

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

K.K., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Buffalo, NY, Employer**

)
)
)
)
)
)
)
)
)
)

**Docket No. 13-71
Issued: March 20, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On October 10, 2012 appellant filed a timely appeal from the September 19, 2012 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's claim should be accepted for a cervical condition causally related to his May 8, 2002 work injury.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

OWCP accepted that on May 8, 2002 appellant, then a 44-year-old mail handler, sustained a lumbar sprain due to moving mail from a dolly to a mail container. Appellant stopped work on May 23, 2002 and received disability compensation through September 2002.²

In a May 3, 2011 letter to his congressman, appellant inquired why it was never accepted that he sustained a cervical condition due to his May 8, 2002 work injury. The letter was forwarded to OWCP. In a May 27, 2011 response, OWCP advised appellant that he should submit additional medical evidence to support his claim that he sustained a cervical injury on May 8, 2002.

Appellant submitted an August 5, 2002 report of Dr. Leonard Kaplan, an attending osteopath, who stated that he reported sustaining a lifting injury at work on May 8, 2002. Dr. Kaplan saw appellant on July 24, 2002 for cervical pain and headache, but that the conditions were not connected at that time “to his work-related injury.” He diagnosed lumbar and cervical segmental dysfunction at multiple levels and stated, “At this time I feel the causality of both his neck and lumbar pain are related to his work injury on May 8, 2002.”³

In a report dated September 3, 2002, Dr. Kaplan stated that, despite the fact that magnetic resonance imaging testing showed a mild, small cervical disc herniation at C5-6, appellant’s symptoms and findings were primarily myofascial and he did not exhibit any radicular nerve tension signs. He noted, “Therefore, it is difficult to say whether the disc herniation is job related. However, the patient’s myofascial component, which would improve very quickly with physical therapy and chiropractic care, was most likely related to his initial low back injury at the job.”

In a brief note dated July 16, 2002, Dr. David Hartman, an attending Board-certified internist, stated that appellant continued to report having pain and discomfort in his neck with a throbbing bilateral headache radiating to the front. In a July 16, 2002 form report, he stated that appellant reported developing pain in his back and neck due to sorting mail at work. Dr. Hartman checked a “yes” box indicating that appellant’s condition was caused or aggravated by the reported work activity.

In a December 16, 2005 report, Dr. Douglas B. Moreland, an attending Board-certified neurosurgeon, noted that appellant reported that he had “neck pain since 2002” which radiated into both shoulders. He diagnosed cervicalgia and cervical disc herniation at C5-6.

In a January 29, 2009 report, Dr. Gerald L. Peer, an attending Board-certified anesthesiologist, stated that appellant reported of cervical problems, “Date of onset: May 14, 2002; first complaint of neck pain associated with [employing establishment] duties. Related to

² OWCP accepted that appellant sustained other work injuries including bilateral shoulder strains and lumbar strain on August 12, 1999 and lumbar strains on October 16, 2003 and October 24, 2004. These other work injuries are not the subject of the present appeal.

³ The record contains a physical therapy note showing that appellant was treated for cervical problems on April 29, 2002.

low back injury of May 8, 2002 by Dr. Kaplan.” Dr. Peer diagnosed intervertebral cervical disc displacement at C5-6 without myelopathy. In a report dated October 19, 2010, Dr. Francis C. Corrigan, an attending Board-certified anesthesiologist, diagnosed lumbar spondylosis, facet syndrome, lumbar degenerative disc disease and cervical degenerative disc disease.

In an August 3, 2011 decision, OWCP denied appellant’s claim on the grounds that he did not submit sufficient medical evidence to establish that his claim should be accepted for a cervical condition causally related to his May 8, 2002 work injury.

Appellant requested a telephone hearing before an OWCP hearing representative. During the November 15, 2011 hearing, he testified that he initially felt back pain at the time of his May 8, 2002 work injury but also experienced cervical pain shortly thereafter. In a February 2, 2012 decision, OWCP’s hearing representative affirmed the August 3, 2011 decision.

In a February 21, 2012 letter, appellant requested reconsideration of his claim. He argued that the medical evidence was sufficient to establish that he sustained a cervical condition due to his May 8, 2002 work injury.⁴

In a September 19, 2012 decision, OWCP affirmed the February 2, 2012 decision, noting that appellant had not submitted sufficient evidence to establish his cervical condition as causally related to his May 8, 2002 work injury.⁵

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 FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁶ The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury 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 compensable 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

⁴ Appellant later submitted an August 21, 2012 letter to his congressman in which he discussed his claim of a work-related cervical condition.

⁵ In its September 19, 2012 decision, OWCP provided a discussion of the standards to be applied when a reconsideration request is untimely. In such a case, it performs a limited review of the case record and only opens the case for merit review if clear evidence of error in its prior decision is shown. It is not clear why OWCP provided this discussion as appellant’s reconsideration request was timely filed and other portions of the decision show that it properly conducted a full merit review of appellant’s claim.

⁶ *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁷

The Board has held that, when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish causal relationship. Appellant's burden includes the necessity of furnishing an affirmative opinion from a physician who supports his conclusion with sound medical reasoning.⁸

ANALYSIS

OWCP accepted that appellant sustained a lumbar strain at work on May 8, 2002 due to moving mail from a dolly to a mail container. In May 2011, he claimed that he also sustained a cervical injury that day. The Board finds that appellant did not submit sufficient medical evidence to establish his cervical condition as causally related to his May 8, 2002 work injury.

Appellant submitted an August 5, 2002 report of Dr. Kaplan, an attending osteopath, who stated that he reported sustaining a lifting injury at work in May 2002.⁹ Dr. Kaplan diagnosed lumbar and cervical segmental dysfunction at multiple levels and stated, "At this time I feel the causality of both his neck and lumbar pain are related to his work injury on May 8, 2002." This opinion on causal relationship is of diminished probative value as Dr. Kaplan did not provide a specific cervical diagnosis or provide medical rationale addressing how any specific cervical condition was caused or contributed to by the May 8, 2002 work injury. He did not provide a full medical history or state whether appellant's cervical condition was related to some nonwork-related condition.¹⁰

In a report dated September 3, 2002, Dr. Kaplan stated that, despite the fact that magnetic resonance imaging testing showed a mild, small cervical disc herniation at C5-6, appellant's symptoms and findings were primarily myofascial. He did not exhibit any radicular nerve tension signs. Dr. Kaplan noted, "Therefore, it is difficult to say whether the disc herniation is job related. However, the patient's myofascial component, which would improve very quickly with physical therapy and chiropractic care, was most likely related to his initial low back injury at the job." This report is of limited probative value on the issue of causal relation as it contains an opinion on causal relationship which is equivocal in nature.¹¹ Dr. Kaplan noted that he could not say whether appellant's cervical herniation was work related, but he also generally indicated, without explanation, that appellant's unspecified "myofascial component" was related to a work injury. However, he did not explain the nature of this relationship.

⁷ See *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

⁸ *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

⁹ Dr. Kaplan indicated that he saw appellant on July 24, 2002 for cervical pain and headache, but that these conditions were not connected at that time "to his work-related injury."

¹⁰ It should be noted that the record contains a physical therapy note showing that appellant was treated for cervical problems on April 29, 2002.

¹¹ See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956) (finding that an opinion which is equivocal is of limited probative value regarding the issue of causal relationship).

In a brief note dated July 16, 2002, Dr. Hartman stated that appellant reported having pain and discomfort in his neck with a throbbing bilateral headache radiating to the front. In a form report dated July 16, 2002, he stated that appellant reported developing pain in his back and neck due to sorting mail at work. Dr. Hartman checked a “yes” box indicating that appellant’s condition was caused or aggravated by the reported work activity. As he did no more than check “yes” to a form question, his opinion on causal relationship is of diminished probative value. It is insufficient to discharge appellant’s burden of proof.¹² Dr. Hartman did not relate a clearly diagnosed condition to work factors or provide medical rationale in support of his opinion.

In a December 16, 2005 report, Dr. Moreland, an attending Board-certified neurosurgeon, indicated that appellant reported that he had “neck pain since 2002” which radiated into both shoulders. He diagnosed cervicgia and cervical disc herniation at C5-6, but he did not provide any indication that this condition was due to the May 8, 2002 work injury. In a January 29, 2009 report, Dr. Peer, an attending Board-certified anesthesiologist, discussed appellant’s reporting of cervical problems in mid-May 2002. He diagnosed intervertebral cervical disc displacement at C5-6 without myelopathy, but he also did not provide any opinion on the cause of this condition.¹³

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 10.607.¹⁴

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that his claim should be expanded to include a cervical condition as causally related to his May 8, 2002 work injury.

¹² See *supra* note 9.

¹³ In a report dated October 19, 2010, Dr. Corrigan, an attending Board-certified anesthesiologist, diagnosed lumbar spondylosis, facet syndrome, lumbar degenerative disc disease and cervical degenerative disc disease. However, he did not provide any opinion on the cause of appellant’s cervical condition. On appeal, appellant suggested that he continued to have disability due to work injuries other than his May 8, 2002 injury, but these other injuries are not the subject of the present appeal.

¹⁴ On appeal, appellant submitted new evidence. The Board may not consider new evidence for the first time on appeal. See 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the September 19, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 20, 2013
Washington, DC

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

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

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