

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

D.B., Appellant)

and)

U.S. POSTAL SERVICE, NETWORK)
DISTRIBUTION CENTER, Jacksonville, FL,)
Employer)

Docket No. 14-672
Issued: August 7, 2014

Appearances:

Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 29, 2014 appellant, through his attorney, filed a timely appeal of a December 9, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 this case.

ISSUE

The issue is whether appellant established that his back condition was causally related to the accepted January 18, 2013 employment incident.

FACTUAL HISTORY

On April 4, 2013 appellant, then a 51-year-old mail clerk filed a recurrence claim alleging that on January 18, 2013 he sustained a recurrence of a November 29, 1999 work-

¹ 5 U.S.C. § 8101 *et seq.*

related back injury; OWCP File No. xxxxxx167. He stated that his back began to hurt after lifting a heavy box that day. OWCP converted the recurrence claim into a new traumatic injury claim as appellant was alleging a new injury. Appellant stopped work on January 19, 2013 and returned to work on January 21, 2013.

In a May 31, 2013 letter, OWCP informed appellant that the evidence of record was insufficient to establish his claim. Appellant was advised as to the medical and factual evidence required and given 30 days to provide the requested evidence.

By decision dated July 9, 2013, OWCP denied appellant's claim on the grounds that the evidence failed to establish that the diagnosed condition was causally related to the January 18, 2013 employment incident.

In a July 1, 2013 report, Dr. Robert Hurford, Jr., appellant's treating Board-certified orthopedic surgeon, noted that appellant was evaluated for his lumbar condition on June 28, 2013. He related that appellant first injured his back at work on November 29, 1999 due to lifting and had intermittent tingling and numbness in his lower extremities since the injury. Dr. Hurford reviewed x-ray interpretations and magnetic resonance imaging (MRI) scans, which revealed severe L4-5 spondylosis, mild L3-4 and L5-S1 spondylosis and L4-5 degenerative disc disease. In concluding, he opined that appellant has a permanent aggravation of his underlying lumbar degenerative disc disease, which he attributed to "the injury."

By decision dated July 9, 2013, OWCP denied appellant's claim on the grounds that the medical evidence was insufficient to establish a causal relationship between the diagnosed condition and the accepted January 18, 2013 employment incident.

On July 10, 2013 OWCP received a June 28, 2013 report from Dr. Hurford, which provided a history of appellant's back pain and physical findings. Diagnoses include low back pain, lumbar degenerative disc disease and lumbar spondylosis without myelopathy.

In a letter dated November 11, 2013, appellant's counsel requested reconsideration and submitted the following evidence in support of his request.

An October 18, 2013 report from Dr. Michael Stephens, a treating Board-certified family medicine physician, diagnosed chronic back pain and noted that he had treated appellant since August 29, 2012. A review of an April 8, 2013 lumbar MRI scan revealed significant disc disease, bulging discs and disc narrowing at in the lumbar area. Dr. Stephens opined that appellant suffered an aggravation of his back condition due to the January 18, 2013 employment incident. In support of this conclusion, he noted that appellant's back pain worsened following his lifting a heavy box on January 18, 2013. In concluding, Dr. Stephens opined that appellant's chronic back pain had been permanently aggravated by the January 18, 2013 lifting incident at work.

By decision dated December 9, 2013, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing the essential elements of her claim, including the fact that the individual is an employee of the United States within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. 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.⁵

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.⁶ An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁸ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.⁹ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty

² *Id.*

³ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁴ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *K.K.*, Docket No. 13-1205 (issued December 13, 2013); *see Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Katherine J. Friday*, 47 ECAB 591 (1996).

⁷ *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁸ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

⁹ *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

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 employee.¹⁰

ANALYSIS

The Board finds that the medical evidence submitted by appellant is insufficient to establish that she sustained a diagnosed medical condition due to the accepted January 18, 2013 employment incident. Therefore, appellant has failed to meet her burden of proof.

In support of his claim, appellant submitted reports dated June 28 and July 1, 2013 from Dr. Hurford. In the June 28, 2013 report, Dr. Hurford provided a medical history, physical findings and diagnoses of lower back pain, lumbar degenerative disc disease and lumbar spondylosis without myelopathy. He offered no opinion as to the cause of the back conditions or any relationship between the accepted January 18, 2013 employment incident and appellant's back conditions. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.¹¹ Thus, Dr. Hurford's June 28, 2013 report is insufficient to establish appellant's claim.

In the July 1, 2013 report, Dr. Hurford related that appellant sustained an injury at work on November 29, 1999 as the result of lifting. He opined that appellant sustained a permanent aggravation of his lumbar degenerative disc disease due to "the injury." Dr. Hurford made no mention of appellant sustaining an injury on January 18, 2013 as the result of lifting a heavy box. He did not identify the injury. Medical conclusions based on inaccurate or incomplete histories are also of little probative value.¹² Further, Dr. Hurford's opinion that the condition was due to an injury at work is unsupported by rationale and is conclusory. Medical opinions which contain no rationale or explanation are of little probative value.¹³ Thus, this report is insufficient to establish appellant's claim.

The record also contains an October 18, 2013 report from Dr. Stephens diagnosing chronic back pain. Dr. Stephens opined that appellant suffered an aggravation of his back condition due to the January 18, 2013 employment incident. In support of this conclusion, he noted that appellant's back pain worsened following his lifting a heavy box on January 18, 2013. This report is not sufficient as Dr. Stephens merely repeated appellant's complaints of an increase in his pain symptoms following the lifting of a heavy box. Dr. Stephens did not provide

¹⁰ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹¹ *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *K.W.*, 59 ECAB 271 (2007); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

¹² *M.W.*, 57 ECAB 710 (2006); *James R. Taylor*, 56 ECAB 537 (2005) (medical opinions based on an inaccurate or incomplete factual history are of diminished probative value). See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

¹³ *F.T.*, Docket No. 09-919 (issued December 7, 2009) (medical opinions not fortified by rationale are of diminished probative value); *Sedi L. Graham*, 57 ECAB 494 (2006) (medical form reports and narrative statements merely asserting causal relationship generally do not discharge a claimant's burden of proof).

medical rationale addressing how lifting the heavy box caused or aggravated his diagnosed medical condition.¹⁴

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's conditions became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.¹⁵ Causal relationship must be established by rationalized medical opinion evidence and he failed to submit such evidence.

OWCP advised appellant that it was her responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment and the physician's opinion, with medical reasons, on the cause of his condition. Appellant failed to submit appropriate medical documentation in response to OWCP's request. As there is no probative, rationalized medical evidence addressing how his claimed back condition was caused or aggravated by the January 18, 2013 employment incident, he has not met his burden of proof to establish an injury in the performance of duty.

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 established that his back condition was causally related to the accepted January 18, 2013 employment incident.

¹⁴ *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

¹⁵ *See D.U.*, Docket No. 10-144 (issued July 27, 2010); *D.I.*, 59 ECAB 158 (2007); *Robert Broome*, 55 ECAB 339 (2004); *Anna C. Leanza*, 48 ECAB 115 (1996).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 9, 2013 is affirmed.

Issued: August 7, 2014
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