

to the left and right repetitively. He stopped work and returned to light duty. The employing establishment controverted the claim. It noted that appellant was initially seen at the emergency room and placed on restrictions, but the next day his physician excused him from work for one month.

In a November 1, 2011 initial evaluation, Dr. Samir F. Bishai, Board-certified in emergency medicine, related appellant's complaint of pain and clicking in the right knee joint, occasional pain in the left knee and lower back pain. He reported a history that on April 29, 2011 appellant was working when his right knee locked up and he experienced sharp pain in his back. Upon examination Dr. Bishai observed tenderness overlying the dorsolumbar spine in the midline and paraspinal muscle spasm of moderate intensity affecting the paraspinal muscles. Straight leg raising test was to 85 degrees on both sides. Examination of the right knee demonstrated slight tenderness overlying the joint line and no swelling. Examination of the left knee showed the presence of slight tenderness overlying the patella and the joint line. Dr. Bishai reported that a June 30, 2011 magnetic resonance imaging (MRI) scan of appellant's lumbar spine revealed posterolateral disc bulge narrowing of the medial aspect of the bilateral neural foramina at the L4-5 and broad-based left parasagittal disc herniation at the L5-S1 level. He diagnosed internal derangement of the right knee joint, radiculopathy of the right leg, lumbosacral strain, strain of the dorsal muscles of the back, herniated lumbar disc at L5-S1 and bulging disc at L4-5. Dr. Bishai opined that by reading appellant's description of the April 29, 2011 incident the injuries to appellant's right and left knee joints and back were directly related to that work event.

In reports dated from December 6, 2011 to May 22, 2012, Dr. Bishai related appellant's complaints of pain and clicking in his right and left knees and pain in his lower back. He reviewed appellant's medical file and listed a date of injury of April 29, 2011. Dr. Bishai conducted an examination and provided similar findings to the November 1, 2011 initial evaluation. He diagnosed internal derangement of the right knee joint, lumbosacral strain, radiculopathy of the right leg, strain of the dorsal muscles of the back, herniated lumbar disc at L5-S1 and bulging disc at L4-5.

In a June 21, 2012 accident report, the employing establishment noted that on June 21, 2012 at approximately 11:30 a.m. appellant was delivering mail when he called to advise that his lower back and both knees were hurting. Appellant stated that the pain was a result of turning from the right to left repetitively while delivering mail.

In a June 21, 2012 emergency room report, Dr. Joy Uzo, a Board-certified internist, noted appellant's complaints of nontraumatic back pain starting that day. She related that appellant was delivering mail at work, which required repetitive twisting and turning, when he felt sudden pain in his low back. Examination of the lumbar spine revealed normal range of motion and no tenderness. X-rays demonstrated normal alignment and disc spaces. Dr. Uzo diagnosed lumbar strain/sprain and sciatica and advised appellant to follow up with his primary care provider.

In a June 22, 2012 MRI scan report of the spine, Dr. Mark J. Timken, a Board-certified diagnostic radiologist, observed narrowing of the C5-6 disc space and reversal of the upper cervical lordosis of the cervical spine. He also noted posterior spondylosis at C3-4, two millimeter posterolisthesis of C3 on C4 and cervicothoracic levoscoliosis. An MRI scan of the

thoracic spine revealed cervicothoracic levoscoliosis and mid-thoracic dextroscoliosis. Dr. Timken also observed normal height and disc spacing of the vertebrae and unremarkable paravertebral lines. An MRI scan of the lumbar spine demonstrated thoracolumbar dextroscoliosis and lower lumbar facet arthropathy of the lumbar spine. Dr. Timken also observed narrowing of the L4-5 disc space.

In a June 22, 2012 report, Dr. Sara Vizcay, a family practitioner, stated that on June 21, 2012 appellant was delivering mail on the street when he began to feel pain in his low back and both knees. Appellant's work duties required him to continuously twist and turn from left to right to put mail in mailboxes, pick up flats and parcels weighing between 5 and 35 pounds, and repetitively mount and dismount his vehicle throughout a normal workday. Dr. Vizcay stated that appellant had a prior right shoulder injury in June 2011 and a prior knee injury in April 2011. Upon examination, she observed that rotation was painful in both hips and he was unable to walk with his heels and tip toes due to pain. Examination of the cervical spine revealed bilateral spasm and tenderness on palpation of the shoulder girdles. Examination of the thoracic spine demonstrated bilateral spasm and tenderness and reduced range of motion in all ranges. Upon examination of the lumbar spine, Dr. Vizcay observed bilateral spasm and tenderness on palpation of the paralumbar musculature from L1-S1 and pain radiating into the lower extremities to the feet. Range of motion was severely restricted with pain. Examination of the knees revealed bilateral tenderness on palpation. Extension was to 100 degrees and flexion was to 90 degrees. Dr. Vizcay diagnosed cervical, thoracic, lumbar spine, and bilateral knee sprain and strains. She stated that, based on appellant's statement, his job duties were directly related to appellant's condition. Dr. Vizcay reported that appellant's injuries permanently aggravated his previous condition.

On August 7, 2012 OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested additional factual and medical evidence to establish that his diagnosed back and bilateral knee strains were causally related to the June 21, 2012 employment incident.

In a July 25, 2012 nerve conduction velocity (NCV) report, Dr. Sonia Tolgyesi, a Board-certified neurologist, observed normal amplitudes and speed of conduction of the left median motor nerves and both ulnar motor nerves. She stated that the findings suggested a left efferent median conduction block and opined that left median neuropathy should also be considered.

In July 25, 2012 sonograms, Dr. Tulia Benazet, a family practitioner observed normal findings of the thoracic spine. She also noted probable mild extended inflammation area at L4, L5 of the lumbar spine and mild bilateral facet inflammation at C7 of the cervical spine.

In an August 15, 2012 statement, appellant responded to OWCP's development letter. He explained that he filed a traumatic injury claim because the pain occurred during one workday. Appellant explained that on June 21, 2012 when he reported to work his pain levels on his knees was about a 2 or 3 out of 10 due to a previous April 29, 2011 work injury (File No. xxxxxx090). After he checked his vehicle, appellant cased about three tubs of flat mail, which involved bending and picking up tubs of mail, throwing the flats into the case separation and then sorting them in street delivery order. He explained that this required twisting and turning from the left and then to the right to prepare mail for delivery. Appellant loaded his truck for

delivery, which required him to lift heavy flat trays which weighed between 20 to 35 pounds and twist and turn in order to put them into the mail truck and went on his mail delivery route. He stated that after about 60 curb routes of residential mail he experienced burning in his lower back and both knees. Appellant described the pain as severe enough in his lower back and both lower extremities that he notified his supervisor that he needed medical attention. His supervisor was unable to assist him so appellant finished his route to the best of his ability. Appellant went to the emergency room and was authorized to return to work with restrictions of no twisting, bending, stooping, pushing or pulling. He stated that the next day the pain was so severe that he could hardly get out of bed. Appellant explained that he had a previous job injury to his right knee that was under appeal (File No. xxxxxx090) and another injury to his right shoulder that was approved for medical benefits (File No. xxxxxx653). He disagreed with the employing establishment's controversion letter and alleged that that was not a reason to controvert a claim. Appellant also submitted a job description of a city carrier and various physical therapy treatment notes.

In an August 15, 2012 NCV report, Dr. Tolgyesi reported bilateral peroneal and posterior tibial motors compound muscle action and amplitude within normal limits. Both Hoffman reflex were significant prolonged after sub maximal simulation. Dr. Tolgyesi opined that his findings suggested focal entrapment involving posterior rami sciatic nerve at the S1 level.

In an August 20, 2012 report, Dr. Bishai related appellant's complaints of lower back pain radiating down to the legs and pain in both right and left knee joints and noted that he reviewed appellant's medical records. Examination of the back and lower extremities revealed tenderness overlying the dorsolumbar spine and paraspinal muscle spasm of moderate intensity. Straight leg raise testing was to 45 degrees on both right and left sides. Sciatic nerve stretching test was slightly positive to 45 degrees. Examination of the right and left knees revealed tenderness overlying the joint line, especially medially. Extension was normal to 180 degrees and flexion was possible to 110 degrees. Dr. Bishai diagnosed internal derangement of the right knee joint, lumbosacral strain, strain of the dorsal muscles of the back, herniated lumbar disc at L5-S1, bulging disc at L4-5 and radiculopathy of the right leg.

In a decision dated September 12, 2012, OWCP denied appellant's claim. It accepted that the June 21, 2012 incident occurred as alleged but denied the claim finding insufficient medical evidence to establish that his diagnosed conditions were causally related to the employment incident.

In a September 18, 2012 report, Dr. Bishai related appellant's complaints of lower back and bilateral knee pain and provided identical examination findings as the August 20, 2012 report. He reviewed appellant's medical records and noted that an August 15, 2012 nerve conduction study demonstrated findings that suggested focal entrapment involving posterior rami sciatic nerve at the S1 level. A June 30, 2011 MRI scan of the lumbar spine also revealed posterolateral disc bulge at the L4-5 level and broad-based left parasagittal disc herniation at the L5-S1 level. Dr. Bishai diagnosed internal derangement of the right knee joint, torn medial meniscus of the right knee joint, lumbosacral strain, strain of the dorsal muscles of the back, herniated lumbar disc at L5-S1, bulging disc at L4-5 and radiculopathy of the right and left legs. He reported that appellant worked as a letter carrier and that on June 21, 2012 he suffered an injury to his back, lower extremities and knees. Dr. Bishai related that appellant was delivering

mail, which required twisting his back to the left and right and driving a postal vehicle, for a few hours when he began to feel sharp pain in his lower back that shot down his legs and also pain in his knees. He stated that appellant's description of the day's activities explained a great deal as to the mechanism of the injury and the correlation between the symptoms he was experiencing, the diagnosed conditions and the work activities he was doing on June 21, 2012.

Dr. Bishai related appellant's statement regarding the work duties he performed on June 21, 2012 and opined that upon reading this statement and considering appellant's history, it was clear that appellant's symptoms in his back, legs and knees were definitely the result of his work activities on June 21, 2012. He explained that appellant had a preexisting condition where he suffered injuries to his back and knees on April 29, 2011 but he continued working, which caused aggravation of the preexisting conditions. Dr. Bishai stated that the cause of the aggravation was all the movements that he had been doing at work, specifically the twisting, turning, bending, stooping, lifting heavy objects and the torque of his spine when he turned to lift up mail and then twisted it to the right. He reported that the combined movements of twisting and turning his back and all the other movements he did to deliver the mail caused him to experience pain in his back, legs and knees. Dr. Bishai noted that the nerve conduction studies of the lower extremities and MRI scan of the lumbar spine supported his findings. He concluded that the cause and effect of appellant's current back and bilateral knee conditions was due to all the movements of twisting, turning, bending, stooping, lifting heavy trays and all the other activities that appellant did during the workday on June 21, 2012.

On September 25, 2012 appellant requested a telephone hearing, which was held on January 22, 2013. He stated that he worked at the employing establishment for seven years and his work activities consisted of frequent bending, turning, twisting, grabbing items, lifting and a lot of walking. On June 21, 2012 at around noon, appellant started to feel sharp pain in his lower back and knee. He informed his supervisor, but because she was busy he finished delivering mail. Appellant went to the emergency room and also scheduled an appointment with Dr. Vizcay the next day. He reported that an MRI scan revealed that he had a bulging and herniated disc. Appellant stated that he had previous April 29, 2011 injuries to his knee and back and another injury to his right rotator cuff. He noted that he did not have any strenuous hobbies or experience back pain before the June 21, 2012 employment incident.

In chart notes dated from August 13, 2012 to January 25, 2013, Dr. Erick R. Corps, a chiropractor, examined appellant for a follow up to injuries sustained during a June 21, 2012 work-related incident. He observed that digital palpation of appellant's spine and extremities revealed subluxations of the cervical, cervical dorsal, thoracic, thoracolumbar and sacroiliac. Palpation of the muscles revealed hypertonicity in the lumbar area. Dr. Corps diagnosed internal derangement of the knee, lumbar strain, lumbar displacement with myelopathy, thoracic/lumbosacral neuritis and radiculities, and cervical, thoracic and lumbosacral segmental dysfunction. He reported that appellant's prognosis was guarded and uncertain and recommended that he undergo spinal adjustments. Dr. Corps stated that appellant should avoid heavy lifting and long periods of standing.

In an October 24, 2012 report, Dr. Bishai related appellant's complaints of pain in his lower back and both knee joints. He noted that he reviewed appellant's records and conducted an examination. Dr. Bishai reported examination findings similar to his previous findings and

diagnosed internal derangement of the right knee joint, torn medial meniscus of the right knee, lumbosacral strain, herniated lumbar disc at L5-S1, bulging disc at L4-5 and radiculopathy of the right and left legs.

In a January 23, 2013 report, Dr. Bishai diagnosed internal derangement of the right knee joint, torn medial meniscus of the right knee, lumbosacral strain, herniated lumbar disc at L5-S1, bulging disc at L4-5 and radiculopathy of the right and left legs. He stated that he was corrected regarding the first appearance of appellant's back pain. Dr. Bishai related that appellant first began to experience back problems on June 21, 2012 and that he did not have any prior back injuries, symptoms, problems or preexisting conditions. He explained that December 5, 2012 nerve conduction studies confirmed the diagnosis of entrapment of the sciatic nerve at L5-S1 and an MRI scan confirmed findings of herniated lumbar disc with radiculopathy.

By decision dated March 5, 2013, an OWCP hearing representative affirmed the September 12, 2012 decision, finding that the medical evidence was insufficient to establish that appellant's diagnosed conditions were causally related to the June 21, 2012 employment incident.²

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence,⁴ including that he or she is an "employee" within the meaning of FECA⁵ and that he or she filed his or her claim within the applicable time limitation.⁶ The employee must also establish that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁷

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether "fact of injury" has been established.⁸ There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment

² The hearing representative also stated that because OWCP frequently cross referenced the April 29, 2011 claim filed under File No. xxxxxx090, it was appropriate for OWCP to combine the cases. The case file was returned to the district Office to combine File Nos. xxxxxx971 and xxxxxx090.

³ 5 U.S.C. §§ 8101-8193.

⁴ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁵ See *M.H.*, 59 ECAB 461 (2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951).

⁶ *R.C.*, 59 ECAB 42 (2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954).

⁷ *G.T.*, 59 ECAB 447 (2008); *M.M.*, Docket No. 08-1510 (issued November 25, 2010).

⁸ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

incident which is alleged to have occurred.⁹ Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.¹⁰

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.¹¹ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.¹² The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹³

ANALYSIS

The record reveals that appellant filed a previous traumatic injury claim for pain and clicking in the right and left knees and lower back pain occurring on April 29, 2011. On June 21, 2012 appellant filed a traumatic injury claim alleging an injury to his low back and both knees that day as a result of repetitively turning to the left and right while he delivered mail. OWCP accepted that the June 21, 2012 incident occurred but denied the claim finding insufficient evidence to establish that his back and bilateral knee conditions resulted from the accepted incident. The Board finds that appellant failed to establish that his back and bilateral knee conditions were causally related to the June 21, 2012 employment incident.

Appellant submitted reports by Dr. Bishai who examined him after the April 29, 2011 incident. In a November 1, 2011 report, Dr. Bishai stated that on April 29, 2011 appellant was at work when his right knee locked up and he experienced sharp pain in his back. Upon examination, he observed tenderness overlying the dorsolumbar spine in the midline and paraspinal muscle spasm of moderate intensity affecting the paraspinal muscles. Examination of the right and left knees demonstrated slight tenderness overlying the joint line and no swelling. Dr. Bishai opined that appellant's back and knee condition was related to the April 29, 2011 incident at work. Appellant continued to receive medical treatment from Dr. Bishai for his lower back and bilateral knee pain. In a September 18, 2012 report, Dr. Bishai related that on June 21, 2012 appellant was delivering mail, which required twisting his back to the left and right and driving a postal vehicle, for a few hours when he began to feel sharp pain in his lower back and knees. He conducted an examination and diagnosed internal derangement of the right knee joint, torn medial meniscus of the right knee joint, lumbosacral strain, strain of the dorsal muscles of the back, herniated lumbar disc at L5-S1, bulging disc at L4-5, and radiculopathy of the right and

⁹ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

¹⁰ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

¹¹ *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

¹² *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

¹³ *James Mack*, 43 ECAB 321 (1991).

left legs. Dr. Bishai opined that, based on appellant's statement of the work duties performed on June 21, 2012 and his history, it was clear that appellant's symptoms in his back, legs and knees were definitely the result of his work activities on June 21, 2012. He stated that because appellant continued to work after the April 29, 2011 injuries to his back and knees he aggravated these preexisting conditions. Dr. Bishai explained that the combined movements of twisting and turning his back and all the other movements appellant did to deliver the mail caused him to experience pain in his back, legs and knees.

The Board notes that Dr. Bishai provided an accurate history of injury and medical diagnosis. He generally supported the causal relationship between appellant's conditions and the June 21, 2012 incident. In a January 23, 2013 report, however, Dr. Bishai stated that he was corrected regarding the first appearance of appellant's back pain. He reported that appellant first began to experience problems with his back on June 21, 2012 and that he did not have any prior back injuries, symptoms, problems or preexisting conditions. The Board has found that inconsistent or contradictory reports from a physician reduce the probative value of his or her opinion.¹⁴ Although Dr. Bishai initially provided an opinion on causal relationship in his September 18, 2012 report, subsequent reports contradicted his statement that appellant sustained a preexisting lower back and bilateral knee condition. This pertains to whether the physician had an accurate medical history. The record reveals that Dr. Bishai continued to treat appellant following the April 29, 2011 incident for complaints of back and bilateral knee pain, but he stated in his January 23, 2013 report that the first appearance of appellant's back pain was on June 21, 2012. Because Dr. Bishai's description of appellant's history is inconsistent with the evidence of record, the Board finds that his reports lack probative value and are insufficient to establish appellant's claim.

Appellant also submitted a June 22, 2012 report by Dr. Vizcay, who stated that on June 21, 2012 he was delivering mail on the street when he began to feel pain in his lower back and both knees. Dr. Vizcay noted that appellant's work duties involved continuous twisting and turning from the left and right, picking up flats and parcels, and repetitively mounting and dismounting his vehicle. Upon examination of the lumbar spine, she observed bilateral spasm and tenderness on palpation of the paralumbar musculature from L1-S1 and pain radiating into the lower extremities to the feet. Range of motion was severely restricted with pain. Examination of the knees revealed bilateral tenderness on palpation. Extension was to 100 degrees and flexion was to 90 degrees. Dr. Vizcay diagnosed cervical, thoracic, lumbar spine, and bilateral knee sprain and strains. She stated that appellant's job duties were directly related to his condition and permanently aggravated his previous condition. Dr. Vizcay accurately described the June 21, 2012 work incident and diagnosed lumbar and bilateral knee sprains. She opined that these conditions resulted from appellant's duties. Dr. Vizcay, however, did not provide an adequate medical explanation or rationale for how she reached this conclusion. The Board has held that medical evidence that states a conclusion but does not offer any rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁵ Because Dr. Vizcay fails to explain based on medical rationale how appellant's conditions were directly related to the work duties he performed on

¹⁴ *K.S.*, Docket No. 11-2071 (issued April 17, 2012); *Cleona M. Simmons*, 38 ECAB 814 (1987).

¹⁵ *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

June 21, 2012, the Board finds that her opinion on causal relationship is insufficient to establish this claim.

Appellant was also seen in the emergency room by Dr. Uzo on June 21, 2012. She related that appellant was delivering mail at work which required repetitive twisting and turning when he felt a sudden pain in his low back. Upon examination, Dr. Uzo observed normal range of motion and no tenderness. She diagnosed lumbar strain and sciatica. Although Dr. Uzo provided a medical diagnosis and a description of the June 21, 2012 incident, she did not provide any opinion on the cause of appellant's condition. The Board has found that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁶ Similarly, the various diagnostic reports by Drs. Timken, Tolgyesi, Benazet also provide examination findings regarding appellant's back and bilateral knee conditions but do not give any opinion on the cause of these conditions or explain whether these conditions resulted from the June 21, 2012 incident at work. Because these reports fail to contain an opinion regarding causal relationship, the Board finds that they are likewise insufficient to establish appellant's claim.

The notes from Dr. Corps are also of limited probative value because he is not a "physician" as defined under FECA. He did not diagnose a spinal subluxation as demonstrated by an x-ray. A chiropractor is not considered a physician under FECA unless reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.¹⁷ Accordingly, Dr. Corps' medical opinion regarding diagnosis and causal relationship are of no probative medical value.

On appeal, appellant's representative contends that Dr. Bishai and Dr. Vizcay's reports are sufficient to establish causal relationship and that an aggravation of a preexisting disease or defect is compensable as an original or new injury. As noted, Dr. Bishai and Dr. Vizcay's opinions on causal relationship are of reduced probative value and insufficient to establish appellant's claim. As the record does not contain sufficient medical evidence to establish that appellant sustained back and bilateral knee conditions as a result of the June 21, 2012 employment incident appellant has not met his burden of proof to establish his claim.

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 back and bilateral knee condition was causally related to the June 21, 2012 employment incident.

¹⁶ *R.E.*, Docket No. 10-679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

¹⁷ 5 U.S.C. § 8102(2); *see Sean O'Connell*, 56 ECAB 195 (2004); *Mary A. Ceglia*, 55 ECAB 626 (2004).

ORDER

IT IS HEREBY ORDERED THAT the March 5, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 15, 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