

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

T.S., Appellant)
and) Docket No. 13-1039
U.S. POSTAL SERVICE, POST OFFICE,) Issued: October 24, 2013
Scottsdale, AZ, Employer)

)

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On March 20, 2013 appellant timely appealed the March 5, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied his occupational disease claim. 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 claim.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on or about April 26, 2012.

FACTUAL HISTORY

On May 3, 2012 appellant, then a 61-year-old rural carrier, filed a claim (Form CA-2) for an alleged employment-related hernia that reportedly arose on or about April 26, 2012. He attributed his claimed condition to moving flats sequencing system (FSS) trays in the back of his

¹ 5 U.S.C. §§ 8101-8193.

long life vehicle(LLV). Appellant indicated that his job required constant lifting eight hours a day, five days a week. He underwent surgery on April 26, 2012 for an incarcerated right femoral hernia.² The operative report indicated that appellant was unaware of the hernia until earlier that day when suddenly he experienced severe abdominal and right groin pain.³

The employing establishment challenged the claim noting, *inter alia*, that appellant's carrier duties did not involve constant lifting activity five days a week. Also, appellant finished his entire route without any reported injury or illness. Moreover, there was no medical evidence linking his claimed hernia to his employment.

On May 24, 2012 OWCP advised appellant of the need for additional factual and medical evidence in support of his claim for an employment-related hernia.

In a May 29, 2012 statement, appellant described his various duties throughout the course of a normal workday which included organizing/sorting mail, loading his LLV and delivery duties. At approximately 2:30 p.m. on April 26, 2012, he was moving FSS trays to the back of his LLV when he felt a sharp pain in his lower, right abdomen. Appellant stated that he used a pull stick to move the FSS tray which weighed 30 to 35 pounds. He stated that the pain persisted through the remainder of his delivery route and continued after returning to the station. Appellant reportedly began to feel fatigued and told the station cage clerk and another person nearby that he was leaving because of stomach flu. After a 30-minute drive home, he immediately removed his clothes and lay down. Appellant reportedly felt a baseball-sized bulge on his abdomen, at which point his wife drove him to the hospital emergency room (ER). His pain had increased by then. Appellant stated that he arrived at the ER around 5:00 p.m., filled out some paperwork and waited. Later that evening, he underwent emergency surgery. Appellant reportedly had no hernia pain or swelling prior to April 26, 2012.

OWCP received treatment records regarding appellant's April 26 and May 8, 2012 hospitalizations which included initial ED triage records, various diagnostic studies, laboratory results, operative reports, pathology reports, progress notes and discharge summaries. The hospital treatment records noted an acute onset of abdominal/groin pain at approximately 2:00 p.m. on April 26, 2012, but did not otherwise indicate what appellant was doing at the time or identify a cause of injury.

Dr. Davis, appellant's surgeon, provided a May 23, 2012 duty status report (Form CA-17) indicating that appellant would be able to resume his regular duties in two months. The noted history of injury was: "Felt pain in groin/abdomen while moving FSS flats tray in the back of postal vehicle." The diagnosis due to injury was femoral hernia.

² There was also approximately a 3centimeter section of appellant's ileum that was necrotic, and thus, required resection and anastomosis. This aspect of the April 26, 2012 procedure resulted in postsurgical complications requiring further surgery on May 10, 2012. Dr. Bruce C. Davis, a Board-certified general surgeon, performed both procedures.

³ Appellant was seen in the emergency department (ED) at approximately 5:40 p.m. on August 26, 2012. The ED triage notes indicate a reported onset of abdominal/groin pain at approximately 2:00 p.m. that same afternoon.

By decision dated August 2, 2012, OWCP denied appellant's claim because the evidence did not demonstrate a causal relationship between the diagnosed condition and appellant's federal employment.

Appellant requested an oral hearing which was held on December 12, 2012.

OWCP received a November 28, 2012 statement from John Robertson, a fellow rural carrier, who described his personal experience working with FSS trays. Mr. Robertson also expressed concerns about proper training and the number of job-related injuries involving FSS trays.

Appellant also submitted an August 30, 2012 report from Dr. Davis, who indicated that he treated appellant for an incarcerated femoral hernia on May 10, 2012. He reported that he had been at work "lifting boxes and pallets of letters" and felt a bulge in the groin area. Dr. Davis identified the specific area as the right femoral canal. Appellant was reportedly able to complete his time at work. Dr. Davis stated that appellant had noticed the bulge at about 2:00 p.m. and finished work at 5:00 p.m. Appellant later went to the ER, and by the time he got to surgery he developed necrosis of a small portion of the intestine that had been entrapped within the hernia. Dr. Davis explained that complications arose after surgery that required yet another operation and a fairly prolonged recovery.

With respect to causal relationship, Dr. Davis stated that the presence of the hernia was noted on the job according to appellant's history and "very well could have resulted from lifting heavy objects in the course of his duties at work." Although he did not have immediate pain or disabling symptoms, appellant's hernia was definitely present and by the time he reached the hospital it was incarcerated and could not be reduced without surgery.

In a March 5, 2013 decision, the Branch of Hearings and Review affirmed OWCP's August 2, 2012 decision. The hearing representative found Dr. Davis' August 30, 2012 opinion regarding causal relationship "speculative."

LEGAL PRECEDENT

A claimant seeking benefits under FECA has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.⁴

⁴ 20 C.F.R. § 10.115(e)(f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

To establish that an injury was sustained in the performance of duty, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a 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 diagnosed condition is causally related to the identified employment factors.⁵

ANALYSIS

The Board finds that appellant failed to establish that his femoral hernia was employment related. The hospital treatment records do not identify a particular cause of injury. Certain records merely note an acute onset of abdominal/groin pain at approximately 2:00 p.m. on April 26, 2012. However, a mere temporal relationship between the employment activity and the reported symptoms will not suffice for purposes of establishing a causal relationship.⁶

Dr. Davis provided a May 23, 2012 duty status report Form CA-17 and an August 30, 2012 medical report, neither of which are sufficient to establish causal relationship. The Form CA-17 does not explain how the reported work activities -- “moving FSS flats tray in the back of postal vehicle” -- either caused or contributed to appellant’s femoral hernia. Moreover, as OWCP’s hearing representative properly found, Dr. Davis’ August 23, 2012 opinion on causal relationship is speculative. Appellant reported having noted the hernia on the job, and Dr. Davis surmised that it “very well could have resulted from lifting heavy objects in the course of his duties at work.” A physician’s opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant’s specific employment factors.⁷ The Board finds that Dr. Davis’ August 23, 2012 report does not constitute a rationalized medical opinion on causal relationship. Consequently, appellant failed to establish that his claimed femoral hernia is causally related to his federal employment.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision.⁸

CONCLUSION

Appellant has not demonstrated that his claimed hernia is employment related. Consequently, he failed to establish that he sustained an injury in the performance of duty on or about April 26, 2012.

⁵*Victor J. Woodhams, supra* note 4.

⁶See *D.I.*, 59 ECAB 158, 162 (2007). The fact that a condition manifests itself during a period of employment does not raise an inference of causal relationship. *Id.*

⁷*Victor J. Woodhams, supra* note 4.

⁸5 U.S.C. § 8128(a); 20 C.F.R. §§ 10.605 through 10.607.

ORDER

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

Issued: October 24, 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