

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

M.M., Appellant)

and)

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

**Docket No. 13-1613
Issued: December 17, 2013**

Appearances:

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 27, 2013 appellant, through his attorney, filed a timely appeal from the May 6, 2013 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 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 has previously been before the Board. In an April 12, 2010 decision, the Board affirmed the June 19, 2008 and April 23, 2009 decisions of OWCP, finding that appellant failed to establish that he sustained an injury on December 12, 2007 in the performance of duty.² The

¹ 5 U.S.C. § 8101 *et seq.*

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

Board found insufficient medical evidence of record providing a complete or accurate factual and medical background, physical findings on examination and medical rationale explaining how appellant's back and leg pain were causally related to the accepted motor vehicle accident. In a June 22, 2012 decision, the Board affirmed the December 7, 2011 decision of OWCP, finding that he did not submit sufficient medical evidence to establish a work-related injury on December 12, 2007.³ The facts and history of the claim as contained in the prior decisions are incorporated by reference.

On February 21, 2013 appellant's counsel requested reconsideration. He submitted new medical evidence and asserted that evidence was sufficient to meet appellant's burden of proof.

In a February 11, 2013 note, Dr. Alfredo Cruz, a Board-certified family practitioner, stated that appellant had a multitude of complaints involving the muscles and joints ranging from the upper extremities, hands and wrists, to the lower extremities, legs and feet. He diagnosed ankylosing spondylitis. Dr. Cruz noted that despite the generalized aches and pains, appellant was able to perform his duties as a rural carrier. On December 12, 2007 appellant was rear-ended and sustained contusions around the back, buttock and thighs. Dr. Cruz stated that the trauma aggravated appellant's condition to the point that the pain was unbearable. He noted that appellant tried to return to work but stopped on February 21, 2008. Dr. Cruz advised that appellant was in pain since the accident and opined that the automobile accident aggravated his back pain to the point that he could no longer work. Appellant still had discomfort around the lumbar area and an associated degree of decreased range of motion in his hips and lower extremities. Dr. Cruz noted that appellant's forward flexion was decreased to 60 degrees and extension to 10 degrees. He explained that there was also limitation of the upper rotation from the lumbar spine and opined that there "is a causal relationship between the accident and the aggravation of pain."

By decision dated May 6, 2013, OWCP denied modification of its prior decisions. It found that Dr. Cruz did not provide sufficient medical rationale addressing how the December 12, 2007 motor vehicle accident aggravated appellant's preexisting ankylosing spondylitis.

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 FECA⁴ and that an injury was sustained in the performance of duty.⁵ These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

³ Docket No. 12-446 (issued June 22, 2012).

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *James E. Chadden Sr.*, 40 ECAB 312 (1988).

⁶ *Delores C. Ellyett*, 41 ECAB 992 (1990).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁷ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁸

Rationalized medical opinion evidence is generally required to establish causal relationship. 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.⁹

ANALYSIS

In the prior decisions, the Board found that the medical evidence was insufficient to establish that appellant sustained an injury on December 12, 2007 while in the performance of duty. There is no dispute that appellant’s postal vehicle was struck from behind by another vehicle on December 12, 2007.

The Board finds that the medical evidence is insufficient to establish that the employment incident caused an injury. The medical reports from Dr. Cruz provide inadequate explanation for the physicians stated conclusion that the incident of December 12, 2007 caused or aggravated an injury.¹⁰ This is important in light of the fact that appellant had a preexisting condition of ankylosing spondylitis. The Board previously noted that the accident appeared to be minor with little damage to the motor vehicles and no reported injury. Compensation was claimed about five months subsequent to the accident.

Appellant submitted a report from Dr. Cruz dated February 11, 2013. He reiterated his opinion from a June 9, 2010 report that appellant had ankylosing spondylitis that was aggravated by the 2007 motor vehicle accident. He asserted that the trauma aggravated the preexisting condition to the point that the pain became unbearable. Dr. Cruz advised that appellant tried to return to work but eventually stopped on February 21, 2008. This is in contrast with the record which shows that appellant did not stop work and was cleared by Dr. Cruz to return to full duty as of February 16, 2008. Dr. Cruz opined that appellant was in pain since the incident and his ankylosing spondylitis was exacerbated by the trauma to the back caused by the automobile accident. He opined that the “the automobile accident has aggravated his back pain to the point that he could no longer work.” Appellant had an associated degree of decreased range of motion with his hips and lower extremities. In its April 12, 2010 decision, the Board noted that his

⁷ *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *Id.*

⁹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁰ 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).

clinical notes dated December 18, 2007, near the time of the accident, diagnosed contusions of the back, buttocks and right thigh and low back pain. X-rays of the hips and lumbar spine of December 27, 2007 did not reveal any abnormality. A March 22, 2008 lumbar magnetic resonance imaging scan was normal. The Board finds that the February 11, 2013 report of Dr. Cruz is insufficiently rationalized and of limited probative value. Dr. Cruz did not address his contemporaneous reports, the diagnostic testing obtained or the nature of the preexisting condition. He appears to premise the finding of injury and disability largely on appellant's statement.¹¹

The medical evidence submitted by appellant does not sufficiently address how the December 12, 2007 incident at work caused or aggravated his back condition. The opinion of Dr. Cruz is of limited probative value¹² and is insufficient to establish that the December 12, 2007 employment incident caused 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.

¹¹ See *Conard Hightower*, 54 ECAB 796 (2003).

¹² See *Linda I Sprague*, 48 ECAB 386, 389-90 (1997).

ORDER

IT IS HEREBY ORDERED THAT the May 6, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 17, 2013
Washington, DC

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

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board