United States Department of Labor
Employees' Compensation Appeals Board

A.L., Appellant	)	
and	)	**Docket No. 13-1325**
	)	**Issued: November 12, 2013**
U.S. POSTAL SERVICE, POST OFFICE, New York, NY, Employer	)	

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
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On May 15, 2013 appellant, through counsel, filed a timely appeal from the April 18, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 in establishing a traumatic injury in the performance of duty on July 2, 2012.

FACTUAL HISTORY

On July 5, 2012 appellant, then a 72-year-old mail handler and equipment operator, filed a traumatic injury claim alleging that, on July 2, 2012, he sustained a cervical and lumbar

[1] 5 U.S.C. § 8101 *et seq.*

osteoarthritis condition in the performance of duty. Appellant stopped work on July 3 and returned on July 10, 2012. The employing establishment controverted the claim.

In a statement accompanying his claim, appellant indicated that he put his health and safety at risk even when the medical provider certified that there were other jobs available for which he would have no physical limitation. He indicated that he had cervical and lumbar osteoarthritis. Appellant explained that when working in a situation that required him to sit or stand, or bear all of his weight through his neck, spine and pelvis, it put the "highest pressure on the claimant neck and back discs" and caused him to have a muscle spasm in the neck and arms.

OWCP received a July 2, 2012 hospital discharge notice, which indicated that appellant was treated for supraventricular tachycardia near syncope.

By letter dated July 5, 2012, Tamese Evans, a supervisor of distribution operations, controverted the claim. She noted that she was unable to substantiate that the claimed condition was related to appellant's employment and that a medical condition was not diagnosed as being connected with the employee's allegation of an accident. Ms. Evans also advised that administratively acceptable medical documentation was not provided.

By letter dated October 1, 2012, OWCP informed appellant of the type of evidence needed to support his claim and requested that he submit such evidence within 30 days. No further evidence was received.

By decision dated November 8, 2012, OWCP denied appellant's claim on the grounds that he had not established an injury as alleged and that the medical evidence was insufficient to establish causal relationship.

OWCP received a statement from appellant noting his work restrictions and medical history. Appellant also provided reports related to the prior claim from Dr. Steven S. Moalemi, a Board-certified internist, dating from April 29, 2010 to May 22, 2012, which noted the history of a December 10, 2006 injury.[2] In the May 22, 2013 report, Dr. Moalemi diagnosed left shoulder sprain, osteoarthritis, exacerbation of cervical spine radiculopathy, osteoarthritis, exacerbation of thoracic spine sprain with osteoarthritis, and possible meniscus tear and exacerbation of left knee osteoarthritis with possible meniscus tear. He also provided work restrictions.

In a July 18, 2012 report, Dr. Moalemi noted that appellant was at work on July 2, 2012 performing duties that included standing and separating mail in a bent forward position for prolonged periods. Appellant related having increased neck pain with radiation to the right arm with pins and needle sensations and tingling in the right arm and hand. Dr. Moalemi noted that appellant also informed him that the pain was severe and that he first tried to sit, but also subsequently laid down flat to try and relieve the pain. He indicated that appellant was taken by ambulance to an emergency room where he was evaluated and released with medications. At that time, appellant was also found to have supraventricular tachycardia and was treated for this.

[2] Appellant submitted documents pertaining to a prior accepted claim for a December 10, 2006 injury and a June 8, 2010 recurrence of that injury. This and other previous claims filed by appellant are not before the Board on the present appeal.

Dr. Moalemi advised that appellant continued with complaints of neck pain with radiation to the right arm and a pins and needles sensation, tingling and pain aggravated by moving his head in certain positions. He examined appellant and provided findings, which included moderate distress secondary to neck pain, and a forward-head posture. Cervical spine range of motion showed flexion of 30 degrees, extension to 10 degrees with pain, rotation to the right of 30 degrees and to the left of 40 degrees. Dr. Moalemi advised that palpation produced spasms and tenderness with trigger points over the cervical spine paraspinal muscles, upper trapezius muscles, levator scapular muscles and a positive Spurling's on the right side. Neurological examination revealed deep tendon reflexes of 2+ and equal in the bilateral biceps, triceps, brachioradialis, knees and ankles. Dr. Moalemi indicated that sensation was decreased in the right upper extremity diffusely to light touch and pinprick and manual muscle testing elicited decreased strength proximally secondary to neck pain. He diagnosed exacerbation of cervical spine radiculopathy. Dr. Moalemi opined that the exacerbation of cervical spine radiculopathy was a work-related injury and recommended physical therapy. He recommended follow up with his cardiologist regarding the arrhythmias.

Appellant also submitted a December 20, 2006 letter from the employing establishment noting that appellant had a chronic condition requiring treatment. OWCP also received several reports related to appellant's prior condition. They included a February 3, 2005 magnetic resonance imaging (MRI) scan of the cervical spine read by Dr. Miklos Weinberger, a Board-certified radiologist, which revealed a disc herniation at C3-4 and C4-5, a bulging annulus fibrosis with impingement at C5-6, secondary disc desiccation at multiple levels, a fusion at C6-7 and degenerative changes throughout. A February 17, 2005 lumbar MRI scan, read by Dr. Ronald Roskin, a Board certified diagnostic radiologist, revealed herniations at L2-3 and L4-5 and desiccation and bulging at L5-S1. A December 27, 2011 MRI scan of the cervical spine read by Dr. James R. McCleavey, a Board-certified diagnostic radiologist, revealed spondylosis deformans, multilevel disc protrusions and cervical lordosis. Also received were physical therapy notes, a July 2, 2012 hospital discharge notice and a pamphlet on neck pain.

In a November 20, 2012 letter, appellant reported that his traumatic injury occurred while performing routine culling activities on the electromechanical culling belt. He explained that the belt was about 34 feet high and 40 feet wide. Appellant noted that he was six feet and one inch tall and weighed 225 pounds and then he had to lean for long periods over the belt with the weight of his body supported primarily through his neck, spine and pelvis. He asserted that he exacerbated his existing cervical and lumbar osteoarthritis conditions which resulted from a prior work injury of December 10, 2006. Appellant alleged that leaning in a forward position combined with a disc bulge in his neck and nerve root impingement, resulted in dizziness and muscle spasms in his neck and right arm. He explained that he stepped back from the culling belt, walked 10 paces to the front of the belt and sat on an empty mail skid. Appellant noted that after several minutes passed the emergency medical technicians (EMTs) arrived and he was transported to a hospital for additional testing.

On November 20, 2012 appellant requested a hearing. A telephonic hearing was held on March 11, 2013. During the hearing, appellant testified that he was working a modified assignment on July 2, 2012 when he was "crouched over the belt" and felt a muscle spasm in his neck. He explained that he had prior neck problems, but this was a different pain, it was stiffness in his neck.

By decision dated April 18, 2013, OWCP's hearing representative affirmed the prior decision finding that there was insufficient medical reasoning supporting causal relationship.

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[3] and that an injury was sustained in the performance of duty.[4] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.[6] In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.[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]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's 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, 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

Appellant alleged that on July 2, 2012 he sustained a neck injury while standing and separating mail in a bent forward position over the conveyor belt for prolonged periods. OWCP initially found that there was insufficient evidence that the incident occurred as alleged because

[3] *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

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

[8] *See John J. Carlone*, *id*. For a definition of the term "injury," *see* 20 C.F.R. § 10.5(a)(ee).

[9] *I.J.*, 59 ECAB 408 (2008).

appellant failed to provide a statement in response to the October 1, 2012 request for additional information. However, during the hearing, appellant explained how he was working on the conveyor belt in a bent position. There is no dispute that, on July 2, 2012, he was standing and separating mail in a bent forward position over the conveyor belt for a prolonged period. The Board does not find such inconsistencies in the evidence regarding how the claimed injury occurred. Thus, the first component of fact of injury, the claimed incident, occurred as alleged.

With regard to whether the July 2, 2012 incident caused the claimed injury, appellant submitted several medical reports from Dr. Moalemi, his treating physician. While several of Dr. Moalemi's reports predate the claimed July 2, 2012 injury and, thus do not support that the incident on that date caused an injury, his July 18, 2012 report does support that the established incident exacerbated appellant's previously accepted condition. In his July 18, 2012 report, Dr. Moalemi noted that appellant was at work on July 2, 2012 performing his duties which included standing and separating mail in a bent forward position for prolonged periods. He related that appellant had increased neck pain with radiation to the right arm which was so severe that he was taken to an emergency room. Dr. Moalemi examined appellant and noted that he was in moderate distress secondary to neck pain and had a forward-head posture. Neck palpation produced spasms and tenderness with trigger points over the cervical spine paraspinal muscles, upper trapezius muscles and levator scapular muscles. Appellant had some decreased sensation in the right arm as well as decreased strength. Dr. Moalemi diagnosed exacerbation of cervical spine radiculopathy. He opined that appellant's exacerbation of his cervical spine radiculopathy was a work-related injury and recommended physical therapy. While Dr. Moalemi's opinion is not completely rationalized in explaining how the July 2, 2012 employment incident exacerbated his neck condition, in light of his preexisting neck issues, it raises an uncontroverted inference between appellant's claimed condition and the employment incident of July 2, 2012, and is sufficient to require OWCP to further develop the medical evidence and the case record.[10]

Therefore, the case must be remanded to OWCP for further development of the medical evidence, including composition of a statement of accepted facts and referral to an appropriate medical specialist for a rationalized opinion as to whether the July 2, 2012 work incident caused or aggravated a right knee injury. Following this and such other development as it deems necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

[10] *Richard E. Simpson*, 55 ECAB 490, 500 (2004); *John J. Carlone*, 41 ECAB 354, 360 (1989).

ORDER

IT IS HEREBY ORDERED THAT the April 18, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further development consistent with this decision.

Issued: November 12, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board