

FACTUAL HISTORY

On December 22, 2011 appellant, a 64-year-old city carrier, filed a claim (Form CA-2) for injuries to his neck and low back that arose on or about October 24, 2011. He submitted a city carrier position description and a November 2011 statement describing his daily work routine. Appellant's duties included approximately two hours of casing and organizing mail, which he then loaded into his delivery vehicle. His mail route consisted of approximately 600 homes some of which were vacant. Appellant stated that 94 percent of his route was park and loop delivery, five percent was dismount and the remainder was curbside delivery. He indicated that his delivery duties took five to seven hours to complete. This consisted of walking through lawns and over uneven terrain, walking up and down stairs, twisting, turning, reaching, reaching above shoulder and stooping. Appellant noted that a fully loaded mail satchel weighed up to 35 pounds. His job required constant movement of his neck in all directions. Appellant explained that his job gradually aggravated his neck and back.

A November 2, 2011 note, Dr. Erick A. Grana, a Board-certified physiatrist with a subspecialty in pain medicine, advised that appellant was to stay off work for two weeks due to neck and low back pain.

A November 3, 2011 cervical magnetic resonance imaging (MRI) scan noted a six-month history of neck pain with decreased range of motion. The study revealed disc herniations at C4-5 and C5-6 with compression on the thecal sac. There was also evidence of mild spondylotic changes at C5-6, moderate left-sided neuroforaminal stenosis and marked intervertebral disc space narrowing.

On November 14, 2011 Dr. Grana diagnosed a cervical herniated disc and advised that appellant was unable to work for two weeks. He also submitted a November 30, 2011 attending physician's report (Form CA-20). Dr. Grana diagnosed cervical facet arthrosis and cervical degenerative joint disease. He noted that appellant had been disabled since November 2, 2011, and he was to remain off work for another two weeks.³

On the CA-2 claim form, the employing establishment noted that appellant was off work from November 2 through December 14, 2011. Appellant returned to work on December 15, 2011, but stopped again on December 22, 2011 after having sustained a new traumatic injury to his neck, shoulders, arms and lower back (xxxxxx900).

On December 30, 2011 OWCP acknowledged receipt of appellant's occupational disease claim. It advised him that the evidence of record was insufficient to support his claim. Appellant's claim was deficient because the record lacked a physician's opinion addressing how the diagnosed cervical condition was causally related to his reported employment activities. OWCP afforded him 30 days' time to submit additional medical evidence.

³ Dr. Grana did not identify the date of injury or otherwise address the cause of appellant's diagnosed cervical condition.

On February 3, 2012 OWCP denied appellant's claim. It found that he had not established a causal relationship between his accepted employment work duties and Dr. Grana's November 30, 2011 diagnosis of cervical facet arthrosis and cervical degenerative joint disease.

Appellant requested an oral hearing, which the Branch of Hearings & Review provided on May 2, 2012. He was afforded the opportunity to submit additional medical evidence posthearing. However, OWCP did not receive any further evidence within the allotted time.

By decision dated July 10, 2012, the hearing representative affirmed the February 3, 2012 decision. He found that the medical evidence did not contain a physician's opinion addressing causal relation.

OWCP subsequently received several reports from Dr. Samy F. Bishai, an orthopedic surgeon. On September 13, 2012 Dr. Bishai noted that appellant sustained injuries to his back while working for the employing establishment. The current injury or onset of symptoms occurred on October 24, 2011 when appellant reportedly experienced sharp pain in his neck and lower back. Dr. Bishai also noted a history of a previous back injury on March 29, 2011 when appellant lifted a package from the rear of his postal vehicle.⁴ Appellant's current complaints included pain and stiffness in the neck and back.

On physical examination, Dr. Bishai noted tenderness, muscle spasm and reduced range of motion in the cervical and dorsolumbar spine. He provided 11 separate diagnoses, which included chronic cervical strain, cervical disc syndrome and C4-5 disc herniation with compression of the thecal sac. Dr. Bishai also diagnosed a two-millimeter broad-based left posterolateral disc herniation at C5-6 with compression on the thecal sac and moderate left-sided neural foraminal stenosis. Additional diagnoses included spondylitic changes at C5-6, chronic muscle strain of the dorsal region of the spine, chronic lumbosacral strain, lumbar disc syndrome, bulging discs at L4-5 and L5-S1, bilateral lower extremity radiculopathy and bilateral upper extremity radiculopathy.

Dr. Bishai attributed appellant's current symptoms to the October 24, 2011 accident, which he characterized as an aggravation of a preexisting condition of March 29, 2011. He explained that the work-related injuries and symptoms were easily connected, noting that appellant's letter carrier duties involved bending, stooping, lifting, casing mail, as well as twisting and turning of his neck and back. Dr. Bishai stated that the combination of all these movements resulted in neck and back disc injuries that developed into degenerative disc disease, which caused appellant's current symptoms. In an October 15, 2012 follow-up examination report, Dr. Bishai reiterated his diagnoses.

On November 19, 2012 Dr. Bishai expressed familiarity with appellant's job duties having reviewed his detailed statement. He noted that appellant's claim had been denied, which he characterized as unfortunate. Dr. Bishai reiterated that the October 24, 2011 injury had aggravated appellant's preexisting condition of March 29, 2011. He stated that individuals who worked as letter carriers developed degenerative disc disease and degenerative arthritis of the cervical spine and dorsolumbar spine. Dr. Bishai reiterated his opinion on December 19, 2012.

⁴ OWCP accepted appellant's March 29, 2011 employment injury for lumbar sprain (xxxxxx800).

On December 3, 2012 appellant requested reconsideration based on Dr. Bishai's November 19, 2012 report.

In a January 18, 2013 decision, OWCP reviewed the merits of appellant's claim and denied modification of the July 10, 2012 decision.

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.⁵

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.⁶

ANALYSIS

The November 3, 2011 cervical MRI scan does not address whether appellant's employment duties either caused or contributed to the noted cervical disc herniations and degenerative osteoarthritis. Similarly, Dr. Grana's November 2011 reports do not address the cause of the diagnosed cervical herniated disc, cervical facet arthrosis and cervical degenerative joint disease. Consequently, this evidence is insufficient to satisfy appellant's burden of demonstrating that his claimed conditions are employment related.

When Dr. Bishai examined appellant on September 13, 2012, he provided diagnosis of the cervical and lumbar spine, as well as appellant's bilateral upper and lower extremities. His diagnosed cervical disc syndrome and herniations; however, it is unclear what evidence Dr. Bishai relied upon in support of his diagnosis of lumbar disc syndrome, bulging discs at L4-5 and L5-S1 and bilateral upper/lower extremity radiculopathy. It is not clear whether he reviewed the cervical MRI scan of November 3, 2011.

Regarding the issue of causation, Dr. Bishai characterized appellant's October 24, 2011 employment injury as an aggravation of his preexisting condition of March 29, 2011. But nowhere in his various reports does he specifically address the nature of appellant's preexisting condition. OWCP previously accepted a lumbar sprain under claim number xxxxxx800 with a March 29, 2011 date of injury. Dr. Bishai described appellant's March 29, 2001 injury as having

⁵ 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).

⁶ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

occurred while lifting a package from the rear of a postal vehicle. At the time, appellant reportedly felt severe, sharp pain in his lower back. Dr. Bishai did not provide a specific diagnosis associated with appellant's March 29, 2001 low back injury. He failed to explain how the low back injury in March 2011 subsequently evolved into a cervical, thoracic or lumbar conditions affecting appellant's upper and lower extremities. The Board further notes that, while appellant attributed his condition, in part, to carrying a 35-pound mail sack, constant walking and walking up stairs, Dr. Bishai did not acknowledge these specific employment factors. In his November 19, 2012 report, Dr. Bishai generally stated that individuals who work as letter carriers develop degenerative disc disease and degenerative arthritis of the cervical spine and dorsolumbar spine.

A physician's opinion on causal relationship must be supported by medical rationale explaining the nature of the relationship between the diagnosed conditions and appellant's specific employment exposure.⁷ Also, the opinion must be based on a complete factual and medical background.⁸ Dr. Bishai's opinion lacks adequate medical rationale and appears based on an incomplete factual and medical history. Consequently, the Board finds that the medical evidence is insufficient to establish that appellant's diagnosed conditions are causally related to his October 24, 2011 employment activities.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision.⁹

CONCLUSION

Appellant failed to establish that his diagnosed conditions are causally related to his accepted employment exposure.

⁷ *Id.*

⁸ *Id.*

⁹ *See* 5 U.S.C. § 8128(a); 20 C.F.R. §§ 10.605, 10.607.

ORDER

IT IS HEREBY ORDERED THAT the January 18, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 10, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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