

FACTUAL HISTORY

On May 29, 2012 appellant, then 54-year-old nursing assistant, filed an occupational disease claim alleging that on March 15, 2011 he developed lumbar pain due to lifting, bending, transferring and repositioning patients over many years. He stopped work on March 20, 2011.

In a letter dated June 20, 2012, OWCP requested additional factual and medical evidence in support of appellant's claim. Dr. Kal-Uwe Lewandrowski, a Board-certified orthopedic surgeon, examined appellant on April 19, 2012. By history appellant's lumbar spinal stenosis symptoms were brought on and exacerbated by standing and walking. Dr. Lewandrowski recommended surgery for a transforaminal lumbar interbody fusion. He performed an L4-5 hardware removal on March 12, 2012. Dr. Lewandrowski released appellant to return to work on April 23, 2012 with restrictions. On May 14 and 30, 2012 he diagnosed a nonunion arthrodesis, spinal stenosis and degenerative disc disease. On June 5, 2012 Dr. Lewandrowski noted that appellant was three months post an L4-5 hardware removal due to myofascial low back pain. He diagnosed degenerative disc disease of the lumbar spine, spondylolisthesis and spinal stenosis with low back pain, radiculopathy and myofascial pain syndrome.

Appellant attributed his condition to 30 years of standing, walking, bending, stooping, lifting and transferring patients. In a note dated July 9, 2012, Dr. Alan K. Rogers, a Board-certified internist, diagnosed lumbar spondylosis and chronic pain syndrome. He stated, "Reasonable that current back problems related to his lifetime occupation."

On July 6, 2012 the employing establishment stated that appellant had been performing light duty since May 2011.

By decision dated September 5, 2012, OWCP denied appellant's claim finding that he did not submit sufficient medical evidence to establish a causal relationship between his diagnosed lumbar condition and his employment duties.

Appellant requested an oral hearing before an OWCP hearing representative on September 18, 2012.

On April 21, 2011 Dr. Lewandrowski performed an L4-5 transforaminal lumbar interbody fusion. He listed a history that in 1990 appellant sustained a low back injury and accepted claim. Appellant was able to resume his normal duties and activities. He stated that he had spinal fusion surgery in April 2011 and returned to his full-time light-duty job. Appellant noted a second surgery on March 8, 2012 to remove hardware and a third surgery on June 20, 2012 to repair his spinal fusion. He submitted the June 20, 2012 surgical report noting that Dr. Lewandrowski performed an L5-S1 transforaminal lumbar interbody fusion, exploration of spinal fusion L4-5 and L4-S1 posterolateral fusion.

In a report dated January 7, 2013, Dr. Rogers stated that appellant's prior low back pain since 1990 resolved such that he could perform his duties as a nursing assistant. He diagnosed lumbar stenosis and stated that the back and leg symptoms were exacerbated by lifting, walking and standing as required by a nursing assistant. Dr. Rogers stated that the wear on appellant's low back as demonstrated by magnetic resonance imaging (MRI) scan and due to lifting,

pushing, carrying and walking as a nursing assistant. He noted that Dr. Lewandrowski performed three spinal surgeries between April 2011 and June 2012 including an L4-5 interbody fusion, hardware installation and removal and revision.

Appellant testified at the February 5, 2013 oral hearing. He noted that he initially missed some work due to his 1990 back injury, but returned to full-duty work and did not stop due to his back until March 2011. In March 2011, on a Sunday event at 8:00 p.m., appellant lifted a patient up in bed and felt intense pain down his right leg. He sought medical treatment and Dr. Lewandrowski saw him on a Tuesday in April. Surgery was performed the following Thursday on April 21, 2011. Appellant stated that he returned to light duty after each of his surgeries and that in 2012 he received a new light-duty assignment. The employing establishment noted that appellant began work after a March 29, 1999 preemployment physical and became a permanent employee in 2000.

By decision dated April 2, 2013, OWCP's hearing representative found that appellant did not submit sufficient medical evidence to establish that his lower back condition or surgeries were causally related to his nursing assistant duties beginning in 2000.

LEGAL PRECEDENT

OWCP's regulations define an occupational disease as "a condition produced by the work environment over a period longer than a single workday or shift."²

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) 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 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 the claimant.

The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.³

ANALYSIS

Appellant described his work activities between 2000 and May 2011 that included lifting, bending, transferring and repositioning patients over many years. He submitted medical evidence that he was treated for lumbar spondylosis, chronic pain syndrome and lumbar stenosis.

² 20 C.F.R. § 10.5(q).

³ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

OWCP denied appellant's claim finding that the medical evidence was not sufficient to establish a causal relationship between his diagnosed back condition and his employment duties.

Dr. Rogers also provided a general opinion that there was a causal relationship between appellant's employment and his back condition stating that it was "reasonable" that appellant's current back problems related to his lifetime occupation. Appellant's back and leg symptoms were exacerbated by lifting, walking and standing as required by a nursing assistant and demonstrated by MRI scan. While Dr. Rogers concluded that appellant's work duties caused or aggravated appellant's back condition, he did not provide adequate medical reasoning explaining the basis for his opinion. In order to meet his burden of proof in establishing an occupational disease claim, appellant must submit rationalized medical opinion evidence in support of a causal relationship between his condition and his employment. Such medical rationale should include a physician's detailed opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment activities. The opinion must be based on a complete factual and medical background of the claim, must be one of reasonable medical certainty and must be supported by an explanation of the nature of the relationship to the specific employment activities identified by the claimant.⁴ Dr. Rogers did not provide sufficient medical reasoning to support of his conclusion on causal relation.

Dr. Lewandrowski noted that by history appellant's lumbar spinal stenosis symptoms were brought on and exacerbated by standing and walking. He did not offer a clear opinion that appellant's back condition was either caused or permanently aggravated by his employment duties. Dr. Lewandrowski's report suggests at most a temporary aggravation of appellant's symptoms due to his employment duties. Furthermore, he did not provide any medical reasoning in support of his opinion that appellant's symptoms were brought on and exacerbated by standing and walking.

In regard to counsel's arguments, the Board notes as described above that appellant has not submitted the necessary rationalized medical opinion evidence to establish his claim. Due to the lack of a detailed report with a clear history of injury and a clear opinion on the causal relationship between his employment and his diagnosed condition, the Board further finds that the medical evidence does not require additional development by OWCP.

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 has not submitted the necessary medical opinion evidence to establish an occupational disease claim.

⁴ A.D., 58 ECAB 149 (2006).

ORDER

IT IS HEREBY ORDERED THAT the April 2, 2013 Office of Workers' Compensation Programs' decision is affirmed.

Issued: September 25, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board