

joint dysfunction, myofascial pain syndrome and thoracic myofascial syndrome causally related to factors of his federal employment. He stopped work on March 1, 2010.²

By letter dated July 23, 2012, OWCP requested additional factual and medical information from appellant, including a detailed report from his attending physician addressing the causal relationship between any diagnosed condition and employment factors.

In a report dated April 12, 2012, Dr. Jack L. Rook, a Board-certified physiatrist, discussed appellant's complaints of pain in his low back, right knee and left ankle. Appellant related a history of numerous work injuries between 1994 and 2010 and he filed three workers' compensation claims for traumatic injuries. Dr. Rook indicated that OWCP accepted that on December 18, 1995 appellant sustained a right knee contusion and lumbosacral strain when he fell while going down stairs. On August 1, 1997 a dog attacked appellant and he fell off a porch about 12 feet, injuring his back. Appellant filed a recurrence of disability under file number xxxxxx055 for this injury but it was denied. On July 19, 2005 OWCP accepted that he sprained his left ankle in file number xxxxxx213. Dr. Rook provided examination findings of full strength of the lower extremities with no atrophy but tenderness of the left sacroiliac joint and left paralumbar muscle spasm. He found tenderness to palpation of the medial left ankle joint and tenderness of the posterior right knee capsule. Dr. Rook diagnosed chronic right knee strain, chronic left ankle strain, a permanent aggravation of underlying ankle joint arthritis with osteochondritis dessicans on magnetic resonance imaging (MRI) scan study, chronic low back pain, a history of L4-5 degenerative disc disease, sacroiliac joint dysfunction on the left, myofascial pain syndrome and thoracic myofascial pain syndrome. He recommended that appellant file a traumatic injury claim for his August 1, 1997 back injury. Dr. Rook found that while work duties contributed to his back worsening over time, it seemed "most appropriate to label his thoracic and lumbar spinal injuries as being secondary to the fall that occurred on August 1, 1997." He further noted that appellant experienced multiple right knee injuries at work, including injuries on December 18, 1995 and July 12, 2006 and indicated that the left ankle injury aggravated the right knee injury. Dr. Rook recommended that appellant file a claim for a right knee injury on July 12, 2006. Regarding the left ankle sprain on July 19, 2005, he found that "this injury likely aggravated the underlying degenerative joint disease and/or caused the osteochondritis defect." Dr. Rook stated:

"I do believe that [appellant's] work as a letter carrier further contributed to a permanent aggravation of [his] lumbar degenerative disc disease and left ankle arthritis condition. [Appellant's] job was physical demanding and it [is] likely the job duties performed over many years accelerated the degenerative joint disease in his left ankle and aggravated his lumbar disc disease."

Dr. Rook opined that appellant performed "weight-bearing activities" that stressed his lower extremities. He stated, "I believe there was repeated microtrauma to [appellant's] left ankle associated with prolonged standing, walking and going up and down stairs and getting into and out of his mail vehicle. This repetitive microtrauma likely led to accelerated degeneration of [appellant's] left ankle joint including the cartilage, bone and ligaments that make up this joint."

² Appellant retired on disability effective October 4, 2010.

Regarding appellant's back condition, Dr. Rook asserted that lifting, twisting and bending while casing and delivering mail over a period of years stressed the annual fibers of his lumbar spine. He concluded, "This type of activity likely caused some degree of degeneration to his L4-5 disc and it likely also caused significant stress to the muscles of his back resulting in the associated myofascial condition."

By decision dated October 17, 2012, OWCP denied appellant's claim, finding that the medical evidence was insufficient to establish that his claimed conditions were causally related to the identified work factors. It determined that Dr. Rook's April 2012 report was insufficiently rationalized to establish that his employment caused or aggravated the diagnosed conditions.

On November 12, 2012 appellant, through his attorney, requested an oral hearing before an OWCP hearing representative. At the March 22, 2013 hearing, counsel asserted that Dr. Rook's opinion was based on an accurate history and review of the medical records. He maintained OWCP did not explain why Dr. Rook's opinion lacked rationale. Counsel discussed appellant's history of prior work injuries.

In a letter dated February 22, 2012, received by OWCP on March 28, 2013, counsel advised Dr. Rook that he had lumbar, left ankle and right knee conditions. He submitted the medical evidence dated 1995 through 2006 that Dr. Rook reviewed in reaching his conclusion.

In a report dated March 12, 2013, Dr. Rook diagnosed a permanent aggravation of left ankle joint arthritis and osteochondritis. He referred to his April 12, 2012 report, noting that he had described the history of appellant's July 19, 2005 work injury. Dr. Rook diagnosed a permanent aggravation of left ankle arthritis and osteochondritis. He quoted from his April 12, 2012 report finding that the July 19, 2005 employment injury likely aggravated an underlying degenerative joint disease.

By decision dated June 5, 2013, an OWCP hearing representative affirmed the October 17, 2012 decision. She found that there was insufficient medical opinion to establish that the claimed conditions were caused or aggravated by employment. The hearing representative instructed appellant that he could pursue a worsening of an accepted condition under his prior number.

On appeal, counsel contends that appellant sustained multiple traumatic injuries from 1992 through 2010. He contends that Dr. Rook's report is sufficient to show that work factors contributed to his chronic left ankle strain, aggravation of left ankle arthritis, chronic right knee strain and aggravation of lumbar degenerative disc disease. OWCP accepted that on December 18, 1995 appellant sustained a right knee contusion and lumbosacral strain under file number xxxxxx055 and left ankle sprain on July 19, 2005 under file number xxxxxx213. Counsel also maintains that appellant sustained an injury to his back on August 1, 1997 when he fell off a porch during a dog attack and a right knee injury on July 12, 2006. He contends that OWCP required appellant to show that work factors provided a significant contribution to his conditions in finding that Dr. Rook's opinion was insufficient to meet his burden of proof.

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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

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;⁶ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁷ and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁸ The medical opinion 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.⁹

ANALYSIS -- ISSUE 1

Appellant attributed his aggravation of chronic right knee strain, chronic left ankle strain with a permanent aggravation of arthritis, lumbar degenerative joint disease, sacroiliac joint dysfunction, myofascial pain syndrome and thoracic myofascial syndrome to the performance of his work duties. OWCP accepted the occurrence of the claimed employment factors. The issue, therefore, is whether the medical evidence establishes a causal relationship between the claimed conditions and the identified employment factors.

On April 12, 2012 Dr. Rook discussed appellant’s history of traumatic injuries at work from 1994 to 2010. He noted an accepted claim for a right knee contusion and lumbosacral strain due to a December 18, 1995 injury and an accepted claim for a left ankle sprain on July 19, 2005. Dr. Rook further stated that appellant sustained a back injury on August 1, 1997 when he fell off of a porch during a dog attack and a right knee injury on July 12, 2006 when a shelf fell on his knee. On examination, he found left sacroiliac joint tenderness, left paralumbar

³ 5 U.S.C. § 8101 *et seq.*

⁴ *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *See Alvin V. Gadd*, 57 ECAB 172 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁶ *Michael R. Shaffer*, 55 ECAB 386 (2004).

⁷ *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

⁸ *D.D.*, 57 ECAB 734 (2006); *Roy L. Humphrey*, 57 ECAB 238 (2005).

⁹ *Id.*

muscle spasm, left ankle joint tenderness and posterior right knee tenderness. Dr. Rook diagnosed chronic right knee strain, chronic left ankle strain, and a permanent aggravation of underlying ankle joint arthritis with osteochondritis, low back pain, a history of L4-5 degenerative disc disease, sacroiliac joint dysfunction on the left, myofascial pain syndrome and thoracic myofascial pain syndrome. He recommended that appellant file a traumatic injury claim for his 1997 back injury and 2006 right knee injury. Dr. Rook indicated that his back condition resulting from his 1997 injury was “likely perpetuated by his ongoing work activities.” He further found that appellant’s employment “likely” caused a permanent aggravation of his lumbar degenerative disc disease and left ankle arthritis due to the physical requirements of his employment. Dr. Rook opined that it was “likely” that repetitive microtrauma to the left ankle from work duties accelerated left ankle joint degeneration. He asserted that casing mail and delivering mail over years aggravated the annual fibers of appellant’s lumbar disc and likely resulted in stress to his back muscles and L4-5 disc degeneration. The Board finds that Dr. Rook’s opinion, that appellant’s work duties “likely” aggravated degeneration of the left ankle and lumbar disc is couched in speculative terms which render it of diminished probative value.¹⁰ To establish causal relationship, a physician’s opinion must be based on a complete and accurate factual and medical background and must be supported by medical rationale to a reasonable degree of medical certainty.¹¹ Dr. Rook relied on a history provided by appellant as experiencing employment injuries on August 1, 1997 and July 12, 2006; however, OWCP has not accepted the occurrence of these alleged injuries. He relied upon an inaccurate history of the injury accepted by OWCP. This further reduces the probative value of Dr. Rook’s stated conclusion that his report is of diminished probative value.¹²

On March 12, 2013 Dr. Rook clarified that in his April 12, 2012 report he diagnosed a permanent aggravation of degenerative joint disease as a result of the July 19, 2005 employment injury. He attributed the condition to appellant twisting his ankle on July 19, 2005. As Dr. Rook did not address the issue of whether appellant sustained an occupational disease, his report is insufficient to meet appellant’s burden of proof.

On appeal, counsel asserts that Dr. Rook’s opinion is sufficient to establish that appellant’s employment duties caused or contributed to his chronic left ankle strain, left ankle arthritis, right knee strain and aggravation of degenerative disc disease. Dr. Rook’s described the history of appellant’s injuries and asserts that OWCP erroneously required that work factors constitute a significant contribution to the condition in order to be accepted as employment related. As discussed, however, the Board finds that his opinion is speculative and based on a history of work injuries not accepted by OWCP. Consequently, it is not sufficient to meet Dr. Rook’s s burden of proof.

¹⁰ See *Rickey S. Storms*, 52 ECAB 349 (2001) (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. The opinion should be expressed in terms of a reasonable degree of medical certainty).

¹¹ See *Roger Dingess*, 47 ECAB 123 (1995).

¹² See *Joseph M. Popp*, 48 ECAB 624 (1997).

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 sustained an occupational disease causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the June 5, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 7, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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