

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

M.M., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
North Malta, NY, Employer

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**Docket No. 12-446
Issued: June 22, 2012**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 29, 2011 appellant, through his attorney, filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) merit decision dated December 7, 2011. 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 met his burden of proof to establish that he sustained an injury on December 12, 2007, while in the performance of duty.

FACTUAL HISTORY

This case was previously before the Board.² In an April 12, 2010 decision, the Board affirmed the June 19, 2008 and April 23, 2009 OWCP decisions, finding that appellant failed to establish that he sustained an injury on December 12, 2007 in the performance of duty. The

¹ 5 U.S.C. § 8101 *et seq.*

² Docket No. 09-1615 (issued April 12, 2010).

Board found that the medical evidence was insufficient to establish his back and leg pain as causally related to a December 12, 2007 motor vehicle accident. The facts and the history contained in the prior decision are incorporated by reference.

In a letter dated April 27, 2009, appellant's representative submitted additional factual and medical evidence, including a January 24, 2008 motor vehicle accident report and an April 19, 2009 letter from appellant, who noted that he promptly reported the accident. Appellant noted that the paperwork was given to him more than two weeks after the accident. OWCP also received an August 6, 2008 report from a nurse.

In an April 6, 2009 report, Dr. Alfredo B. Cruz, a Board-certified family practitioner, noted that appellant had recurrent back pain. He explained that x-rays revealed bilateral sacroiliitis. Dr. Cruz diagnosed ankylosing spondylitis and noted that, on December 12, 2007, while delivering his route, appellant was in an automobile accident and aggravated his lumbosacral region. Appellant underwent physical therapy and tried to return to work but was unable to do so because of back pain. Dr. Cruz advised that a March, 22, 2008 lumbar spine magnetic resonance imaging (MRI) scan did not show any radiculopathy or entrapment. Appellant had a full range of motion in the arms and legs but his lumbar spine range of motion was decreased with forward flexion at 60 degrees and extension at 10 degrees and limited rotation of the lumbar spine. Dr. Cruz opined that appellant was able to perform his duties as a mail carrier despite having ankylosing spondylitis and explained that "the automobile accident aggravated the patient's condition which deteriorated his work performance."

In a July 1, 2009 report, Dr. Cruz noted that he first saw appellant on December 18, 2007 for back pain. He related a history that appellant was in a car accident on December 12, 2007 and injured when he was hit on the rear driver's side. Dr. Cruz found contusions on the back, buttocks and thigh. He relied upon x-rays and opined that "yes, the accident caused the back pain." Dr. Cruz noted that appellant was off work from February 21, 2008. He explained that appellant had preexisting ankylosing spondylitis.

In a June 9, 2010 report, Dr. Cruz noted treating appellant for several years for complaints involving the muscles and joints ranging from the hands and wrists to the legs and feet and indicated that appellant had ankylosing spondylitis. He explained that appellant was able to work as a rural mail carrier until the work-related automobile accident on December 12, 2007. Appellant was hit from the rear area of the driver's side of the vehicle and had contusions around his back, buttocks and thighs. Dr. Cruz explained that the trauma caused injury to appellant's back, which was short of having a fracture of the vertebrae and resulted in severe ligaments and muscle injuries of the paraspinal and quadratus lumborum muscles. He explained that the injuries could result in constant pain and morbidity for appellant. Dr. Cruz advised that these injuries aggravated appellant's pain from his preexisting ankylosing spondylitis. The pain was of "such intensity" that it prevented appellant's return to work as a mail carrier. Dr. Cruz stated that "the automobile accident has caused his back pain and aggravated his existing condition of ankylosing spondylitis to a point that he could no longer work." Appellant was in constant pain and discomfort around the lumbar area and had an associated degree of decreased range of motion with his hips and leg. Dr. Cruz noted findings which included forward flexion which was decreased to 60 degrees, extension to 10 degrees and limitation of upper rotation from the lumbar spine. He reiterated that there was a causal relationship between the trauma and the preexisting ankylosing spondylitis. Dr. Cruz opined that

appellant was totally disabled and unable to work in any capacity since February 21, 2008. He further noted that appellant would live “his life in constant pain.”

In a letter dated December 16, 2010, appellant’s representative requested reconsideration. He contended that Dr. Cruz’s June 9, 2010 report established that appellant sustained an injury on December 12, 2007.

By decision dated December 7, 2011, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his claim by the weight of reliable, probative and substantial evidence,³ including that he is an “employee” within the meaning of FECA and that he filed his claim within the applicable time limitation.⁴ The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes 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. The opinion of the physician must be based on a complete factual and medical background, 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

ANALYSIS

The evidence supports that appellant was in a motor vehicle accident on December 12, 2007. There is no dispute that his vehicle was struck from behind by another vehicle that date. The Board finds that the medical evidence of record is insufficient to establish that the employment incident caused an injury.

³ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

⁴ *R.C.*, 59 ECAB 427 (2008).

⁵ *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *T.H.*, 59 ECAB 388 (2008).

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

The medical reports do not establish that the motor vehicle accident on December 12, 2007 caused a personal injury. The medical evidence contains insufficient reasoning explaining how the specific employment incident on December 12, 2007 caused or aggravated an injury. This is particularly important in light of the fact that appellant had a preexisting condition of ankylosing spondylitis. In the prior decision, the Board noted that the claim was filed about five months after the accident and that records indicated that the accident was minor with little damage to the vehicles and no reported injuries.

Appellant submitted several reports by Dr. Cruz. In a June 9, 2010 report, Dr. Cruz noted that appellant had preexisting ankylosing spondylitis but was able to perform his duties as a rural mail carrier until the December 12, 2007 automobile accident. He advised that appellant was hit from the rear area of the driver's side of the vehicle and had contusions around his back, buttocks and thighs. Dr. Cruz explained that the trauma caused injury to appellant's back, which was "short of having a fracture of the vertebrae." He opined that "this resulted in severe ligaments and muscles injuries of the paraspinal and quadratus lumborum muscles." Dr. Cruz stated that these injuries were disabling and could result in constant pain and morbidity and aggravated appellant's pain from his preexisting ankylosing spondylitis. He noted findings which included decreased lumbar motion and opined that there was a causal relationship between the trauma and the existing condition of appellant's ankylosing spondylitis. In an April 6, 2009 report, Dr. Cruz noted that appellant had continuing back pain and opined that the "automobile accident aggravated the patient's condition which deteriorated his work performance." In his July 1, 2009 report, he repeated the history of injury and opined that "yes, the accident caused the back pain." Dr. Cruz explained that appellant had a preexisting condition of ankylosing spondylitis.

The Board finds that Dr. Cruz's reports are insufficient to establish appellant's claim. The Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting rationale, to establish causal relation.⁸ In his contemporaneous December 18, 2007 clinical notes, Dr. Cruz diagnosed contusions of the back, buttocks and right thigh and low back pain. Furthermore, a March 22, 2008 lumbar MRI scan was normal. The more contemporaneous clinical notes make no mention of any fracture of the vertebrae or any specific low back injury caused by the motor vehicle accident. The Board finds that Dr. Cruz's opinion is of limited probative value as it contains insufficient medical rationale explaining how the December 12, 2007 motor vehicle accident caused or aggravated a diagnosed medical condition.⁹ Although he asserts that the accident aggravated appellant's preexisting ankylosing spondylitis, his initial reports do not support this and his more recent reports do not sufficiently explain why a relatively minor motor vehicle accident, for which no claim was filed for about five months, would cause such an aggravation of this condition.

OWCP also received an August 6, 2008 report from a nurse. However, health care providers such as nurses, are not physicians under FECA. Thus, their opinions on causal

⁸ *Kimper Lee*, 45 ECAB 565 (1994).

⁹ *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

relationship do not constitute rationalized medical opinions and have no weight or probative value.¹⁰

Because the medical reports submitted by appellant do not sufficiently explain how the December 12, 2007 incident at work caused or aggravated a diagnosed medical condition, these reports are of limited probative value and are insufficient to establish that the December 12, 2007 employment incident caused or aggravated a specific injury.

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 injury in the performance of duty on December 12, 2007.

ORDER

IT IS HEREBY ORDERED THAT the December 7, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 22, 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

¹⁰ *Jane A. White*, 34 ECAB 515, 518 (1983). See 5 U.S.C. § 8101(2).