

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

I.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Thousand Oaks, CA, Employer**

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**Docket No. 11-1808
Issued: March 23, 2012**

Appearances:
Sally F. LaMacchia, Esq., for the appellant
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 2, 2011 appellant, through his attorney, filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) merit decision dated July 11, 2011 denying appellant's occupational disease claim. 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 met his burden of proof to establish that he sustained a back or neck injury in the performance of duty.

FACTUAL HISTORY

This is the second time this case has been before the Board. By decision dated September 14, 2009, the Board affirmed OWCP's September 10, 2008 decision denying

¹ 5 U.S.C. § 8101 *et seq.*

appellant's occupational disease claim for a back injury.² The facts and the law contained in that decision are incorporated herein by reference.³ Relevant facts are stated below.

On September 25, 2007 appellant, a 47-year-old letter carrier, filed an occupational disease claim for possible carpal tunnel syndrome (CTS) and other conditions. He alleged that, on June 2, 2007 while at work, he felt numbness and pain in his face, back and shoulder, which radiated into his right arm, right hand and right leg.

By decision dated November 5, 2007, OWCP denied appellant's claim because the evidence of record was insufficient to establish that he sustained an injury as defined by FECA. Appellant disagreed and, through his attorney, requested an oral hearing. In a decision dated September 10, 2008, an OWCP hearing representative affirmed the prior decision denying his claim for back injury, but remanded the case for further development regarding his claim for CTS. On October 15, 2008 OWCP accepted the claim for right CTS.

Appellant appealed the September 10, 2008 decision to the Board. In its September 14, 2009 decision, the Board affirmed the denial of his claim for a back injury, finding that he had failed to meet his burden of proof. The Board reviewed a May 23, 2008 report from Dr. Marvin Pietruszka, Board-certified in anatomic and clinical pathology, on which appellant relied to establish his claim. The Board found that, although Dr. Pietruszka's report provided a review of appellant's medical history and proffered findings upon examination, it contained no substantive opinion on the causal relationship between the diagnosed cervical and lumbar discopathy and any identified factor of his federal employment. The Board provided a generalized explanation of the neurological mechanics underlying how his alleged cervical and lumbar condition produced pain, rather than a rationalized opinion concerning how a specific employment factor caused or contributed to the cervical and lumbar conditions that he diagnosed.⁴

In a letter dated August 13, 2010, counsel requested a supplemental report from Dr. Pietruszka. He specifically asked Dr. Pietruszka to provide rationale for his May 23, 2008 opinion that appellant's work activities were contributing factors to his diagnosed cervical and lumbar conditions.

On September 14, 2010 appellant, through counsel, requested reconsideration. The record contains a position description for a rural carrier.

In a September 14, 2010 supplemental report, Dr. Pietruszka indicated that he had reviewed appellant's job description and opined that his duties as a rural carrier caused his cervical discopathy and foraminal stenosis conditions. He explained that the most common types

² Docket No. 09-481 (issued September 14, 2009).

³ Prior claims accepted by OWCP include: case file number xxxxxx425, for an injury occurring August 13, 1990 which was accepted for "injury/body;" case file number xxxxxx280 for a May 13, 1992 injury accepted for exposure to flames; case file number xxxxxx890 for a May 21, 1999 injury accepted for lower back strain; and case file number xxxxxx786 for a November 5, 2005 injury accepted for left wrist sprain, for which no time was lost. All of these prior claims have been retired.

⁴ *Supra* note 2.

of cervical injuries are the flexion-type, in which the posterior vertebral elements are under tension and the anterior vertebrae elements are in compression and the extension injury in which the neck bends backward. Dr. Pietruszka stated that appellant's duties, including reaching for stacks of letters and magazines that are at face level or higher, as well as placing trays in a hamper, which involves repetitive bending over, driving a vehicle in which he occasionally must make sudden stops and must frequently turn his head to avoid accidents, "can readily explain symptoms related to cervical disc injury. He opined that appellant's job duties ultimately caused him to develop cervical discopathy and foraminal stenosis, resulting in scarring of injured tissues.

Dr. Pietruszka also attributed appellant's lumbar and thoracic discopathy and lumbar radiculopathy to his duties as a rural carrier. He explained that while there is some normal degeneration of intervertebral discs with the aging process, mechanical factors which include flexion, extension and rotational forces play an important role in causing injury to supporting structures of the lumbar spine. Additionally, sudden jarring motions put excessive stress on facets, which may ultimately result in chronic back pain. In appellant's case, the repetitive bending, lifting, stooping and twisting movements that he routinely performed throughout the day, as well as unloading postal vehicles, lifting up to 70 pounds, sitting while driving and stepping in and out of a vehicle, resulted in repetitive trauma to the lumbar spine.

Dr. Pietruszka also diagnosed repetitive trauma disorder. The specific clinical findings supporting this diagnosis included appellant's inability to sit for prolonged periods of time while giving a history, the finding of tenderness and myospasm of the posterior cervical paraspinal musculature and the description of pain during range of motion testing. Dr. Pietruszka opined that the constant use of appellant's neck, shoulders, hands and wrists with repetitive bending, lifting, stooping and twisting throughout the day, caused injury to the soft tissue structures, including muscles and ligaments, ultimately resulting in chronic pain. He also opined that appellant suffered from a sleep disorder and an aggravation of his preexisting hypertension resulting from his chronic pain.⁵

Appellant submitted reports for the period November 16, 2010 to June 14, 2011 from Dr. Kamyar Assil, a Board-certified anesthesiologist, who stated that he was unable to address appellant's low back and neck pain complaints because his claim had not been accepted for those conditions. Appellant also submitted a March 17, 2011 report of a magnetic resonance imaging scan.

By decision dated July 11, 2011, OWCP denied modification of its prior decision, finding that the evidence failed to establish that any of the conditions diagnosed by Dr. Pietruszka were in fact a result of appellant's federal employment activities. The evidence failed to provide a rationalized medical opinion based on a complete medical history, employment duties and timeframes involved and industrial, nonindustrial and aggravated medical conditions.

⁵ Appellant submitted reports from Dr. Mark T. Montgomery, a Board-certified orthopedic surgeon, specializing in the hand and physical therapy notes relating to his accepted CTS condition. As this appeal concerns the denial of a claim for back injury, reports and notes concerning diagnosis of or treatment for conditions unrelated to the back or spine are not relevant.

The claims examiner reviewed in detail Dr. Pietruszka's explanation of the mechanisms of injury concerning appellant's diagnosed back and neck conditions as outlined in his September 14, 2010 supplemental report. He stated, however, that his supplemental report was deficient as it was not based on a recent physical examination or on contemporaneous medical evidence which supported the beginning of all his current medical symptoms or conditions and it failed to provide a specific period of time during which the employment factors could have contributed to his medical conditions. The claims examiner stated that, in order to meet his burden of proof, the medical evidence had to establish with certainty that appellant's federal employment factors in fact contributed to his medical conditions.

On appeal, counsel contends that Dr. Pietruszka's supplemental report is sufficient to establish that appellant's employment duties as a rural carrier caused his diagnosed neck and back conditions. He further contends that a recent physical examination is not required to obtain a competent addendum report.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his 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, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁶ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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.⁸

⁶ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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

⁸ *Id.*

An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease nor 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 a causal relationship.⁹

ANALYSIS

The Board finds that this case is not in posture for decision regarding whether appellant sustained a back or neck injury in the performance of duty.

An employee who claims benefits under FECA has the burden of establishing the essential elements of his claim. The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.¹⁰ However, it is well established that proceedings under FECA are not adversarial in nature and while the claimant has the burden of establishing entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.¹¹

In Dr. Pietruszka's original May 23, 2008 report, he provided detailed examination findings, a history of injury and treatment and an opinion that appellant's back condition was caused by his employment activities. The Board affirmed the denial of his claim, however, finding that Dr. Pietruszka's report provided a generalized explanation of the neurological mechanics underlying how appellant's alleged cervical and lumbar condition produced pain, rather than a rationalized opinion concerning how a specific employment factor caused or contributed to the cervical and lumbar conditions that he diagnosed. In response to the Board's September 14, 2009 decision, appellant and his counsel sought a supplemental report from Dr. Pietruszka.

In his September 14, 2010 report, Dr. Pietruszka opined that appellant's diagnosed cervical, lumbar and thoracic discopathy and lumbar radiculopathy resulted from his duties as a rural carrier. His supplemental report reflected an understanding of appellant's job requirements and the nature of his job duties. Dr. Pietruszka noted that the most common types of cervical injuries are the flexion type, in which the posterior vertebral elements are under tension and the anterior vertebrae elements are in compression and the extension injury in which the neck bends backward. He stated that appellant's duties, including reaching for stacks of letters and magazines that are at face level or higher, as well as placing trays in a hamper, which involves repetitive bending over, driving a vehicle in which he occasionally must make sudden stops and

⁹ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

¹⁰ See *Virginia Richard (Lionel F. Richard)*, 53 ECAB 430 (2002); see also *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

¹¹ *Phillip L. Barnes*, 55 ECAB 426 (2004); see also *Virginia Richard, id.*; *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

must frequently turn his head to avoid accidents, “can readily explain symptoms related to cervical disc injury.”

Explaining that, while there is some normal degeneration of intervertebral discs with the aging process, Dr. Pietruszka stated that mechanical factors (including flexion, extension and rotational forces) play an important role in causing injury to supporting structures of the lumbar spine. He opined that in appellant’s case, the repetitive bending, lifting, stooping and twisting movements that he routinely performed throughout the day, as well as unloading postal vehicles, lifting up to 70 pounds, sitting while driving and stepping in and out of a vehicle, resulted in repetitive trauma to the lumbar spine. Additionally, sudden jarring motions put excessive stress on facets, which ultimately resulted in chronic back pain. Dr. Pietruszka supported his diagnosis of repetitive trauma disorder with his prior examination findings, including appellant’s inability to sit for prolonged periods of time while giving a history, tenderness and myospasm of the posterior cervical paraspinal musculature and the description of pain during range of motion testing. He opined that the constant use of appellant’s neck, shoulders, hands and wrists with repetitive bending, lifting, stooping and twisting throughout the day, caused injury to the soft tissue structures, including muscles and ligaments, ultimately resulting in chronic pain.

The Board notes that, while the opinion contained in Dr. Pietruszka’s September 14, 2010 report is not based on a complete factual and medical background of the claimant or a current physical examination, it is supported by medical rationale explaining the nature of the relationship between the diagnosed conditions and the specific employment factors identified by the claimant.¹² Dr. Pietruszka demonstrated a clear understanding of appellant’s work duties. Additionally, his opinion is not contradicted by any substantial medical or factual evidence of record. While Dr. Pietruszka report is not sufficiently rationalized to meet appellant’s burden of proof to establish his claim, it raises an uncontroverted inference between his claimed back and neck conditions and the identified employment factors and is sufficient to require OWCP to further develop the medical evidence and the case record.¹³

On remand, OWCP should prepare a statement of accepted facts which includes a detailed employment history, a job description and specific functions performed by appellant in his position. It should submit the statement of accepted facts to a second opinion examiner, in order to obtain a rationalized opinion as to whether his current neck and back conditions are causally related to factors of his employment, either directly or through aggravation, precipitation or acceleration. After such further development as OWCP deems appropriate, it shall issue a merit decision in order to protect appellant’s rights of appeal.

CONCLUSION

The Board finds that this case is not in posture for decision as to whether or not appellant sustained a back or neck injury in the performance of duty.

¹² *Dennis M. Mascarenas, supra* note 9.

¹³ *See Virginia Richard, supra* note 10; *see also Jimmy A. Hammons, 51 ECAB 219 (1999); John J. Carlone, 41 ECAB 354 (1989).*

ORDER

IT IS HEREBY ORDERED THAT the July 11, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision.

Issued: March 23, 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