United States Department of Labor
Employees' Compensation Appeals Board

M.W., Appellant	)	
and	)	**Docket No. 14-1664**
	)	**Issued: December 5, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Milwaukee, WI, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On July 28, 2014 appellant filed a timely appeal from an April 10, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 met her burden of proof to establish thoracic and cervical conditions causally related to factors of his employment.

FACTUAL HISTORY

On September 21, 2013 appellant, then a 49-year-old distribution operations manager, filed an occupational disease claim alleging that he developed thoracic spine degeneration as a result of bending and reaching in all-purpose containers (APC), bulk mail centers (BMC), and

[1] 5 U.S.C. § 8101 *et seq.*

boxes in order to sort priority parcels, parcel post, and periodicals from delivery units and upstate facilities. He first became aware of his condition and realized that it resulted from his employment on January 19, 2013. Appellant noted that he had a previous back condition. The employing establishment reported that appellant had not worked since June 5, 2013.[2] Appellant filed for disability compensation beginning June 11 to November 1, 2013.

In a June 10, 2013 report, Dr. Max C. Lee, a Board-certified neurological surgeon, related appellant's complaints of worsening leg numbness and difficulty walking since January. He reviewed appellant's history and noted that he suffered from chronic lower back pain since 2004 and bilateral weakness and numbness in the legs since June 2011. Appellant underwent lumbar laminectomy in 2004 and pain pump placement in 2007. Dr. Lee reported that he initially treated appellant in May 2012 for cervical cord compression but had not seen him since August 2012. He noted that a June 7, 2013 cervical, thoracic, and lumbar computerized tomography (CT) myelogram revealed evidence of reversal of the normal lordotic curvature and congenital narrowing of the central canal. Dr. Lee also reported stenosis at C6-7 and C4-5 to a lesser degree.

Upon examination, Dr. Lee observed spastic gait with ataxia. He stated that appellant had difficulty performing sit to stand secondary to proximal bilateral lower extremity weakness. Dr. Lee provided range of motion findings for appellant's hip and lower extremities. Neurologic examination demonstrated marked hyperreflexia with 4/4 bilateral knee and ankle jerks and marked sustained clonus. Dr. Lee noted that appellant was unable to distinguish between sharp and dull involving a stocking distribution of the entirety of the bilateral lower extremities. He reported that no thoracic sensory deficit was noted. Sensation was grossly intact to light touch and Hoffman's sign was negative bilaterally. Dr. Lee stated that appellant was unable to meet the demands of his job and had been off work. He related that, since appellant's last examination in January, he observed neurological deterioration with worsening leg numbness and weakness, ataxia, and spasticity. Dr. Lee stated that surgical treatment was planned for next week. In an attached note, he stated that surgery was planned for next week and noted that appellant would need an extended period of time off work.

On June 19, 2013 appellant underwent thoracic decompression surgery.

In a July 1, 2013 report, Dr. Lee stated that he noticed a marked decline in appellant's condition since January. He related that appellant's bilateral leg numbness was progressively worsening and the numbness was in a stocking distribution of the entire bilateral lower extremities. Dr. Lee also noted some combined thoracic back pain but without thoracic radiculopathy. He reported that appellant's legs were becoming progressively weaker and that he had difficulty walking, climbing stairs, and standing from a sitting position. Upon examination, Dr. Lee observed that appellant could sit to stand with minimal difficulty and provided range of motion findings of the hip and feet. Neurologic examination demonstrated improved hyperflexion of the bilateral knees and ankle jerks. Dr. Lee diagnosed thoracic stenosis. He also noted neurologic deterioration from January to June 2013 with worsening leg

[2] Appellant previously filed two occupational disease claims on March 29, 2001 (File No. xxxxxx540) and June 15, 2011 (File No. xxxxxx726). He also filed 2 previous traumatic injury claims for April 17, 2006 (File No. xxxxxx989) and September 26, 2007 (File No. xxxxxx106) employment injuries.

numbness, weakness, ataxia, and spasticity. Dr. Lee stated that repetitive work activity of daily bending at the waist contributed to accelerated degenerative change. He explained that repetitive bending and reaching into large mail containers at work certainly could have accelerated his degenerative changes beyond normal progression and contributed to the need for decompressive surgery.

In a July 29, 2013 report, Dr. Lee related that appellant was recovering well with continued improvement of his strength and mobility since his most recent surgery. Upon examination, he observed good strength of the bilateral upper extremities and 5/5 strength throughout the bilateral lower extremities. Dr. Lee noted that appellant still had some difficulty sit-to-stand and guarded gait but it had improved. Neurological examination demonstrated that a few beats of left ankle clonus was present and bilateral knee jerks were slightly brisk.

By letter dated October 1, 2013, the employing establishment controverted appellant's claim. It noted that the medical evidence indicated that appellant had a previous nonindustrial back issue and underwent several surgeries. The employing establishment reported that after being off work from May through July 2012 due to surgery appellant returned to full duty on August 8, 2012. It explained that appellant was allowed to use a motorized scooter while performing his supervisory duties due to his difficulty in walking. On June 6, 2013 appellant was placed in a totally incapacitated status and had not returned to work. The employing establishment alleged that appellant's condition appeared to be an on-going previous, nonwork-related injury. It included a description of his position.

In a statement dated October 5, 2013, appellant reported that, after he returned to work in August 2012 following neck surgery the employing establishment had hired more workers for the holiday season. He explained that, as manager, he was required to be more "hands-on" in assisting employees in moving heavy parcels. Appellant related that this work involved bending into boxes, BMCs, APCs, hampers, and containers to perform quality checks of mail and bundles being processed and lifting mail weighing up to 70 pounds out of parcel containers. He performed these tasks five to six days a week up to 12 hours a day, especially during the holiday peak. Appellant noted that since returning to work his thoracic and back conditions had severely degenerated, causing numbness and weakness, from bending and lifting. He related that a myleogram taken in late 2011 showed mild to moderate degenerative disease at T-10 and T-11 and a myleogram taken in June 2013 showed that the same area was severely degenerative. Appellant stated that he had minor lower back and inguinal issues in the military but that since working at the employing establishment the problems engulfed his entire back.

In a November 8, 2013 attending physician's report, Dr. Lee diagnosed spinal cord compression, thoracic spondylosis and myelopathy, degenerative disc disease, and spinal stenosis of the thoracic region. He indicated that for history of injury, physical findings, and causal relationship to refer to his note dated June 6, 2013. Dr. Lee opined that appellant was totally disabled beginning June 10, 2013.

In a letter dated February 13, 2014, OWCP requested that Dr. Lee review the attached statement of accepted facts (SOAF) and provide additional information. It asked that he respond to specific questions with medical rationale and provide a detailed, narrative medical report explaining whether appellant's conditions were medically connected to his federal employment.

In a March 11, 2014 report, Dr. Lee related that appellant had multiple issues, including cervical stenosis leading to cervical myelopathy, thoracic stenosis with thoracic disc herniation, and symptoms of thoracic myelopathy with spinal cord compression. He stated that these conditions required a C4 to C7 anterior cervical discectomy and fusion and a T10-11 decompression and fusion. Dr. Lee also noted that appellant previously suffered from a lumbar condition and underwent a lumbar laminectomy and anterior lumbar interbody fusion in 2004. He opined that although he could not fully address appellant's lumbar issues, he felt that appellant's cervical and thoracic issues could be attributed to the factors of employment described in the SOAF as an aggravating and precipitating cause, in addition to accelerating preexisting degeneration. Dr. Lee explained that during appellant's initial presentation he did not have symptoms of thoracic myelopathy and thoracic stenosis in 2012. He stated that he could not comment on any nonindustrial or preexisting disability since he was unfamiliar with appellant's lumbar laminectomy and anterior lumbar interbody fusion. Dr. Lee noted that if OWCP wanted a discussion he would need to reexamine appellant and would require further imaging. He reported that appellant needed continual follow-up for both his cervical fusion and thoracic fusion and may need further management, including physical therapy and pain management. Dr. Lee stated that appellant may have had preexisting degeneration but he did not have symptoms from it, especially related to his thoracic injury. He further opined that appellant's June 19, 2013 surgery was directly related to his employment.

In a decision dated April 10, 2014, OWCP denied appellant's occupational disease claim. It accepted that appellant worked as a distribution operations manager and sustained diagnosed cervical and thoracic conditions but denied the claim finding insufficient medical evidence to establish that his medical condition was causally related to his federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his claim by the weight of the reliable, probative, and substantial evidence[3] including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.[4] In an occupational disease claim, appellant's burden requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[5]

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.[6] The opinion of the physician must be

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[4] *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

[6] *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, 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.[7] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[8]

ANALYSIS

Appellant alleges that he sustained thoracic and cervical conditions as a result of his employment duties as a distribution operations manager. OWCP accepted that he worked as a distribution operations manager and that he sustained diagnosed conditions. It denied appellant's claim finding insufficient medical evidence to establish that his conditions were causally related to factors of his employment. The Board finds that he did not meet his burden of proof to establish thoracic and cervical conditions due to his employment.

Appellant submitted various reports from Dr. Lee dated June 10, 2013 to March 11, 2014. He reviewed appellant's history and discussed his previous back surgeries. Dr. Lee reported that a June 7, 2013 CT myleogram revealed reversal of the normal lordotic curvature, congenital narrowing of the central canal, and reported stenosis at C6-7 and C4-5. He provided findings on examination and diagnosed thoracic and cervical stenosis. In a July 1, 2013 report, Dr. Lee opined that repetitive work activity of daily bending at the waist contributed to accelerated degenerative change. He explained that repetitive bending and reaching into large mail containers at work certainly could have accelerated his degenerative changes beyond normal progression and contributed to the need for decompressive surgery. In a March 11, 2014 report, Dr. Lee stated that he felt that appellant's cervical and thoracic issues could be attributed to factors of employment described in the SOAF as an aggravating and precipitating cause, in addition to accelerating preexisting degeneration.

The Board finds that Dr. Lee's opinion on causal relationship lacks probative value because it is vague and equivocal, and does not adequately explain the causal relationship between appellant's cervical and thoracic conditions and his employment duties.[9] His belief that appellant's employment activities "could have accelerated" his degenerative condition or that appellant's conditions "could be attributed" to the employment factors described in the SOAF is speculative in nature and of diminished probative value.[10] The Board finds that Dr. Lee fails to explain, based on medical rationale, how any of appellant's employment duties would have physiologically caused or contributed to his cervical and thoracic conditions. The need for such rationale is important in this case because appellant also suffers from preexisting conditions. In controverting appellant's claim, the employing establishment related that after appellant's return to work on August 8, 2012 he was allowed to use a motorized scooter, because of his difficulty

[7] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

[8] *James Mack*, 43 ECAB 321 (1991).

[9] *Roy L. Humphrey*, 57 ECAB 238, 242 (2005); *Michael E. Smith*, 50 ECAB 313 (1999).

[10] *D.D.*, 57 ECAB 734, 738 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004).

walking. The Board also notes that Dr. Lee noted appellant's difficulty in walking, but did not discuss how use of a scooter at work, rather than walking, would have impacted the diagnosed conditions. Without such rationalized medical opinion evidence regarding causal relationship, the Board finds that Dr. Lee's reports are insufficient to establish appellant's claim.

On appeal, appellant alleged that Dr. Lee's March 11, 2014 report established a direct relationship between his cervical and thoracic stenosis conditions were related to his employment. As explained alone, however, the Board has found that Dr. Lee's report is of diminished probative value and fails to establish causal relationship. An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between his claimed condition and his employment.[11] The Board finds that appellant has not provided sufficient medical evidence to establish that his thoracic and cervical conditions were causally related to his employment duties. He did not meet his burden of proof to establish his claim.

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 met her burden of proof to establish cervical and thoracic conditions causally related to factors of his federal employment.

[11] *Robert A. Boyle*, 54 ECAB 381 (2003); *Patricia J. Glenn*, 53 ECAB 159 (2001).

ORDER

IT IS HEREBY ORDERED THAT the April 10, 2014 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 5, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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