United States Department of Labor
Employees' Compensation Appeals Board

B.K., Appellant	)	
and	)	**Docket No. 14-1819**
	)	**Issued: December 12, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Madison, WI, Employer	)	

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 August 19, 2014 appellant, through counsel, filed a timely appeal from a July 17, 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 his burden of proof to establish back injuries as a result of factors of his federal employment.

FACTUAL HISTORY

This case has previously been before the Board. By decision dated March 21, 2014, the Board set aside OWCP's February 7, 2013 nonmerit decision which denied appellant's request for reconsideration, which found that he neither raised substantive legal questions nor included

[1] 5 U.S.C. § 8101 *et seq.*

new and relevant evidence.[2] The Board determined that OWCP had failed to review newly submitted medical reports and remanded the case for OWCP to issue a *de novo* decision after properly considering all of the evidence. The findings of fact and conclusions of law from the prior decision and order are hereby incorporated by reference.

On November 23, 2012 appellant, then a 43-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging a displaced thoracic spinal cord, degenerative disc bulging, acute low back pain, lumbar pelvic muscle spasms, and subluxation as a result of his federal employment duties.[3] He stated that his work duties required constant bending, reaching, and stooping. Appellant further noted that on November 20, 2012 he crouched to get in the mail truck and felt his lower back give out. He first became aware of his condition on October 6, 2004 and of its relationship to his employment on November 20, 2012. Appellant stopped work and sought medical treatment on November 20, 2012. His supervisor was notified on November 28, 2012.

In support of his claim, appellant submitted notes dated November 20, 2012 from a nurse practitioner and chiropractor excusing him from work.

In a November 28, 2012 worker's injury form, appellant reported that he had previously injured his lower back in a similar manner on September 9, 2011. He further noted a preexisting injury of bilateral plantar fasciitis.

By letter dated November 28, 2012, the employing establishment controverted the claim. It stated that appellant had self-reported a preexisting condition for the past eight years for which he had been under chiropractic care. The employing establishment further noted that he received military disability benefits for a service-related L1-S1 spine condition.

By letter dated January 8, 2013, OWCP informed appellant that the evidence of record was insufficient to support his claim. It further stated that it was unclear whether he was claiming an occupational disease or traumatic injury claim. Appellant was advised of the medical and factual evidence needed to be submitted within 30 days.

Appellant submitted an August 31, 2012 letter from Andrew A. Uhl, a treating chiropractor, who provided a history of appellant's treatment for back pain since 2004 with varying diagnoses. Dr. Uhl provided a current diagnosis of chronic degenerative disc disease which caused chronic and progressively worsening low back pain. He opined that appellant was permanently disabled and unable to perform his job duties as a letter carrier.

In a November 30, 2012 work capacity evaluation, Dr. Frederick Kron, Board-certified in family medicine, diagnosed plantar fasciitis and pain in back, legs, and heels.

[2] Docket No. 14-145 (issued March 21, 2014).

[3] The Board notes that appellant has one other occupational disease claim and two other traumatic injury claims: A February 11, 2001 traumatic injury claim No. xxxxxx181; a July 10, 2006 traumatic injury claim No. xxxxxx480; and a June 9, 2012 occupational disease claim No. xxxxxx203. The record before the Board contains no other information regarding these additional workers' compensation claims.

In a December 10, 2012 report, Dr. Ronald P. Guiao, a Board-certified orthopedic surgeon, reported that appellant complained of foot and back pain. Appellant claimed that his walking duties as a mail carrier resulted in the development of plantar fasciitis. Dr. Guiao diagnosed bilateral foot pain and suspected neurologic-based etiology.

In a December 12, 2012 report, Dr. Greg Thomas Graglia, a doctor of podiatric medicine, diagnosed right plantar fasciitis and neuritis/neuropathy.

Dr. Adam R. Jaffe, a doctor of osteopathic medicine, in a report dated January 7 and 18, 2013 medical report, noted that appellant complained of back pain and foot problems and referenced a preexisting history of back problems which seemed to be aggravated by his postal carrier duties. He recommended a magnetic resonance imaging (MRI) scan of the lumbar spine. Dr. Jaffe noted that a January 18, 2013 electromyogram study of the bilateral lower extremities was suggestive of L5-S1 radiculopathy.

In a January 8, 2013 diagnostic report, Dr. Samuel Gibson, a Board-certified diagnostic radiologist, reported that an MRI scan of the lumbar spine revealed mild multilevel lumbar spine degenerative changes.

Dr. Kron submitted a January 23, 2013 report in which he found that appellant had a long history of low back pain with frequent flare-up dating back to 2000. He noted a pattern where appellant would injure his back at work, improve with therapy, and reinjure his back again. Appellant's working conditions (prolonged walking, standing, lifting, reaching, pushing, pulling, and carrying) did not make it easy to return him to his employment without the chance of reinjury.

In a January 24, 2013 report, Dr. Cynthia M. Bender, Board-certified in physical medicine and rehabilitation, reported that appellant presented with a history of clinical symptoms consistent with lumbar radiculopathy.

In a January 25, 2013 narrative statement, appellant reported that over the last 10 years he suffered from a number of medical conditions including multilevel degenerative disc disease, disc protrusion, intervertebral disc syndrome and plantar fasciitis. He stated that he had undergone treatment, but his duties as a rural carrier caused a worsening of his conditions. Specifically, appellant had a severe flare-up in his lower back on November 20, 2012 while delivering mail, bending, reaching, and stooping, which caused him to file an occupational disease claim.

By decision dated February 7, 2013, OWCP denied appellant's claim finding that the medical evidence had failed to establish that his conditions were causally related to his accepted federal employment duties.

By letter dated March 15, 2013, appellant requested reconsideration of OWCP's decision.

In support of his claim, appellant submitted a February 6, 2013 functional capacity evaluation and a February 21, 2013 report of left S1 nerve root injection from Dr. Timothy Crummy, a Board-certified diagnostic radiologist. He also submitted a March 7, 2013 medical report from Dr. Bender who stated that appellant's subsequent disc protrusion at L5-S1 caused

his radicular pain. Dr. Bender opined that appellant's injury was caused by the November 20, 2012 work incident when he squatted down to get a parcel in his truck. She further stated that this was a new symptom which she believed was caused by his work.

By decision dated May 7, 2013, OWCP denied appellant's request for reconsideration finding that he neither raised substantive legal questions nor included new and relevant evidence.

As previously noted, by decision dated March 21, 2014, the Board set aside the May 7, 2013 decision finding that OWCP failed to review the newly submitted medical reports and remanded the case for an issuance of a *de novo* final decision after properly considering all of the evidence.[4]

Following the Board's remand, OWCP had also received reports dated May 6 to June 6, 2013 from Dr. Christopher Kroll, a treating chiropractor, who provided a history of injury and diagnosed somatic dysfunction of the lumbar region and lumbar disc displacement without myelopathy.

In a May 22, 2013 medical report, Dr. Bender noted that appellant complained of a flare-up in back pain. She diagnosed lower back pain with history of radiculopathy.

By decision dated July 17, 2014, OWCP affirmed the February 7, 2013 decision finding that the medical evidence failed to establish that appellant's conditions were causally related to his federal employment duties.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or 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 or specific condition for which compensation is claimed is causally related to the employment injury.[5] These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[6]

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[7] The second

[4] *Supra* note 2.

[5] *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

[6] *Michael E. Smith*, 50 ECAB 313 (1999).

[7] *Supra* note 5.

component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (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.[8]

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.[9] The opinion of the physician 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 claimant. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. 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.[10]

ANALYSIS

OWCP accepted that appellant engaged in repetitive activities in his employment duties as a letter carrier. It denied his claim, however, on the grounds that the evidence failed to establish a causal relationship between those activities and his diagnosed conditions. The Board finds that the medical evidence of record is insufficient to establish that appellant developed back injuries causally related to these factors of his federal employment.

In medical reports dated January 7 and 18, 2013, Dr. Jaffe diagnosed L5-S1 radiculopathy. While he provided a medical diagnosis of L5-S1 radiculopathy, Dr. Jaffe failed to provide an adequate explanation as to the cause of appellant's injury. His opinion on causation is speculative as he states that appellant's preexisting history of back problems seemed to be aggravated by his postal carrier duties. Dr. Jaffe failed to specify to which preexisting back problems he was referring and failed to relate appellant's postal carrier duties to a firm medical diagnosis. Moreover, his report provided no description or detail regarding appellant's employment duties and failed to address the frequency of various physical movements and tasks. Without medical reasoning explaining how appellant's federal employment duties as a letter carrier caused or contributed to L5-S1 radiculopathy, Dr. Jaffe's reports are insufficient to meet appellant's burden of proof.[11]

[8] *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

[9] *See* 20 C.F.R. § 10.115(e).

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

[11] *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

In a January 23, 2013 report, Dr. Kron diagnosed back pain with frequent flare-up dating back to 2000. He noted a pattern where appellant would injure his back at work, improve with therapy, and reinjure his back again. Dr. Kron noted that appellant's work conditions of prolonged walking, standing, lifting, reaching, pushing, pulling, and carrying did not make it easy to return to employment without the chance of reinjury. The Board notes that Dr. Kron's assessment that appellant's pain was caused by his work conditions is of no probative value as he is describing a symptom rather than a clear diagnosis of the medical condition.[12] His opinion on causal relationship is equivocal as he related appellant's symptoms to his employment duties and failed to provide medical rationale explaining the relationship between a diagnosed condition and factors of his employment.[13]

In medical reports dated January 24, March 7, and May 22, 2013, Dr. Bender diagnosed subsequent disc protrusion at L5-S1 which caused appellant radicular pain. She opined that his disc protrusion was caused by the November 20, 2012 work incident when he squatted down to get a parcel in his truck. Dr. Bender stated that this was a new symptom which she believed was caused by appellant's employment.

The Board finds that the opinion of Dr. Bender is not well rationalized. Dr. Bender failed to provide a detailed medical history or description of appellant's federal employment duties as a letter carrier which may have caused him injury. It appears that she is attributing appellant's lumbar disc protrusion to a traumatic incident from a single occurrence within a single workday on November 20, 2012, rather than an occupational injury produced by his work environment over a period longer than a single workday or shift as alleged by appellant in this claim.[14] Dr. Bender's statement on causation fails to provide a sufficient explanation as to the mechanism of injury pertaining to this occupational disease claim, namely, how repetitive bending, reaching, and stooping would cause or aggravate appellant's disc protrusion.[15] Medical reports without rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.[16] As Dr. Bender failed to provide any definitive opinion that appellant's lumbar disc protrusion was caused or aggravated by his occupational employment duties, her medical reports fail to establish that his injuries are a result of a work-related occupational exposure.[17]

These reports are insufficient to establish his claim as they are not physicians. A chiropractor is not considered a physician under FECA unless it is established that there is a

[12] *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[13] *Cecelia M. Corley*, 56 ECAB 662 (2005) (medical opinions which are speculative or equivocal are of diminished probative value).

[14] A traumatic injury means a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

[15] *S.W.*, Docket 08-2538 (issued May 21, 2009).

[16] *See L.M.*, Docket No. 14-973 (issued August 25, 2014); *R.G.*, Docket No. 14-113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-548 (issued November 16, 2012).

[17] *S.R.*, Docket No. 12-1098 (issued September 19, 2012).

spinal subluxation as demonstrated by x-ray to exist. Dr. Uhl provided a final diagnosis of chronic degenerative disc disease while Dr. Kroll diagnosed somatic dysfunction of the lumbar region and lumbar disc displacement without myelopathy. The evidence does not reflect, however, that Dr. Uhl or Dr. Kroll provided a current subluxation diagnosis based on the results of an x-ray.[18] Thus, these reports do not constitute probative medical evidence.[19]

The remaining medical evidence is also insufficient to establish causal relationship between appellant's injury and his federal employment duties. Dr. Kron's November 30, 2012 report diagnosed plantar fasciitis and pain in the back, legs, and heels. Dr. Guiao's December 10, 2012 report diagnosed bilateral foot pain and suspected neurologic-based etiology. Dr. Graglia's December 12, 2012 report provided a diagnosis of right plantar fasciitis, chronic pain, and neuritis/neuropathy. Dr. Gibson's January 8, 2013 diagnostic report noted mild multilevel lumbar spine degenerative changes. While the physicians provided various diagnoses of pain, the Board has held that pain is a description of a symptom rather than a clear diagnosis of the medical condition.[20] It is not possible to establish the cause of a medical condition, if the physician has not stated a diagnosis, but only notes pain.[21] With respect to the additional diagnoses of plantar fasciitis, neuritis/neuropathy, and multilevel lumbar spine degenerative changes, the reports are of limited probative value as no physician provided an opinion regarding the cause of appellant's injuries.[22]

The return-to-work notes dated November 20, 2012 are also insufficient to establish appellant's claim as they were not signed by a physician. Registered nurses, physical therapists and physicians assistants, they are not physicians as defined under FECA, their opinions are of no probative value.[23]

In this instance, appellant has filed an occupational disease claim. As he is alleging that his injuries were produced by his work environment over a period longer than a single workday or shift, appellant must submit rationalized medical evidence from a physician which describes his employment duties and provides an explanation on how these duties caused him injury.[24]

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[18] *See Kathryn Haggerty*, 45 ECAB 383 (1994). 5 U.S.C. § 8102(2) of FECA provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. The term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

[19] *T.G.*, Docket No. 13-76 (issued March 22, 2013).

[20] *Supra* note 12.

[21] *Supra* note 19.

[22] *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

[23] *Supra* note 21.

[24] *Id.*

In the instant case, the record lacks rationalized medical evidence establishing a causal relationship between appellant's federal employment duties as a letter carrier and his diagnosed conditions. Thus, appellant has failed to meet his burden of proof.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 and 10.607.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that his diagnosed lumbar conditions are causally related to the accepted factors of his federal employment as a letter carrier.

ORDER

IT IS HEREBY ORDERED THAT the July 17, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 12, 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