13, 2002 and that is a separate claim. It is not established that there were employment injuries in 1996 and 1999.¹³ Dr. Ellis does not provide a rationalized medical opinion establishing an injury causally related to prior work injuries or to work duties.

The remainder of the medical evidence consists of treatment reports that do not provide a rationalized medical opinion, based on an accurate and complete background, establishing causal relationship between a diagnosed back condition and the identified employment factors.

¹¹ *Id.*

¹² See *Geraldine Foster*, 54 ECAB 435 (2003).

¹³ Appellant may pursue the 1999 claim with OWCP in an appropriate manner, but that claim is not before the Board.

Dr. Rafiullah briefly stated that appellant had chronic pain from 1997 and 1999 injuries, without further explanation. None of the other physicians of record provide an opinion with respect to causal relationship between a diagnosed condition or conditions and federal employment. The Board notes that the reports of a nurse practitioner are of no probative medical value.¹⁴ It is appellant's burden of proof on the issue, and the Board finds he did not prove his burden in this case. 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 appellant did not meet his burden of proof to establish a back injury causally related to identified employment factors.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 28, 2011 is affirmed.

Issued: June 21, 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

¹⁴ Nurse practitioners are not considered physicians under FECA. See 5 U.S.C. § 8101(2); *Sean O'Connell*, 56 ECAB 195 (2004).