

In a January 4, 2012 decision, OWCP denied appellant's claim. It found that the work incident occurred as alleged but that he failed to submit any medical evidence to establish a diagnosed medical condition causally related to the work incident.

Appellant requested a hearing before an OWCP hearing representative. He submitted copies of medical records from 2005 to 2011 documenting treatment for conditions of the cervical spine, right shoulder and right middle finger. At the hearing, which was held on April 23, 2012, appellant testified that his back was about the same as it was before the November 28, 2011 work incident.

After the hearing, appellant submitted an April 19, 2012 report from Dr. Joseph S. Lombardi, a Board-certified orthopedic surgeon, who saw appellant on January 18, 2012. Dr. Lombardi described appellant's low back complaints and the November 28, 2011 work incident. After examining appellant's low back and reviewing an imaging study from November 15, 2011, he diagnosed left-sided herniated nucleus pulposus at L2-5 and a central disc herniation at L5-S1.

Dr. Lombardi saw appellant again on February 29, 2012, after appellant had completed a course of physical therapy. He described appellant's complaints of pain. The physical examination was essentially unchanged and the diagnosis remained disc herniation at L2-S1. It was Dr. Lombardi's opinion that the multiple disc herniations were aggravated by the November 28, 2011 work incident:

"In my medical opinion within a reasonable degree of medical probability, the patient's injuries will be permanent. The permanency associated with the dis[c] herniation is due to the permanent change in the dis[c] morphology. The function of the dis[c] is to absorb strain and cushion the surrounding vertebral bodies. Once the dis[c] is herniated this function no longer exists and will cause his eventual increase in degenerative changes at the level of the herniation. These permanent changes will also result in intermittent radiculopathy. If the radiculopathy is severe this could lead to surgical intervention."

In a decision dated July 12, 2012, OWCP's hearing representative affirmed the denial of appellant's injury claim. She found Dr. Lombardi's opinion on causal relationship unrationalized, at least with respect to his opinion on aggravation. Dr. Lombardi did not identify the objective findings on or after November 28, 2011 upon which he based his opinion that there was an aggravation. He did not distinguish the effects of the preexisting condition and the effects of the work incident. As Dr. Lombardi did not explain how driving over a bump materially aggravated or adversely affected appellant's preexisting low back condition, the hearing representative found that appellant did not meet his burden to establish his injury claim.

On appeal, appellant's representative argues that appellant has provided *prima facie* evidence to support his claim.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² 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. He or she must also establish that such event, incident or exposure caused an injury.³

Causal relationship is a medical issue,⁴ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁵ must be one of reasonable medical certainty,⁶ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁷

Medical conclusions unsupported by rationale are of little probative value.⁸

ANALYSIS

OWCP accepts that the November 28, 2011 work incident occurred as alleged. Appellant has therefore met his burden to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. The question that remains is whether the incident of driving over a bump in his postal vehicle caused an injury.

This is a medical question, and the only medical evidence addressing the issue of causal relationship is the April 19, 2012 report from Dr. Lombardi, the orthopedic surgeon. After reviewing an imaging study of the lumbar spine taken about two weeks before the November 28, 2011 work incident, Dr. Lombardi diagnosed left-sided herniated nucleus pulposus at L2-5 and a central disc herniation at L5-S1. He opined that the November 28, 2011 work incident aggravated these multiple disc herniations, but he did not explain how he came to this conclusion. Dr. Lombardi did not explain how driving over a bump in a postal vehicle aggravated, biomechanically speaking, each of the disc herniations. He did not explain how he

² 5 U.S.C. § 8102(a).

³ *John J. Carlone*, 41 ECAB 354 (1989).

⁴ *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

⁵ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁶ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁷ *See William E. Enright*, 31 ECAB 426, 430 (1980).

⁸ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954). *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

was clinically able to identify such an aggravation or how he was able to distinguish appellant's condition on examination from the natural progression of his preexisting low back disease. Dr. Lombardi did address the permanency of disc herniation in general but not the permanency of any aggravation.

The Board finds that Dr. Lombardi's opinion on causal relationship is not well rationalized and is insufficient to establish the critical element of causal relationship. As a result, appellant has not met his burden of proof. The Board will affirm OWCP's July 12, 2012 decision.

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 the medical evidence is insufficient to establish that appellant's low back condition is causally related to the November 28, 2011 work incident.

ORDER

IT IS HEREBY ORDERED THAT the July 12, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 4, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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