

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

J.V., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Amherst, NY, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 14-1025
Issued: November 24, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 31, 2014 appellant timely appealed the March 3, 2014 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 the claim.

ISSUE

The issue is whether appellant's claimed lumbar condition is causally related to his June 4, 2012 accepted employment exposure.

FACTUAL HISTORY

Appellant, a 54-year-old letter carrier, filed a traumatic injury claim (Form CA-1) for a lower back condition that allegedly arose in the performance of duty on June 4, 2012. At approximately 12:40 p.m., he lifted a bundle of mail from a tray in the front of his work vehicle

¹ 5 U.S.C. §§ 8101-8193 (2006).

and reportedly felt a tingling, warm, spreading sensation in his lower back. Appellant also reported experiencing a heavy feeling and tingling in both legs. He previously injured his back at work on January 6, 1999, which OWCP accepted for lumbar disc displacement without myelopathy (xxxxxx677). The employing establishment challenged the current traumatic injury claim, arguing it should instead be considered a recurrence of appellant's January 1999 lumbar injury.

On June 5, 2012 appellant was treated at MedFirst Urgent Care for low back strain. He was seen by several healthcare providers, including Dr. Vinod R. Patel, a Board-certified family practitioner. The MedFirst treatment notes indicated a prior history of herniated disc. With respect to appellant's current complaints, the MedFirst records indicated that on June 4, 2012 he turned in his chair and lifted a pile of mail, at which point appellant felt a warm sensation across his lower back. A June 5, 2012 lumbar x-ray revealed equal disc spaces and no acute fractures. Based on his latest low back injury, appellant was excused from all work for six days and advised to resume normal duties effective June 11, 2012.

Dr. Corine S. Cicchetti, a Board-certified physiatrist, examined appellant on July 9, 2012 for complaints of lower back pain radiating to his bilateral thighs. Appellant's symptoms began on June 4, 2012 when he was sitting in a mail truck and turned to get a bundle of mail. As he turned to exit the truck, appellant reportedly felt a "jelly squirt" in his back. The pain worsened throughout the day. Dr. Cicchetti noted that appellant had a work-related back injury since 1999, and was being seen by Dr. Eugene J. Gosy, a Board-certified neurologist. Appellant was also seeing a chiropractor. His current pain was the same as the previous pain. Dr. Cicchetti noted that appellant was employed as a mail carrier, but had not worked since June 4, 2012 due to injury/symptoms. A July 9, 2012 lumbar magnetic resonance imaging (MRI) scan revealed small central disc herniations at L3-4 and L4-5. Dr. Cicchetti also reviewed appellant's November 11, 2011 lumbar MRI scan, which showed a broad-based disc herniation at L3-4 and a central disc herniation at L4-5 with midline annular tear. Her current diagnoses included herniated lumbar disc, bilateral lumbar radiculopathy, pes planus and unequal leg length -- short left leg. Dr. Cicchetti explained that appellant currently had a flare-up of his preexisting back pain, which was initially a workers' compensation injury from 1999. She further explained that his pain had been under good control with medication and chiropractic treatment up until the current flare, which began on June 4, 2012 while at work. Dr. Cicchetti stated that appellant's latest lumbar MRI scan did not show any new findings when compared to his November 2011 MRI scan. For appellant's back condition, she recommended pain medication, physical therapy and that he not work until his pain was better controlled. In conclusion, Dr. Cicchetti reiterated that appellant's current complaints, which began on June 4, 2012, represented a flare-up of pain related to his original 1999 injury.

In a July 19, 2012 duty status report (Form CA-17), Dr. Cicchetti continued to find appellant totally disabled.

In an August 1, 2012 report, Dr. Eric P. Roger, a spine neurosurgeon, diagnosed lumbar intervertebral disc degeneration, lumbago.

In an August 17, 2012 report, Dr. Cicchetti noted a diagnosis of lumbar disc herniations at L3-4 and L4-5. She stated that appellant originally injured his back in 1999, and developed

increased pain while at work on June 4, 2012. A recent lumbar MRI scan showed disc herniations at L3-4 and L4-5, which was the cause of appellant's pain. Dr. Cicchetti characterized appellant's current condition/injury as an exacerbation of his original 1999 injury. She noted a good prognosis, with a goal to returning appellant to full duty within the next six months. Dr. Cicchetti recommended physical therapy, Celebrex and tramadol for pain, and no work until appellant's pain was more manageable. She planned to see him every two to three weeks to monitor his response to treatment.

In a February 1, 2013 report, Dr. Cicchetti reiterated much of what she previously stated in her August 17, 2012 report, including her diagnosis of lumbar disc herniations at L3-4 and L4-5. Again, she noted that appellant was originally injured in 1999, and developed increased pain while at work on June 4, 2012. Appellant reported having turned to get mail from his truck when he suddenly felt pain in his low back. This exacerbated his original 1999 injury, and the pain appellant experienced was caused by his lumbar disc herniations. With medications and physical therapy, appellant's condition improved and he was able to resume his regular work duties. Dr. Cicchetti noted that appellant continued under the care of Dr. Gosy, and that his prognosis was good.

In her latest report dated September 3, 2013, Dr. Cicchetti stated that appellant was under her care for a June 4, 2012 workers' compensation case. She indicated that he had a preexisting back injury with a diagnosis of L3-4 and L4-5 disc herniations. Dr. Cicchetti further indicated that appellant had been doing well and working full duty until the date of injury when he twisted and lifted while retrieving mail from his truck and felt significant back pain. She stated that this action at work caused an exacerbation of his discogenic pain (back pain) and his radicular symptoms (leg pain).

OWCP also received physical therapy records, as well as treatment records from Kathleen Butler, a nurse practitioner, who saw appellant during the period of June 20 through August 1, 2012. Appellant was also treated by Wendy A. Callen, a physician's assistant. Ms. Callen's treatment records cover the period of August 15, 2012 through January 23, 2013.

In a July 26, 2012 decision, OWCP denied appellant's claim on the basis that he did not establish fact of injury. It found there was no medical diagnosis in connection with the claimed event and/or work factors, but this initial decision was later modified to reflect an alternative basis for denial.

By decision dated June 5, 2013, OWCP explained that, based on the June 4, 2012 employment incident, the case was properly considered a new traumatic injury rather than a recurrence of appellant's January 6, 1999 lumbar injury. Additionally, it found the medical evidence sufficient to establish a diagnosis of exacerbation of herniated discs. However, appellant's claim remained in denial status because the medical evidence did not establish that the diagnosed condition was causally related to the June 4, 2012 employment incident. OWCP explained that Dr. Cicchetti merely stated that appellant developed increased pain at work on June 4, 2012. Her opinion was considered deficient because Dr. Cicchetti did not provide medical rationale in support of her conclusion that appellant's preexisting disc injury was exacerbated. Consequently, OWCP denied the claim because appellant failed to establish causal relationship.

In an October 1, 2013 nonmerit decision, OWCP denied appellant's September 16, 2013 request for reconsideration and, in a March 3, 2014 decision, it denied modification on the basis that Dr. Cicchetti's September 3, 2013 report did not include a rationalized explanation of how the June 4, 2012 employment incident exacerbated appellant's (lumbar) medical condition.

LEGAL PRECEDENT

A claimant seeking benefits under FECA has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.²

To determine if an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.³ The second component is whether the employment incident caused a personal injury.⁴ An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.⁵

ANALYSIS

OWCP accepted that the June 4, 2012 employment incident occurred as alleged, and also found the medical evidence sufficient to establish a diagnosis of exacerbation of herniated discs. However, the medical evidence of record was insufficient to establish that the diagnosed condition was causally related to the June 4, 2012 employment incident.

The Board finds that Dr. Cicchetti's various reports are insufficient to discharge appellant's burden of proving that appellant's June 4, 2012 employment exposure exacerbated his lumbar condition. In her initial July 9, 2012 report, Dr. Cicchetti stated that appellant's current complaints, which began on June 4, 2012, represented a flare-up of pain related to his original 1999 injury. She further noted that prior to the June 4, 2012 flare-up at work, appellant's pain had been under good control with medication and chiropractic treatment. Dr. Cicchetti

² 20 C.F.R. § 10.115(e), (f) (2014); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

³ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question which generally requires rationalized medical opinion evidence to resolve the issue. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

⁵ *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

failed to explain how appellant's then-current lumbar symptoms were either caused or aggravated by his June 4, 2012 employment activities.

In subsequent reports dated August 17, 2012 and February 1, 2013, Dr. Cicchetti diagnosed lumbar disc herniations at L3-4 and L4-5, which predated the June 4, 2012 employment incident. Dr. Cicchetti noted that appellant originally injured his back in 1999, and developed increased pain while at work on June 4, 2012. The disc herniations were noted to be the cause of appellant's pain. Dr. Cicchetti characterized his current condition/injury as an exacerbation of his original 1999 injury. Although she described what appellant was doing when he experienced increased pain in his lower back, Dr. Cicchetti again failed to explain how appellant's June 4, 2012 employment activities exacerbated his lumbar disc herniations.

In her latest report dated September 3, 2013, Dr. Cicchetti indicated appellant had been doing well and working full duty until June 4, 2012, when he twisted and lifted while retrieving mail from his truck and felt significant back pain. She stated that this action caused an exacerbation of appellant's discogenic pain and his radicular symptoms. Once again, Dr. Cicchetti failed to provide an explanation of how appellant's June 4, 2012 employment activities exacerbated his lumbar disc herniations.

Dr. Cicchetti opined that appellant's employment activities exacerbated his lumbar condition, but what is not evident from her various reports is how the reported employment activity -- twisting and lifting -- caused or contributed to appellant's current lumbar condition. A physician's opinion must be based on a complete factual and medical background and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).⁶ Dr. Cicchetti has not adequately explained the mechanism of injury and how it was responsible for appellant's claimed condition.

The Board further notes that appellant's physical therapy records and the treatment records from Ms. Butler, a nurse practitioner, and Ms. Callen, a physician assistant, will not suffice for purposes of establishing entitlement to FECA benefits.⁷ Physician assistants, nurse practitioners and physical therapists are not considered "physician[s]" as defined under FECA.⁸ As such, the above-noted treatment records are of limited probative value.

Because the medical evidence of record fails to establish a causal relationship between appellant's accepted employment exposure and the diagnosed lumbar condition, OWCP properly denied appellant's traumatic injury claim.

⁶ *Victor J. Woodhams, supra* note 4.

⁷ *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013). Although Ms. Callen was associated with Dr. Cicchetti's medical practice, Ms. Callen's treatment records were not countersigned by Dr. Cicchetti.

⁸ 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

CONCLUSION

Appellant failed to establish that his claimed lumbar condition is causally related to his June 4, 2012 accepted employment exposure.

ORDER

IT IS HEREBY ORDERED THAT the March 3, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 24, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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