

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

A.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Tampa, FL, Employer**

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**Docket No. 13-198
Issued: April 22, 2013**

Appearances:
Lenin V. Perez, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 5, 2012 appellant, through his representative, timely appealed the September 13, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied his traumatic injury 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 the claim.²

ISSUE

The issue is whether appellant sustained injuries to his cervical, thoracic and lumbar spine in the performance of duty on December 22, 2011.

¹ 5 U.S.C. §§ 8101-8193.

² The record includes evidence received after OWCP issued its September 13, 2012 final decision. As this evidence was not part of the record when OWCP issued the decision currently under review, the Board is precluded from considering it for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

Appellant, a 62-year-old city carrier, filed a Form CA-1 claim for injuries to his neck, shoulders, arms and lower back allegedly sustained on December 22, 2011 while delivering mail. He reported that his injury occurred around noon. By then appellant had already performed multiple park and loops and dismount deliveries.³ While driving his delivery vehicle to the next location on his route along 26th Street, he reached a stop sign and looked to the left. When appellant began to look to the right, pain reportedly shot down both sides of his neck and into both shoulders and proceeded down his arms. He also reported lower back and left hip pain. Unable to withstand the pain, appellant returned to the postal facility and informed his supervisor. He further indicated that on every park and loop the mail in his satchel weighed in excess of 30 pounds. Appellant's lower back, neck and shoulders reportedly ached while delivering mail, but when the pain shot up to 9 out of 10, he just could not continue delivering his route.

Appellant previously filed a claim for injuries to his neck and low back allegedly sustained on October 24, 2011. That case was assigned File No. xxxxxx895. The employing establishment noted that appellant had been off work approximately six weeks before returning on December 15, 2011 only to sustain the current injury a week later. Appellant's employer also noted that he appeared to have a preexisting neck condition.

The record included diagnostic evidence of preexisting lumbar disc disease dating back to January 2005. Additionally, a November 3, 2011 cervical magnetic resonance imaging (MRI) scan noted a six-month history of neck pain with decreased range of motion. This MRI scan, which predated the claimed injury by seven weeks, revealed mild degenerative changes and disc herniations at C4-5 and C5-6.

Dr. Sara C. Vizcay, a Board-certified family practitioner, examined appellant on December 22, 2011 and diagnosed cervical, lumbar and bilateral shoulder sprain/strain. She reported that earlier in the day he felt a sharp pain in his neck after delivering mail and carrying a heavy mailbag. Appellant also complained of bilateral shoulder and arm pain, low back pain and left hip pain. Dr. Vizcay prescribed a muscle relaxant and pain medications and recommended physical therapy. She also excused appellant from all work and referred him to an orthopedic surgeon for further evaluation. In a follow-up examination on December 29, 2011 Dr. Vizcay provided additional diagnoses of bilateral upper and lower extremity radiculopathy and thoracic sprain/strain.

A lower extremity nerve conduction velocity (NCV) study administered on January 18, 2012 revealed L5-S1 radiculopathy and S1 entrapment. It was also noted that a global sensory polyneuropathy could not be entirely ruled out.

³ In a December 22, 2011 statement, that accompanied the claim, appellant provided a block by block account of the deliveries he made earlier that day. He identified specific streets/avenues and the number of houses and/or businesses he delivered to in a particular loop. Appellant also described how he moved his postal vehicle from one loop to the next and he identified specific locations on his route where he was required to dismount.

Dr. Allamm Morales, a Board-certified neurologist with a subspecialty in vascular neurology, examined appellant on January 30, 2012. He noted that appellant had been delivering mail on December 22, 2011 when he suddenly felt a sharp pain in his neck, both shoulders and arms and his low back and left hip. Appellant's symptoms had reportedly worsened since then. Dr. Morales noted a past medical history of chronic neck and back pain. He also noted that appellant had undergone physical therapy, which resulted in very mild improvement. Additionally, Dr. Morales reviewed the results of appellant's January 18, 2012 lower extremity NCV. His clinical assessment was to rule out cervical radiculopathy and lumbar radiculopathy. Dr. Morales also provided a differential diagnosis of radiculopathy versus carpal tunnel syndrome (CTS). He recommended continued physical therapy three times a week and a muscle relaxant. Dr. Morales also recommended cervical and lumbar MRI scans. He advised appellant to follow up in two to three weeks.

A February 1, 2012 upper extremity NCV showed bilateral CTS and C8-T1 radiculopathy. The results were reportedly indicative of a double crush syndrome.

By decision dated February 23, 2012, OWCP denied appellant's traumatic injury claim because he failed to establish that the diagnosed conditions were causally related to the December 22, 2011 employment incident.

Appellant subsequently requested an oral hearing which was held on June 14, 2012.

Dr. Vizcay provided follow-up examination reports dated February 16 and May 10, 2012. Her February 16, 2012 report included diagnoses of bilateral CTS, cervical and lumbar radiculopathy, double crush syndrome and upper extremity radiculopathy due to double crush syndrome. Dr. Vizcay identified December 22, 2011 as the date of injury, but did not otherwise explain how the diagnosed conditions were purportedly employment related. She advised appellant to remain off work for four weeks.

In her May 10, 2012 report, Dr. Vizcay noted that appellant continued to have pain in the cervical and lumbar spine, as well as pain in both shoulders with movement. She diagnosed chronic cervical strain, cervical disc syndrome and C4-5 disc herniation with compression of the thecal sac. Dr. Vizcay also diagnosed a two-millimeter broad-based left posterolateral disc herniation at C5-6 with compression on the thecal sac and moderate left-sided neural foraminal stenosis. Additional diagnoses included spondylitic changes at C5-6, chronic muscle strain of the dorsal region of the spine, chronic lumbosacral sprain, lumbar disc syndrome, bulging discs at L4-5 and L5-S1, bilateral lower extremity radiculopathy and bilateral upper extremity radiculopathy. Dr. Vizcay explained that appellant's injuries were the direct result of the constant weight from his satchel, which was in excess of 30 pounds. She also attributed his injuries to repetitive mounting and dismounting his postal vehicle and excessive walking throughout the day. Dr. Vizcay recommended acupuncture, pain medication, a muscle relaxant and physical therapy three times a week for four weeks.

The record also included a May 17, 2012 report from Dr. Vizcay regarding a March 29, 2011 back injury appellant reportedly sustained while lifting a 20-pound package out of his postal vehicle (File No. xxxxxx800). Dr. Vizcay diagnosed lumbar strain/sprain.

Dr. Samy F. Bishai, an orthopedic surgeon, examined appellant on May 16, 2012 and reviewed prior medical records. He identified December 22, 2011 as the date of injury, but did not describe the mechanism of injury. Dr. Bishai, an associate of Dr. Vizcay at AmeriMed Diagnostic Services, Inc., provided the same 11 diagnoses previously identified in her May 10, 2012 report. He advised appellant to continue physical therapy and acupuncture and return for a follow-up orthopedic evaluation in four weeks.

When appellant returned on June 19, 2012, Dr. Bishai reiterated the previous 11 diagnoses. He again advised appellant to continue physical therapy and acupuncture and return for a follow-up orthopedic evaluation in four weeks. But unlike the previous report, Dr. Bishai's June 19, 2012 report addressed causal relationship. He stated that he had reviewed appellant's December 22, 2011 statement regarding the duties he performed earlier that day. Dr. Bishai also referenced work-related injuries appellant reportedly sustained on March 29 and October 24, 2011. He noted that appellant worked as a letter carrier for over 13 years and had been carrying his current mail route the past 12 years. On December 22, 2011 appellant was reportedly on restricted duty working only five hours per day. Dr. Bishai indicated that when appellant began to work that day his neck, lower back and left hip pain was 2 to 3 on a scale of 1 to 10. At 7:30 a.m. appellant reportedly started casing his mail which required him to twist and turn. He cased mail for about two hours then pulled down the route and loaded his truck for delivery. Dr. Bishai then described appellant's delivery duties that morning. He essentially incorporated appellant's December 22, 2011 statement, describing how he moved from one loop to the next. However, Dr. Bishai added previously unreported details including distances walked between appellant's postal vehicle and houses during dismounts and the number of stairs appellant climbed at various locations along the route. He also stated that appellant altered his normal delivery routine on 12th Street because of increased pain. This was the last delivery location prior to the shooting pain appellant reported while at a traffic stop. Dr. Bishai stated that appellant was already in a great deal of pain when he reached the intersection. He explained that appellant's description of events provides a clue that his condition was work related. Dr. Bishai further stated that the causal relationship between appellant's symptoms and his work was definitely clearly established. Accordingly, he attributed appellant's condition to the injury suffered while working on December 22, 2011. Dr. Bishai also stated that the injuries suffered on December 22, 2011 permanently aggravated appellant's previous condition.

Dr. Bishai's August 28, 2012 follow-up examination report reiterated the previous 11 diagnoses. Appellant continued to complain of pain in the neck radiating down his bilateral shoulders and arms, as well as lower back pain radiating down the left buttock, hip and leg. Dr. Bishai again identified December 22, 2011 as the date of injury, but did not elaborate on causal relationship. He recommended that appellant continue physical therapy for another eight weeks and advised him to return for follow up in four weeks.

In a September 13, 2012 decision, the Branch of Hearings & Review affirmed OWCP's February 23, 2012 decision. The hearing representative found Dr. Bishai's opinion on causal relationship speculative and lacking probative value.

LEGAL PRECEDENT

A claimant seeking benefits under FECA has the burden of establishing the essential elements of his or her 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.⁴

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether “fact of injury” has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that is alleged to have occurred.⁵ The second component is whether the employment incident caused a personal injury.⁶ An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.⁷

ANALYSIS

Dr. Vizcay examined appellant on December 22, 2011 and initially diagnosed cervical, lumbar and bilateral shoulder sprain/strain. She reported that earlier in the day he felt a sharp pain in his neck after delivering mail and carrying a heavy mailbag. Although she attributed the diagnoses to appellant’s described duties, Dr. Vizcay did not explain how his letter carrier duties that day either caused or contributed to his diagnosed conditions. A week later, she expanded appellant’s diagnoses to include bilateral upper and lower extremity radiculopathy and thoracic sprain/strain, but again she failed to clearly explain how the diagnosed conditions were causally related to his December 22, 2011 employment activities. As time passed, the list of diagnosed conditions grew to include multilevel cervical and lumbar disc herniations/bulges, cervical and lumbar disc syndrome, C5-6 spondylitic changes and chronic dorsal region muscle strain, all of which were purportedly due to the events of December 22, 2011.

In her May 10, 2012 report, Dr. Vizcay explained that appellant’s current injuries were the direct result of the constant weight from his satchel, which exceeded 30 pounds. She also attributed the December 22, 2011 injuries to repetitive mounting and dismounting, as well as excessive walking that day.

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

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

⁶ *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question which generally requires rationalized medical opinion evidence to resolve the issue. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician’s opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician’s 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. *Id.*

⁷ *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

Diagnostic studies indicated that appellant's lumbar disc bulges predated the December 22, 2011 employment incident by approximately seven years. His diagnosed cervical disc herniations and C5-6 spondylitic changes were evident on an MRI scan that predated the December 22, 2011 employment incident by seven weeks. Despite evidence of preexisting cervical and lumbar disc disease, Dr. Vizcay purports to attribute all of the diagnosed conditions to appellant's December 22, 2011 employment exposure. Appellant's preexisting cervical and lumbar disc disease might possibly have been aggravated by his December 22, 2011 employment duties; however, that was not the explanation provided by Dr. Vizcay. Under the circumstances, the Board finds that Dr. Vizcay's opinion on causal relationship is not well reasoned and therefore insufficient to satisfy his burden under FECA.

The Board similarly finds Dr. Bishai's opinion on causal relationship deficient. Dr. Bishai diagnosed various cervical, thoracic (dorsal) and lumbar spine conditions consistent with Dr. Vizcay's findings. He attributed the 11 diagnosed conditions to appellant's December 22, 2011 employment exposure. Dr. Bishai also stated that the injuries suffered on December 22, 2011 permanently aggravated appellant's previous condition. He acknowledged a preexisting condition, but neglected to distinguish which of the 11 diagnosed conditions were preexisting. Dr. Bishai also failed to explain how appellant's December 22, 2011 employment exposure caused or contributed to the diagnosed conditions. He did not explain why the purported December 22, 2011 aggravation was permanent rather than temporary.

Dr. Bishai's June 19, 2012 report included much of the same information appellant included in his December 22, 2011 statement. He essentially recited the day's events and concluded, without explanation, that appellant's diagnosed conditions were work related. A physician's opinion on causal relationship must be supported by medical rationale explaining the nature of the relationship between the diagnosed conditions and appellant's specific employment exposure.⁸ Dr. Bishai provided no such medical rationale. The essence of his June 19, 2012 report was that appellant started the workday in pain and his symptoms increased over the next few hours while delivering mail. However, a mere temporal relationship between the employment activity and the reported symptoms will not suffice for purposes of establishing a causal relationship.⁹

While medical rationale is a necessary and important component, a physician's opinion must also be based on a complete factual and medical background.¹⁰ The Board notes that Dr. Bishai's description of the events of December 22, 2011 is not entirely consistent with the statement appellant initially submitted to OWCP. First, appellant did not claim to have started the workday already in pain, nor did he describe or otherwise implicate any early-morning casing duties as a cause of his claimed conditions. Second, he did not describe the number of steps taken between his postal vehicle and the various houses he delivered to on December 22, 2011. Also, appellant did not describe the number of steps he climbed at various locations along his

⁸ See *Victor J. Woodhams*, *supra* note 6.

⁹ See *D.I.*, 59 ECAB 158, 162 (2007). The fact that a condition manifests itself during a period of employment does not raise an inference of causal relationship. *Id.*

¹⁰ See *Victor J. Woodhams*, *supra* note 6.

route nor did he report having deviated from his normal delivery routine on 12th Street because of increased pain. Lastly, he did not claim to have been in a great deal of pain prior to reaching the stop sign in route to 26th Street. Dr. Bishai may very well have been privy to additional factual information; however, the source of the information and its accuracy cannot be verified based on the current record.¹¹

It is also noteworthy that neither Dr. Vizcay, nor Dr. Bishai specifically addressed what, if any, role the stop sign incident played in appellant's current condition. Although appellant had already been delivering mail for a few hours at that time, he reportedly experienced shooting pain only after looking to the left and then to the right. Drs. Vizcay and Bishai primarily focused on appellant's employment activities prior to the stop sign incident. However, the question remains as to whether this head and/or eye movement caused or contributed to appellant's condition. It is apparent that both physicians believe that appellant's current conditions are employment related. What is not explained is the underlying basis for their respective beliefs. A conclusion without explanation will not suffice.

In view of the above-noted deficiencies regarding the reports of Dr. Vizcay and Dr. Bishai, the Board finds that the medical evidence of record does not establish that appellant's diagnosed conditions are causally related to his December 22, 2011 employment activities.

CONCLUSION

Appellant failed to establish that his diagnosed cervical, thoracic and lumbar conditions are causally related to the letter carrier duties he performed on December 22, 2011.

¹¹ Both Dr. Bishai and appellant's representative, Mr. Perez, indicated that appellant was working part-time limited-duty on December 22, 2011 due to a prior injury. This assertion has neither been confirmed nor refuted by the employing establishment.

ORDER

IT IS HEREBY ORDERED THAT the September 13, 2012 decision of the Office of Workers' Compensation Programs is affirmed.¹²

Issued: April 22, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

¹² 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. §§ 10.605-10.607.