

FACTUAL HISTORY

This case was previously before the Board. On January 27, 2014 the Board issued an order dismissing appeal based on appellant's request.² On March 5, 2011 appellant, then a 37-year-old senior software specialist, filed an occupational disease claim alleging that his back condition arose from, or was aggravated by, sitting in a chair at work that encouraged the use of poor posture. He first realized his back condition was caused or aggravated by his employment on March 1, 2010. The employing establishment noted that appellant first reported his condition on March 28, 2006 and was provided a new ergonomic chair.

In a February 14, 2011 statement, appellant stated that he was taller and heavier than the average person and the chair he used at work was not ergonomic nor provided adequate support for his upper or lower back. He noted that an alternative ergonomic chair was provided in November 2009, but was worse for his frame because of his stature and did not provide any back support. Appellant went back to his original chair and started to experience back pain while sitting for an extended amount of time. His back pain became problematic during the summer of 2009 and he sought medical treatment.

Appellant submitted a March 27, 2006 prescription for an ergonomic chair and an October 4, 2010 attending physician's report from David S. Bronat, a chiropractor, which diagnosed thoracic spine pain, lumbar spine pain and muscle spasm due to improper spinal support provided by appellant's work chair and workstation.

In an October 15, 2009 report, Dr. Thomas Qualey, an emergency medicine physician, noted that appellant experienced an onset of back pain on August 27, 2009. He diagnosed chronic, recurrent back pain. Dr. Qualey opined that appellant's back pain was probably contributed to by workplace but stated that he was unsure.

In a November 30, 2010 attending physician's report, Dr. Beverly Whittenberg, a Board-certified physiatrist, diagnosed thoracic spondylosis, lumbar spondylosis, thoracic myofascial pain and lumbar facet syndrome. She advised that there was no history or evidence of preexisting injury or disease and that appellant was initially seen on June 21, 2010 with reported neck and low back pain since January to March 2009. With a checkmark "yes," Dr. Whittenberg opined that his condition was caused or aggravated by employment activity.

In a February 11, 2011 letter, Laura Robertson, Senior IT Manager, confirmed appellant's position required long periods of time sitting at a workstation. Appellant was able to stand or walk around as needed. Ms. Robertson advised that he worked a compressed work schedule of nine hours a day and that all the chairs provided to him and staff were ergonomic. She described appellant's various ergonomic assessments in March 2006, November 2009 and June 2010 and described how the employing establishment responded to his concerns and modified his workstation.

On March 14, 2011 OWCP advised appellant of the deficiencies in his claim. Appellant was asked to submit additional factual and medical evidence, including a report from a physician

² Docket No. 13-982 (issued January 27, 2014).

with a rationalized medical opinion to support that his work-related exposure resulted in a specific diagnosed condition. He was provided 30 days to submit the requested information.

In an April 11, 2011 statement, appellant advised that he first started having back pain in March 2009 and sought treatment late August 2009. He submitted physician's orders for physical therapy and a copy of Dr. Whittenberg's November 30, 2010 attending physician's report.

In a March 31, 2011 report, Dr. Whittenberg advised appellant had been a patient since June 21, 2010. Appellant presented to the practice with axial low back pain and radiation of symptoms into his thoracic spine and upper extremities. At his initial visit, he reported that his symptoms began roughly 18 months prior and were the result of an injury sustained at work. Dr. Whittenberg noted that appellant had completed a course of physical therapy and chiropractic manipulation without lasting therapeutic benefit. She reported on the course of his treatment, including continued improvement in his symptoms at his recent appointment on March 29, 2011. Dr. Whittenberg stated that appellant's pain patterns were consistent with a diagnosis of thoracic disc degeneration and lumbar facet arthropathy. Appellant should avoid prolonged periods at his computer/workstation with breaks to stand and move about every 30 minutes or so. Intermittent flares punctuated by period of symptom improvement were the norm and were to be expected.

By decision dated May 31, 2011, OWCP denied appellant's claim. It found that the medical evidence was insufficient to establish the causal relationship of his diagnosed medical conditions to his work factors.

In a June 31, 2011 letter, appellant requested reconsideration. He contended that Dr. Whittenberg's reports supported causal relationship. In a June 9, 2011 report, Dr. Whittenberg provided an impression of thoracic spondylosis without myelopathy, thoracic disc degeneration and lumbar disc degeneration.

By decision dated September 15, 2011, OWCP denied modification of its May 31, 2011 decision.

On August 23, 2012 appellant requested reconsideration. In an August 23, 2012 report, Dr. Whittenberg stated that his mid-back pain was longstanding and aggravated by sitting at his workstation in his full-time position. Before appellant had back pain, he had an ergonomic assessment in 2004/2005 for numbness in his hands and feet and was given an ergonomic chair but it was too small and he was given a larger chair. In 2009, his back pain started. Appellant had a second ergonomic assessment and was provided a new ergonomic chair with a mesh back. The chair aggravated his back pain and he used his prior chair, which his chiropractor had previously deemed inappropriate. Dr. Whittenberg stated that, while appellant had an elevated computer screen, he did not have a good chair, an ergonomic mouse or keyboard as recommended. She opined that his work chair and workstation were the cause of his pain and was a direct agitator of his disc degeneration and facet disease. Dr. Whittenberg noted that appellant experienced pain while sitting at work after about 20 minutes. She diagnosed him with facet (joint) arthritis and disc degeneration without any type of nerve injury.

Dr. Whittenberg explained that appellant's workstation did not ergonomically compliment his tall frame and sitting hours at work resulted in middle back pain and low back residual pain as his body became sensitized to aggravating factors of continued positioning in poor seating that set off his middle back. As appellant had not had the appropriate accommodations, she had to treat the pain as opposed to having efforts made to prevent his pain. Dr. Whittenberg opined that appellant was asymptomatic for low back or middle back pains prior to his work assignment in early 2009. The seating and poor ergonomics of his workstation in early 2009 were the sole factors and the cause of appellant's pain. Appellant's underlying disease had been aggravated by sitting at work. Poor positioning for a prolonged period of time was a very viable and well-known etiology for chronic pain conditions as they placed recurrent strain on poorly supported muscles.

By decision dated February 12, 2013, OWCP denied modification of its September 15, 2011 decision.

On December 3, 2013 appellant, through his attorney, requested reconsideration. He submitted a July 13, 2012 magnetic resonance imaging (MRI) scan of the thoracic and lumbar spine and an August 22, 2013 report from Dr. Whittenberg, who stated that the July 13, 2010 MRI scan showed multilevel degenerative disc disease of thoracic spine and evidence of degenerative disc disease and facet arthropathy of the lumbar spine. Dr. Whittenberg stated that there was no evidence of any preexisting injuries and no occurrences in appellant's medical history or any nonwork factors which contributed to or had any impact on his back condition. She opined that there was no question that prolonged sitting in an ill-fitted chair caused his back pain, which began in 2009. The ergonomic assessments had not, unfortunately, resolved appellant's back pain. The chair and the act of prolonged sitting did not cause his degenerative disease, but exacerbated the preexisting conditions which were previously asymptomatic. The prolonged sitting in his work chair is directly related to the exacerbation of the pain that he experiences chronically. Dr. Whittenberg opined that appellant's back pain was work related.

By decision dated March 5, 2014, OWCP denied modification of its February 12, 2013 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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.³ 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.⁴

³ C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁴ S.P., 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (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.⁵

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.⁶ 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 The weight of the 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.⁸ 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.⁹

ANALYSIS

OWCP accepted that appellant's position involved extended periods of sitting with the ability to stand or walk around as needed. The employing establishment stated that each of the chairs provided to appellant were ergonomic and he underwent ergonomic assessments in March 2006, November 2009 and June 2010 with modifications to his chairs and workstation. OWCP denied his claim finding there was insufficient medical evidence to establish that his back condition was caused or aggravated by sitting or the type of chair utilized. The Board finds that appellant did not meet his burden of proof to establish that his back condition was caused or aggravated by his employment.

Appellant submitted reports from Dr. Whittenberg. In a November 30, 2010 attending physician's report, Dr. Whittenberg opined with a checkmark "yes" that his thoracic spondylosis, lumbar spondylosis, thoracic myofascial pain, and lumbar facet syndrome was caused or aggravated by employment activity. The Board has held that when a physician's opinion on causal relationship consists only of checking yes to a form question, that opinion has little probative value and is insufficient to establish causal relationship.¹⁰ Dr. Whittenberg failed to offer any further explanation for her stated conclusion; her opinion on causal relationship is of

⁵ See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁶ See *J.Z.*, 58 ECAB 529, 531 (2007); *Paul E. Thams*, 56 ECAB 503, 511 (2005).

⁷ *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁸ *James Mack*, 43 ECAB 321, 329 (1991).

⁹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁰ See *Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Lillian M. Jones*, 34 ECAB 379 (1982).

diminished probative value. Her subsequent reports are similarly deficient. In a March 31, 2011 report, Dr. Whittenberg stated that appellant's pain patterns were consistent with a diagnosis of thoracic disc degeneration and lumbar facet arthropathy. In her June 9, 2011 report, she provided an impression of thoracic spondylosis without myelopathy, thoracic disc degeneration and lumbar disc degeneration. Dr. Whittenberg, however, did not adequately discuss appellant's work duties or a fully-rationalized opinion on causal relationship. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.¹¹

Dr. Whittenberg stated in her August 23, 2012 report that appellant's work chair and workstation were the cause of his back pain and was a "direct agitator" of his disc degeneration and facet disease without any type of nerve injury. She explained that his workstation and chair did not ergonomically compliment his tall frame and sitting hours at work resulted in middle and low back pain as his body became sensitized to aggravating factors of continued positioning in poor seating. Dr. Whittenberg opined that appellant was asymptomatic for low back or middle back pain prior to early 2009 and the seating and poor ergonomics of his workstation in early 2009 caused his back pain and aggravated his underlying disease. She explained that poor positioning for a prolonged period of time was a well-known etiology for chronic pain conditions as they placed recurrent strain on poorly supported muscles. In an August 22, 2013 report, Dr. Whittenberg reiterated that her opinion that prolonged sitting in an ill-fitted chair caused appellant's back pain, which began in 2009, and exacerbated his preexisting condition which was previously asymptomatic. While she provided general support that his back condition developed due to poor positioning; she provided insufficient medical reasoning explaining how prolonged sitting exacerbated his preexisting degenerative disease. The fact that appellant was asymptomatic prior to 2009 is not dispositive of whether his medical conditions are causally related to the accepted work factors. The Board has held that an opinion that a condition is causally related because the employee was asymptomatic before the incident is insufficient without supporting rationale to establish causal relation.¹² Dr. Whittenberg had not provided a well-rationalized medical opinion that the diagnosed conditions were exacerbated by the accepted work-related duties of prolonged sitting. Thus, these reports are insufficient to establish appellant's claim.

In an October 15, 2009 report, Dr. Qualey opined that appellant's chronic, recurrent back pain was probably contributed to by workplace but stated that he was unsure. His opinion is insufficient to establish that appellant's back pain is causally related to the accepted work factors. Dr. Qualey offered equivocal support for causal relationship, by stating the back pain was probably contributed to by the workplace.¹³ Furthermore, pain is not a firm medical diagnosis. Thus, this report is insufficient to meet appellant's burden of proof.

¹¹ *Michael E. Smith*, 50 ECAB 313 (1999).

¹² *See John F. Glynn*, 53 ECAB 562 (2002).

¹³ Medical opinions that are speculative or equivocal in character are of diminished probative value. *D.D.*, 57 ECAB 734 (2006).

The other evidence submitted by appellant is also insufficient to establish his claim. The October 4, 2010 report from the chiropractor is of no probative medical value as the he failed to diagnose spinal subluxation or document whether x-rays were taken.¹⁴ The reports of diagnostic studies, MRI scans and prescription slips do not provide any opinion as to the cause of appellant's condition and are of diminished probative value.¹⁵

Appellant has not submitted reasoned medical evidence explaining how and why his diagnosed medical conditions were caused or aggravated by the accepted work factors. He has not met his burden of proof.

On appeal, appellant's attorney argues OWCP's decision is contrary to fact and law. For the reasons stated above, the Board finds that he has not met his burden of proof.

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.

¹⁴ Section 8101(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. The term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulations by the secretary. *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹⁵ *See Mary E. Marshall*, 56 ECAB 420 (2005).

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.

ORDER

IT IS HEREBY ORDERED THAT the March 5, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 25, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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