

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

R.A., Appellant)
and) Docket No. 13-1229
U.S. POSTAL SERVICE, POST OFFICE,) Issued: November 7, 2013
Oakland, CA, Employer)

)

Appearances: Case Submitted on the Record
Alan J. Shapiro, Esq. for the appellant
Office of Solicitor, for the Director

DECISION AND ORDER

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

JURISDICTION

On April 25, 2013 appellant, through his attorney, filed a timely appeal of the March 15, 2013 decision of the Office of Workers' Compensation Programs (OWCP), which denied his claim for an occupational disease. 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 case.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he sustained an occupational disease in the performance of duty.

FACTUAL HISTORY

On May 5, 2011 appellant then a 41-year-old mail processing clerk, filed a Form CA-2, occupational disease, alleging that he developed aches and pain in his ankle, knees, foot, thighs

¹ 5 U.S.C. §§ 8101-8193.

and legs. He became aware of his condition and realized that it was causally related to his employment on April 26, 2011. Appellant did not stop work.²

Appellant was treated by Dr. Subena Tilley, a Board-certified family practitioner, who submitted prescription notes dated April 29 to May 5, 2011, noting that he was unable to work due to a medical illness and was disabled from April 29 to June 10, 2011.

On May 18, 2011 OWCP advised appellant of the type of evidence needed to establish his claim. It particularly requested that he submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific work factors.

Appellant submitted reports dated April 26 and June 10, 2011 from Dr. Charan K. Singh, a Board-certified neurologist, who treated him for longstanding chronic neck, shoulder and arm pain related to a workers' compensation claim. He reported initially having low back pain on April 26, 2011 while assisting a patron at the customer service window. Appellant slid a package across the lane and suddenly experienced severe pain that radiated from his low back to his buttocks and legs with swelling in the ankles. He noted that due to the knee and ankle pain he was unable to stand and remained off work from April 26 to June 9, 2011. Dr. Singh advised that an x-ray of the lumbar spine and both knees was normal. Appellant noted limited range of motion of the back, muscle spasm, increased lordosis and intact strength with no atrophy or sensory deficit. Dr. Singh diagnosed low back pain with muscle tension and sprain, bilateral sciatica pain and ankle swelling bilaterally and knee pain. On June 10, 2011 he opined that it appeared that, due to the strain at work with sudden movement that may have jarred the low back, appellant developed low back pain radiating down into the sciatic distribution.

On June 29, 2011 OWCP denied the claim on the grounds that the medical evidence was insufficient to establish that appellant's claimed conditions were causally related to work events.

Appellant requested an oral hearing, which was held on October 26, 2011. He submitted a July 18, 2011 report from Dr. Singh who related appellant's complaints of aches, pain in his ankle, foot, thighs and legs since he was required to stand, walk and help customers as a window and lobby clerk. Dr. Singh noted that appellant was a lobby clerk intermittently since 2006 but performed the job more regularly for six hours a day since 2008. Appellant spent six hours a day on his feet walking on a pavement floor. Dr. Singh noted a direct causal relationship between the amount of walking and standing that appellant did and the onset of his symptoms. He noted that the new onset of bilateral leg pain specifically in the knees, ankles, shins, feet and calves was due to the cumulative process of standing and walking six hours a day while being a lobby and window clerk.

In a November 10, 2011 report, Dr. Singh noted an onset of appellant's injury on April 26, 2011. He again noted that appellant was working a six-hour-a-day job, which entailed standing and walking for six hours while working the window and lobby as a customer clerk. Appellant reported that his pain increased on April 26, 2011, radiating down the buttocks into the knees and ankle along with significant swelling in the knees and ankles. Dr. Singh diagnosed

² The record indicates that appellant has other accepted claims pertaining to his neck, back and arms. These claims are not before the Board on the current appeal.

bilateral lower extremity pain, bilateral knee, ankle and joint swelling. He noted that a recent electromyogram revealed mild left axonal tibial neuropathy and left mild L5 radiculopathy. Dr. Singh noted that appellant continued to have significant symptoms in his feet, knees and legs, which was the result of repetitive standing.

In a January 4, 2012 decision, an OWCP hearing representative vacated the June 29, 2011 decision and remanded the case for further medical development. He found that there was *prima facie* evidence of causal relationship between the diagnosed knee and ankle conditions and appellant's work duties, which required further development.

On January 24, 2012 OWCP referred appellant for a second opinion to Dr. Juoon-Kin K Fong, a Board-certified orthopedic surgeon. It provided Dr. Fong with appellant's medical records, a statement of accepted facts and a detailed description of his employment duties.

In a February 22, 2012 report, Dr. Fong noted reviewing the records provided, stated appellant's history and examined him. Appellant displayed significant pain mannerisms including holding his back with his left hand while using a cane, walking in a stooped manner, with significant moaning and crying out in pain with movements. He was unable to heel and toe walk and indicated that he could not ascend the foot stool to sit on the examining table. Dr. Fong noted limited range of motion of the lumbar spine done with moaning and crying, muscle guarding without spasm of the paralumbar muscles, normal reversal lumbar lordosis, no true sacral-iliac lumbar or gluteal notch tenderness on palpation with howling pain when the back was touched. Straight leg raises were negative in the seated position while deep tendon reflexes were equal bilaterally for the knees and ankles. Sensory testing was unremarkable to pinprick and light touch for both lower extremities, there was no effusion of the knees or ankles, motor testing for the lower extremities revealed nonfunctioning giving way that was inconsistent on repetitive testing. Dr. Fong diagnosed chronic lumbalgia superimposed on lumbar spondylosis, chronic pain syndrome and possible rheumatoid disease. He noted that he could not diagnose any lower extremity condition related to an orthopedic condition as his history and presentation were unusual as appellant exhibited extensive pain-magnification behavior in the absence of any objective findings involving the legs. Dr. Fong thought it was possible that appellant aggravated his previous back condition leading to sciatic-type symptoms to the lower extremities and indicated that rheumatoid arthritis or another autoimmune disorder could be the cause of his symptoms none of which are work related. He noted that the only diagnoses related to appellant's work would have been the aggravation of the previous back issue. Dr. Fong noted that appellant appeared to be incapacitated by his pain but there were no objective findings of disability on examination. From an objective standpoint, six to eight weeks was a reasonable time of total disability for a severe exacerbation of back pain. In a February 22, 2012 work capacity evaluation, Dr. Fong diagnosed lumbalgia and advised that appellant could not stand or walk for long periods of time but could work four to six hours per day with restrictions.

On March 8, 2012 OWCP requested that Dr. Fong clarify what diagnosed conditions were aggravated by the prior back injury and, if the aggravation was temporary, when would it have ceased. In a March 16, 2012 supplemental report, Dr. Fong indicated that the aggravated condition was lumbar spondylosis and indicated that "admittedly, the only reason this is given as a diagnosis is the history provided by the claimant of his previous physician ... allegedly telling him that he had 'bad discs.'" He indicated that there were no medical records provided that

substantiated previous back problems. Dr. Fong noted that the expected temporary total disability from this type of exacerbation would be six to eight weeks.

In an April 17, 2012 decision, OWCP denied appellant's claim. It found that the weight of the evidence rested with Dr. Fong who found no basis to support the existence of a medical condition which was aggravated by factors of employment.

Appellant requested an oral hearing which was held on August 14, 2012. He submitted a December 22, 2010 magnetic resonance imaging scan of the lumbar spine, which revealed a central bulge at C5-6 with mild anterior indentation of the cord and bony and disc changes at other levels without focal disc protrusion, cord compression or central foraminal stenosis. Reports from Dr. Singh dated February 10 and May 15, 2012 noted treating appellant for pain radiating from the buttocks to the knees and ankles with associated swelling of the knees and ankles. He diagnosed pain in the soft tissues of the limb, myalgia and myositis, lumbago, chronic pain syndrome and effusion of the joints multiple sites. Appellant reported the pain in the knees, ankles and feet when he was standing and walking, while a customer service/lobby clerk, and opined that there was a causal relationship between the amount of walking and standing he performed and the onset of his symptoms. In a September 10, 2012 report, Dr. Singh related appellant's reported history of performing his work duties on a concrete floor, throwing parcels up to 70 pounds, casing flats, casing letters, stamping letters and parcels, counting money, writing final notices, certificate letters and parcels and standing and walking 8 to 10 hours a day on a concrete floor. Appellant reported that, on April 26, 2011, while working on the customer service window, he slid a package across a lane and suddenly had low back pain with muscle strain radiating into the thighs, knees and ankles. Dr. Singh diagnosed pain in the soft tissues of the limb, myalgia and myositis, lumbago, chronic pain syndrome and effusion of the joint. He noted that he had no further treatment options for appellant.

In a decision dated November 5, 2012, an OWCP hearing representative affirmed the April 17, 2012 decision.

On December 27, 2012 appellant requested a review of the written record. He submitted a November 9, 2011 x-ray of the left forearm, which revealed no abnormalities. In a December 31, 2012 decision, OWCP denied appellant's request for a review of the written record as he had previously requested reconsideration on the same issue. It also denied a discretionary review noting that the matter could be further pursued through the reconsideration process.³

Appellant requested reconsideration and submitted a report from Dr. Singh dated September 10, 2012, previously of record.

In a decision dated March 15, 2013, OWCP denied modification of the decision dated November 5, 2012.

³ Appellant did not appeal this decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. Appellant must also establish that such event, incident or exposure caused an injury.⁴

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) 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 claimant. The medical evidence required to establish causal relationship is generally 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.⁵

ANALYSIS

It is not disputed that appellant's duties as mail processing clerk included standing and walking on the floor of the employing establishment assisting customers. It is also not disputed that he has been diagnosed with several medical conditions in connection with this claim. However, appellant has not submitted sufficient medical evidence to establish that any of these conditions are causally related to specific employment factors or conditions.

Appellant submitted reports from Dr. Singh dated April 26 and June 10, 2011, who treated him for low back pain with bilateral sciatica radiation. He reported that on April 26, 2011 he was assisting a patron at the customer service window when he slid a package across the lane and suddenly had severe pain that radiated from his low back to his buttocks and legs and his ankles were swollen. Dr. Singh diagnosed low back pain with muscle tension and sprain, sciatica pain, ankle swelling bilaterally and knee pain. He noted that appellant was disabled from work from April 26 to June 9, 2011. In reports dated July 18 and November 10, 2011,

⁴ See generally *John J. Carbone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989). See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury).

⁵ *Solomon Polen*, 51 ECAB 341 (2000).

Dr. Singh noted that appellant was a lobby clerk who spent six hours a day on his feet and opined that there was a direct causation between the prolonged walking and standing and the pain and swelling causing disability on April 26, 2011. He noted the new onset of bilateral leg pain specifically in the knees, ankles, shins, feet and calves due to the cumulative process of standing and walking six hours a day while working as a lobby clerk and window clerk. Although, Dr. Singh supported causal relationship, he did not provide medical rationale explaining the basis of his conclusion opinion regarding the causal relationship between appellant's knee, ankle, shin pain and swelling and work factors.⁶ He did not explain the process by which prolonged walking and standing would cause or aggravate the diagnosed conditions why such conditions would not be due to any nonwork factors. Therefore, these reports are insufficient to meet appellant's burden of proof.

To further develop the claim, OWCP referred appellant to Dr. Fong, in a February 22, 2012 report, he diagnosed chronic lumbar spondylosis, chronic pain syndrome and rule out rheumatoid disease. Dr. Fong noted that he could not diagnose any lower extremity condition related to an orthopedic condition as appellant exhibited extensive pain magnification behavior in the absence of any objective findings involving the lower extremities. He noted findings upon physical examination of significant pain mannerisms with significant moaning and crying with movement. Dr. Fong noted that straight leg raises were negative in the seated position, deep tendon reflexes were equal bilaterally for the knees and ankles, sensory testing was unremarkable to pinprick and light touch for both lower extremities, no effusion of the knees or ankles, motor testing for the lower extremities revealed nonfunctioning giving way that was inconsistent on repetitive testing. He noted that appellant appeared to be incapacitated by his pain but there were no objective findings of disability on examination. Dr. Fong opined that it was possible that appellant aggravated a previous back condition leading to sciatic-type symptoms to the lower extremities and indicated that rheumatoid arthritis or another autoimmune disorder could be the cause of his symptoms, none of which were work related. In a supplemental report dated March 16, 2012, he indicated that the possible aggravated condition was lumbar spondylosis and indicated that "admittedly, the only reason this is given as a diagnosis is the history provided by the claimant of his previous physician ... allegedly telling him that he had "bad discs." Dr. Fong noted that there were no medical records provided for review that substantiated any previous back problems. Thus, he found no objective basis to support that any leg condition claimed by appellant was causally related to work factors.

Appellant continued to submit reports from Dr. Singh. In February 10 and May 15, 2012 reports, Dr. Singh noted that appellant reported the pain in the knees, ankles and feet when he was standing and walking for six hours per day at work and offered leg and low back diagnoses. He opined that there was a direct cause and relationship between the amount of walking and standing that appellant was doing and the onset of his symptoms. In a September 10, 2012 report, Dr. Singh noted that appellant performed his work duties while standing and walking 8 to 10 hours a day on a concrete floor and noted diagnoses. The Board notes that while Dr. Singh's reports provide some support for causal relationship these reports continue to be insufficient to

⁶ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

establish the claim as he did not provide medical reasoning explaining why particular workplace factors caused or aggravated a diagnosed condition.

The Board finds that the medical evidence does not establish that any condition involving appellant's ankles, knees, feet and thighs is causally related to his employment. An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁷ Causal relationships must be established by rationalized medical opinion evidence. As noted the medical evidence is insufficient to establish appellant's claim. Consequently, OWCP therefore properly found that appellant did not meet his burden of proof in establishing his claim.

On appeal, appellant disagrees with OWCP's decision denying his claim for compensation and notes that he has expenses related to his condition and is in a bad financial situation. As noted above, the medical evidence does not establish that his conditions were causally related to his employment. Reports from appellant's physician's failed to provide sufficient medical rationale explaining how her injuries were causally related to particular employment factors.

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 did not meet his burden of proof to establish that his claimed conditions were causally related to his employment.

⁷ See Dennis M. Mascarenas, 49 ECAB 215 (1997).

ORDER

IT IS HEREBY ORDERED THAT the March 15, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 7, 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