

FACTUAL HISTORY

On January 9, 2012 appellant, then a 33-year-old city carrier (transitional employee) filed a traumatic injury claim alleging that on January 4, 2012 he sustained an injury to his low back when he tripped going up steps while delivering mail. He stopped work that day.

An OWCP Form CA-16, authorization for examination, dated January 9, 2012, indicated that appellant was authorized to receive office and/or hospital treatment as medically necessary for the effects of the injury.

A Yell County, Arkansas emergency medical services (EMS) report dated January 4, 2012 indicates that a call was received at 12:55 p.m. The paramedic assessment provided a history that appellant stepped off a step and heard a pop in his back and indicated that he was upset, crying and complaining of lumbar pain when EMS arrived.² Appellant was stabilized and transported to River Valley Medical Center. The emergency department report indicates that he was admitted at 1:30 p.m. on January 4, 2012. Dr. Robin Goodman, a Board-certified pediatrician, noted a history that appellant almost fell and heard a pop in his back. He noted a past history of back injury and chronic back pain and that he had had similar symptoms previously. Physical examination demonstrated back muscle spasm. A lumbar spine x-ray was negative. Dr. Goodman diagnosed lumbosacral strain and appellant was discharged with medication at 3:00 p.m.

In a January 5, 2012 report, Dr. Darin K. Wilbourn, an attending Board-certified physiatrist, noted that appellant returned for follow-up evaluation of chronic lower back pain and bilateral lower extremity radiculitis. He indicated that appellant had a mid-line disc protrusion at L5-S1 and a bulging disc at L4-5 without compression on the thecal sac. Dr. Wilbourn reported a history that while delivering mail the previous day appellant sneezed as she was walking down stairs, tripped and jarred his lower back; he then hobbled back to the mail truck and was then taken to River Valley Medical Center by ambulance. He advised that appellant was in distress secondary to increased pain in his lower back and into his left hip and leg. Physical examination demonstrated positive straight leg raises bilaterally and tenderness to palpation across the lower back. Dr. Wilbourn next saw appellant on January 11, 2012 when he reiterated his findings and performed an L5-S1 epidural steroid injection. He advised that she could not perform his regular work. On January 18, 2012 Dr. Wilbourn advised that appellant could return to work and recommended a magnetic resonance imaging (MRI) scan study of the lumbar spine.

Appellant returned to full time, full duty on January 27, 2012. Dr. Wilbourn continued to submit reports describing her physical findings.³ On March 27, 2012 he advised that appellant was unable to work.

The employing establishment controverted the claim and provided medical reports from Dr. Wilbourn dated May 4 to October 6, 2011. In the May 4, 2011 report, Dr. Wilbourn reported

² The signatures of the paramedics are illegible.

³ The record also contains emergency department reports from Johnson Regional Medical Center dated February 14 and 15, 2012. The record indicates that OWCP is adjudicating this under a separate claim.

that appellant had been referred with a history of chronic low back pain that had occurred off and on for the past three years. He noted that in addition to work as a mail carrier, she also worked in environmental services at a hospital. Dr. Wilbourn reported that appellant had an MRI scan study on April 18, 2011 that demonstrated a bulging disc at L4-5 and a mid-line disc protrusion at L5-S1 without compression on the thecal sac or displacement of the exiting nerve roots. Physical examination demonstrated a mildly positive straight leg raise bilaterally and tenderness to palpation across the lower back. Dr. Wilbourn performed an epidural steroid injection on May 18, 2011 and on June 9, 2011 indicated that appellant was doing better. On October 6, 2011 he stated that she reported increased low back pain and that he had quit his hospital job due to the increased pain. Dr. Wilbourn reiterated his findings and conclusions.

In correspondence dated April 23, 2012, OWCP notified appellant that when his claim was received, it appeared to be a minor injury, but because the medical bills had exceeded \$1,500.00, the merits of the claim needed to be formally considered. Appellant was informed that the medical evidence did not substantiate that the disc protrusion at L5-S1 and the bulging disc at L4-5 were caused or aggravated by the January 4, 2012 employment incident. He was asked to provide a medical explanation as to how this incident caused or aggravated his preexisting condition.

Appellant thereafter submitted an April 6, 2012 MRI scan study of the lumbar spine that demonstrated a disc extrusion at L5-S1 with posterior displacement and compression of the descending right S1 nerve and a posterior annular tear and broad-based disc displacement at L4-5. In an April 12, 2012 report, Dr. Wilbourn indicated that she reported that he had been terminated by the employing establishment on April 2, 2012. He noted the April 6, 2012 MRI scan study findings and indicated that he was referring appellant to a spinal surgeon.

By decision dated May 24, 2012, OWCP denied the claim on the grounds that the medical evidence had not established that the claimed condition was causally related to the accepted January 4, 2012 employment incident. Appellant, through his attorney, timely requested a hearing that was held on September 18, 2012. At the hearing, he described the January 4, 2012 incident. Appellant testified that he began having back problems in April 2011 but did not report it at work, and that he had back surgery on July 25, 2012. Counsel argued that the January 4, 2012 work incident caused more than a lumbosacral strain and the conditions shown on the MRI scan study should be accepted. The hearing representative advised counsel to obtain the operative report. The record was left open for 30 days. Nothing further was submitted.

In a December 14, 2012 decision, OWCP's hearing representative found that appellant established that on January 4, 2012 he sustained a lumbosacral strain but that he did not establish that the January 4, 2012 employment incident caused any further lumbar conditions including the disc bulge and protrusion at the L4-5 and L5-S1 levels. She affirmed the May 24, 2012 decision as modified.

On December 17, 2012 OWCP accepted that appellant sustained an acute lumbosacral sprain. On April 11, 2013 counsel requested that the claim be upgraded to include additional diagnoses. On June 19, 2013 OWCP informed him to follow the appeal rights contained in the December 14, 2012 decision.

Appellant, through his attorney, requested reconsideration on July 2, 2013. Counsel asserted that the medical evidence was sufficient to establish that additional conditions should be accepted because the January 4, 2012 work incident aggravated appellant's preexisting condition. Appellant submitted a February 5, 2013 form report in which Dr. Richard Peek, a Board-certified orthopedic surgeon, described the incident as "delivering mail for postal service before I assumed his care." Dr. Peek noted subjective complaints of bilateral sciatica, L5-S1 sensory deficit and spasms with physical examination findings of positive straight leg raises, bilateral sensory deficits and spasm. He reported x-ray and MRI scan findings of instability and postlaminectomy changes. Dr. Peek diagnosed postlaminectomy instability at L5-S1 and herniated nucleus pulposus at L4-5. In an April 4, 2013 progress note, Dr. George Timothy Burson, a Board-certified neurosurgeon, noted a two-year history of persistent radiating low back pain. He stated that there was no injury and noted that after 2012 back surgery, appellant's pain worsened. Dr. Burson provided physical examination findings and diagnosed chronic pain syndrome and postlaminectomy syndrome of the lumbar region. On April 24, 2013 he placed a pain pump with intrathecal catheter.

In a merit decision dated August 7, 2013, OWCP denied modification of the prior decision, finding that the medical evidence submitted was insufficient to establish that the L4-5 and L5-S1 disc bulge and protrusion conditions were causally related to the January 4, 2012 employment injury.

LEGAL PRECEDENT

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁴ 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 employee.⁵ 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 causal relationship.⁶

In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, Larson notes that, when the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of direct and natural results and of the claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.⁷

⁴ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁵ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁶ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁷ Larson, *The Law of Workers' Compensation* § 10.01 (June 2010); see *Charles W. Downey*, 54 ECAB 421 (2003).

ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish that the January 4, 2012 employment injury caused or aggravated his preexisting disc protrusion at L5-S1 and a bulging disc at L4-5 because the medical evidence is insufficient to establish causal relationship. OWCP accepted that he sustained an employment-related acute lumbosacral sprain on January 4, 2012.

The April 6, 2012 MRI scan study did not provide a cause of any diagnosed conditions and medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁸ Likewise, the opinion of Dr. Wilbourn is insufficient to establish causal relationship. He clearly indicated in a May 4, 2011 report, seven months before the January 4, 2012 employment injury, that appellant had a two- to three-year history of chronic back pain and that an April 18, 2011 MRI scan study demonstrated a bulging disc at L4-5 and a mid-line disc protrusion at L5-S1. These conditions therefore predated the January 4, 2012 employment injury. In numerous reports submitted by Dr. Wilbourn subsequent to the January 4, 2012 employment injury, he did not include an opinion as to the cause of any diagnosed conditions at L4-5 and L5-S1.

Dr. Goodman, in the January 4, 2012 emergency department report, diagnosed a lumbosacral strain. A lumbosacral sprain has been accepted as employment related and he did not discuss additional lumbosacral conditions.⁹ Dr. Peek merely indicated that there was an incident while appellant was delivering mail that occurred prior to his care. He did not describe the January 4, 2012 incident or provide any explanation regarding the cause of appellant's diagnosed conditions of postlaminectomy instability at L5-S1 and herniated nucleus pulposus at L4-5. Dr. Burton did not provide a cause of appellant's diagnosed condition. In fact, he stated that there was no injury.

The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to his federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.¹⁰ It is appellant's burden to establish that his claimed back

⁸ *Willie M. Miller*, 53 ECAB 697 (2002).

⁹ The Board notes that in the December 14, 2012 decision, OWCP's hearing representative stated lumbosacral strain was accepted. The December 17, 2012 OWCP correspondence to appellant indicated that acute lumbosacral sprain was accepted.

¹⁰ *A.D.*, 58 ECAB 149 (2006).

condition is causally related to factors of his federal employment. In this case, he submitted insufficient evidence to show that the diagnosed conditions at L4-5 and L5-S1 were caused by the January 4, 2012 employment injury.¹¹

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 establish that the conditions of disc protrusion at L5-S1 and a bulging disc at L4-5 were caused or aggravated by the January 4, 2012 employment injury.

¹¹ *Supra* note 6. The Board, however, notes that where, as in this case, an employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. 20 C.F.R. § 10.300(c). The record in this case indicates that emergency room medical treatment was a covered expense.

ORDER

IT IS HEREBY ORDERED THAT the August 7, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 25, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board