

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

M.B., Appellant	)	
	)	
and	)	<b>Docket No. 14-635</b>
	)	<b>Issued: June 12, 2014</b>
U.S. POSTAL SERVICE, POST OFFICE, Burbank, CA, Employer	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*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 27, 2014 appellant filed a timely appeal from a January 7, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 a lower back injury causally related to factors of his federal employment.

**FACTUAL HISTORY**

On November 15, 2013 appellant, then a 36-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 12, 2013 he had strained his lower back while lifting heavy parcels and that he had worsened the strain on the following day performing

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

the same task. The employing establishment controverted continuation of pay, stating that appellant's disability was not caused by a traumatic injury.

In a statement dated November 15, 2013, appellant explained that on November 12 and 13, 2013 he loaded and unloaded several large, heavy parcels in excess of 50 pounds. He stated that on those two days he strained his lower back. Appellant noted that he had pain in his lower back over the last several months due to repetitive heavy lifting at work, but that, after work on November 13, 2013, he could not sit up or bend over without moderate-to-severe lower back pain.

By note dated November 15, 2013, Dr. Loanne Tran, a Board-certified internist, stated that appellant should be excused from work from November 14 through 20, 2013.

On November 21, 2013 OWCP advised appellant of the evidence needed to establish his claim and administratively converted it to an occupational disease claim, noting that a claim for traumatic injury only applies to injuries sustained over the course of one work shift. It requested that he submit a physician's opinion as to how employment activities caused, contributed to or aggravated his medical condition, supported by medical explanation.

In a diagnostic report dated November 20, 2013, Dr. Tien T. Peng, a Board-certified radiologist, examined the results of a magnetic resonance imaging (MRI) scan of appellant's lumbar spine. He diagnosed appellant with mild scoliosis and mild disc and bony degenerative changes, predominantly involving the L5-S1 level, with no significant central foraminal stenosis.

In a duty status report dated December 1, 2013, Dr. Tran stated that appellant was able to resume work on December 2, 2013. She recommended work restrictions of kneeling, bending/stooping, twisting, pulling/pushing of no more than two hours per day for each activity and no more than four hours per day of driving a vehicle. Dr. Tran diagnosed appellant with back pain and noted clinical findings of lower back pain and stiffness accompanied by muscle spasm.

By letter dated December 2, 2013, Dr. Tran stated that, based on her evaluation and an MRI scan, she determined that the cause of appellant's lower back pain was "most likely work related." She noted that he was a mail carrier and performed repeated bending, lifting, walking and twisting as duties of his position. Dr. Tran recommended that he refrain from working until his back pain had resolved.

By decision dated January 7, 2014, OWCP denied appellant's claim. It found that the medical evidence did not establish that his lower back pain was causally related to factors of his federal employment.

### **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.<sup>2</sup> These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>3</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.

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.<sup>4</sup> 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.<sup>5</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>6</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's reasoned opinion on whether there is a causal relationship between the claimant's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.<sup>7</sup> The weight of 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.<sup>8</sup>

### ANALYSIS

OWCP denied appellant's claim on the basis that he had not established a causal relationship between his claimed injury and the accepted work factors. The Board finds that he

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<sup>2</sup> *Gary J. Watling*, 52 ECAB 278, 279 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *Michael E. Smith*, 50 ECAB 313, 315 (1999).

<sup>4</sup> *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

<sup>5</sup> *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

<sup>6</sup> *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117, 123 (2005).

<sup>7</sup> *Leslie C. Moore*, 52 ECAB 132, 134 (2000).

<sup>8</sup> *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

has not submitted sufficient medical evidence to establish that his lower back condition was caused or aggravated by factors of his federal employment.

On December 2, 2013 Dr. Tran stated that, based on her evaluation and an MRI scan, she determined that the cause of appellant's lower back pain was "most likely work related." She noted that he was a mail carrier and performed repeated bending, lifting, walking and twisting as duties of his position. While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. Dr. Tran's opinion is speculative, utilizing language such as "most likely." Furthermore, she failed to explain in detail how appellant's condition physiologically resulted from the listed work factors.

On November 20, 2013 Dr. Peng examined the results of an MRI scan of appellant's lumbar spine. He diagnosed appellant with mild scoliosis and mild disc and bony degenerative changes, predominantly involving the L5-S1 level, with no significant central foraminal stenosis. Dr. Peng did not otherwise opine on the provenance of appellant's condition. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>9</sup>

On appeal, appellant argues that his claim should not have been administratively converted from a traumatic injury claim to an occupational disease claim. Under the implementing regulations for FECA, 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.<sup>10</sup> An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift.<sup>11</sup> When an incorrect form is submitted in support of a claim, OWCP will convert the claim to the correct type when the actual benefits claimed can be determined, notify the claimant and the employing establishment and explain the reasons for the conversion.<sup>12</sup> Here, appellant's initial claim form stated that his injury occurred over the course of two days. His statement dated November 15, 2013 noted that he had experienced pain in his lower back over the last several months due to repetitive heavy lifting at work. The medical evidence submitted did not contain a diagnosis related to a traumatic injury; instead, Dr. Tran's December 2, 2013 letter referenced appellant's regular duties as a mail carrier and Dr. Peng's report contained diagnoses of degenerative changes. Under these circumstances, OWCP properly converted appellant's claim to an occupational disease claim, as the actual benefits claimed could be determined and the factual circumstances indicated an occupational disease, not a traumatic injury.

The Board finds that the medical evidence does not establish that appellant sustained a lower back injury causally related to his federal employment. An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition

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<sup>9</sup> *Michael E. Smith*, 50 ECAB 313, 316 n.8 (1999).

<sup>10</sup> 20 C.F.R. § 10.5(ee).

<sup>11</sup> *Id.* at § 10.5(q).

<sup>12</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Forms Used for Initial Claims*, Chapter 2.800(c)(2)(a) (June 2011).

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.<sup>13</sup> Causal relationships must be established by rationalized medical opinion evidence. As noted, the medical evidence is insufficient to establish appellant's claim. Consequently, OWCP properly found that appellant did not meet his burden of proof in establishing 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 did not meet his burden of proof to establish a lower back condition causally related to his federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 7, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 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

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<sup>13</sup> See *Dennis M. Mascarenas*, *supra* note 5.