

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

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| K.G., Appellant |) | |
| |) | |
| and |) | Docket No. 13-1511 |
| |) | Issued: January 9, 2014 |
| U.S. POSTAL SERVICE, POST OFFICE, |) | |
| Des Moines, IA, Employer |) | |
| _____ |) | |

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 12, 2013 appellant filed a timely appeal from an April 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.²

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a back condition in the performance of duty causally related to factors of his federal employment.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of the April 9, 2013 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On January 16, 2013 appellant, then a 49-year-old mailhandler, filed an occupational disease claim (Form CA-2) alleging that he sustained a herniated disc in his lower back due to factors of his federal employment, including use of a high-speed tray sorter. He stated that, because of the gradual nature of the way the injury came on and even after resting on his days off, the pain returned when he went back to work and worsened with each day until he went to the emergency room.

On January 16, 2013 Dr. Kevin Pothoven, a Board-certified emergency medicine physician, discharged appellant from the emergency room and indicated that he should be able to return to work after released by his primary physician.

In a January 30, 2013 report, Dr. Timothy Noonan, a Board-certified family medicine specialist and appellant's attending physician, diagnosed sciatica and indicated that appellant had pain when bending, twisting, sitting-up, lying down and a positive straight-leg raise test. He released appellant to light-duty work with restrictions.

On February 5, 2013 the employing establishment offered and appellant accepted a modified mailhandler position with restrictions on handling more than two pounds.

By letter dated February 15, 2013, OWCP requested additional factual and medical information from appellant. It allotted him 30 days to submit additional evidence and respond to its inquiries.

Subsequently, appellant submitted a position description and a February 23, 2013 narrative statement indicating that he had pain radiating out and around the left hip from the lower back and had no other employment or volunteer activities nor service-related injuries as a veteran.

In another January 16, 2013 emergency room report, Dr. Pothoven diagnosed left lumbar spasm and indicated that appellant's work required lifting and twisting.

On January 23, 2013 Dr. Noonan reiterated his diagnosis and indicated that appellant did a lot of twisting, lifting and bending at work. He released appellant to resume normal activities effective February 23, 2013.

By decision dated April 9, 2013, OWCP denied the claim on the basis that the medical evidence failed to establish a causal relationship between the diagnosed conditions and the implicated employment factors.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 timely filed within the applicable time

³ 5 U.S.C. §§ 8101-8193.

limitation period of FECA and that an injury⁴ was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit 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.⁶

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. 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 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

ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish that federal employment factors caused or aggravated his back condition. While appellant submitted a statement in which he identified the factors of employment that he believed caused the condition, in order to establish a claim that he sustained an employment-related injury, he must also submit rationalized medical evidence which explains how his medical conditions were caused or aggravated by the implicated employment factors.⁸

In his reports, Dr. Pothoven diagnosed left lumbar spasm and indicated that appellant's work required lifting and twisting. Similarly, in his reports, Dr. Noonan diagnosed sciatica and indicated that appellant did a lot of twisting, lifting and bending at work. He found that appellant had pain when bending, twisting, sitting-up, lying down and a positive straight-leg raise test. Drs. Pothoven and Noonan provided firm diagnoses and identified appellant's work duties. However, they failed to provide a rationalized opinion explaining how factors of appellant's federal employment, such as twisting, lifting and bending, caused or aggravated these back conditions. Such generalized statements do not establish causal relationship as they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how

⁴ OWCP regulations define an occupational disease or illness 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).

⁵ See *O.W.*, Docket No. 09-2110 (issued April 22, 2010); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁶ See *D.R.*, Docket No. 09-1723 (issued May 20, 2010). See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ See *O.W.*, *supra* note 5.

⁸ See *A.C.*, Docket No. 08-1453 (issued November 18, 2008); *Donald W. Wenzel*, 56 ECAB 390 (2005); *Leslie C. Moore*, 52 ECAB 132 (2000).

his physical activity at work actually caused or aggravated the diagnosed conditions.⁹ Thus, the Board finds that the reports from Drs. Pothoven and Noonan are insufficient to establish that appellant sustained an employment-related injury.

As appellant has not submitted any rationalized medical evidence to support his allegation that he sustained an injury causally related to the indicated employment factors, he failed to meet his burden of proof to establish a 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 his burden of proof to establish that he sustained a back condition in the performance of duty causally related to factors of his federal employment.

ORDER

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

Issued: January 9, 2014
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁹ See *K.W.*, Docket No. 10-98 (issued September 10, 2010).