

FACTUAL HISTORY

On August 21, 2013 appellant, then a 68-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained a back injury due to factors of his federal employment, including walking, climbing, lifting packages, and driving a vehicle. He indicated that he became aware of the condition on July 15, 2013 and related it to factors of his federal employment on August 9, 2013.

In a narrative statement dated September 10, 2013, appellant indicated that his back condition started in 2006 and his family doctor recommended a magnetic resonance imaging (MRI) scan on December 7, 2006. He had been taking pain medication for his lower back pain, which also affected his entire left leg. Appellant explained that while he was working on July 15, 2013 the pain was so strong that he could not move, so he took medication and finished delivering the mail. The next two weeks he was scheduled for annual leave and he returned to work on August 5, 2013.

In an August 14, 2013 report, Dr. Daniel Koch, a Board-certified family practitioner, indicated that appellant had been under his care since that day and would be able to return to work on August 15, 2013 with restrictions of no lifting, walking, or standing for 10 days.

Appellant submitted a light-duty request with a medical certification from Dr. Koch. The employing establishment denied the request on August 19, 2013 as there was no work within his restrictions.

An August 19, 2013 MRI scan revealed diffuse disc desiccation in the lumbar spine with mild diffuse disc space narrowing, most prominent level of L4-5, and multiple cysts off the right kidney. It was noted that the MRI scan was compared to a scan dated December 7, 2006.

On August 21, 2013 Dr. Koch reviewed the August 19, 2013 MRI scan and diagnosed herniated lumbar disc. He reported that this was causing appellant significant pain and weakness in the leg.

In a September 25, 2013 letter, OWCP notified appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted hospital records dated August 16, 2013 from Carolinas HealthCare System in Lincolnton, North Carolina. Dr. Timothy Hall, a Board-certified emergency medicine specialist, diagnosed sciatica and hypertension.

In reports dated August 9 and 14, 2013, Dr. Koch diagnosed sciatica and lumbago, noting a history of degenerative joint disease of the lumbar spine since 2006.

On August 27, 2013 Dr. Mark Kiefer, a Board-certified family practitioner, diagnosed sciatica and reported that a recent MRI scan showed herniated nucleus pulposus with encroachment of the L4 nerve root on the left. He stated that appellant worked "as a postman and ha[d] been unable to work."

By decision dated December 9, 2013, OWCP denied appellant's claim as the medical evidence failed to establish a causal relationship between his lumbar condition and factors of his federal employment.

On July 30, 2014 appellant, through counsel, requested reconsideration and submitted a light-duty request form dated June 23, 2014. He also submitted a June 2, 2014 report from Dr. Anthony Asher, a Board-certified neurosurgeon, who indicated that appellant's "past medical history with his lumbar issues and surgery is a direct correlation of his work as a city carrier." Dr. Asher opined that appellant was unable to perform his duties as a city carrier and advised that he was able to work with restrictions of no bending, lifting, extended walking, or driving.

In an August 11, 2014 letter, appellant requested either a full-time job or disability retirement and submitted a "Medical Restrictions Assessment Form" from Dr. Asher who diagnosed lumbar degenerative disc disease and restricted appellant from lifting more than 25 pounds.

On August 11, 2014 Dr. Asher reported that appellant presented "with a several-month history of leg pain in roughly an L5 distribution" in November 2013. Appellant was experiencing worsening symptoms despite conservative therapies and his imaging studies showed evidence of multilevel lumbar spondylitic changes that appeared to be most marked at L4-5 where there was evidence of lateral recess stenosis causing compression of the exiting L5 nerve root. Dr. Asher stated that appellant's "symptoms were greatly exacerbated by his employment as a mail carrier" and appellant "specifically mentioned how walking for prolonged distances and carrying heavy objects exacerbated his pain." He reported that appellant underwent a lumbar decompression and was subsequently placed in physical therapy. Dr. Asher noted that appellant "was doing well until late January [2014] when, during a course of physical therapy, he experienced recurrence of his symptoms, and imaging studies showed evidence of a large recurrent disc herniation at L4-5."

Appellant underwent a repeat lumbar laminectomy and discectomy and his symptoms improved. Dr. Asher stated that appellant was left with residual discomfort, which was not unexpected given his age, the degree of spondylitic changes that he had in his lumbar spine, and the fact that he had required two surgeries. He found that appellant had "lumbar pain for many years and he believe[d] his occupation as a postal worker has aggravated the situation." Dr. Asher stated that "given the job responsibilities associated with being a mail carrier, it is easy to understand that [appellant's] occupation may have exacerbated his underlying lumbar condition." He concluded that it would be very difficult for appellant to return to work as a mail carrier.

By decision dated September 22, 2014, OWCP denied modification of its prior decision.

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 timely filed within the applicable time

³ 5 U.S.C. § 8101 *et seq.*

limitation period of FECA, and that an injury⁴ was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit the following: (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.⁶

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. 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

ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish a lumbar condition due to factors of his employment. Appellant submitted a statement in which he identified the factors of employment that he believed caused the condition, including walking, climbing, lifting packages, and driving a vehicle, which OWCP accepted as factual. However, in order to establish a claim that he sustained an employment-related injury, he must also submit rationalized medical evidence which explains how his medical condition was caused or aggravated by the implicated employment factors.⁸

In his reports, Dr. Asher diagnosed lumbar degenerative disc disease. On June 2, 2014 he noted that appellant's "past medical history with his lumbar issues and surgery is a direct correlation of his work as a city carrier." On August 11, 2014 Dr. Asher reported that appellant presented "with a several-month history of leg pain in roughly an L5 distribution" in November 2013 and underwent a lumbar decompression. He indicated that appellant's "symptoms were greatly exacerbated by his employment as a mail carrier" and that appellant had "specifically mentioned how walking for prolonged distances and carrying heavy objects exacerbated his pain." Dr. Asher indicated that appellant "was doing well until late January

⁴ OWCP regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

⁵ See *O.W.*, Docket No. 09-2110 (issued April 22, 2010); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁶ See *D.R.*, Docket No. 09-1723 (issued May 20, 2010). See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ See *O.W.*, *supra* note 5.

⁸ See *A.C.*, Docket No. 08-1453 (issued November 18, 2008); *Donald W. Wenzel*, 56 ECAB 390 (2005); *Leslie C. Moore*, 52 ECAB 132 (2000).

[2014] when, during a course of physical therapy, he experienced recurrence of his symptoms, and imaging studies showed evidence of a large recurrent disc herniation at L4-5.” Appellant underwent a repeat lumbar laminectomy and discectomy and his symptoms improved. Dr. Asher stated that appellant was left with residual discomfort, which was not unexpected given his age, the degree of spondylitic changes that he had in his lumbar spine, and the fact that he had required two surgeries. He found that “given the job responsibilities associated with being a mail carrier, it is easy to understand that [appellant’s] occupation may have exacerbated his underlying lumbar condition.” Although these reports support appellant’s claim, Dr. Asher failed to provide a rationalized opinion explaining how the factors of appellant’s federal employment, such as walking, climbing, lifting packages, and driving a vehicle, caused or aggravated his lumbar condition. He noted that appellant’s condition occurred while he was at work, but such generalized statements merely repeat appellant’s allegations and are unsupported by adequate medical rationale explaining how his physical activity at work actually caused or aggravated the diagnosed condition.⁹ Lacking thorough medical rationale on the issue of causal relationship, the Board finds that Dr. Asher’s reports are insufficient to establish that appellant sustained an employment-related injury.

On August 27, 2013 Dr. Kiefer diagnosed sciatica and indicated that appellant worked “as a postman and ha[d] been unable to work.” The Board has held that the mere fact that appellant’s symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between appellant’s condition and his employment factors.¹⁰ Dr. Kiefer failed to provide a rationalized opinion explaining how factors of appellant’s federal employment, such as walking, climbing, lifting packages, and driving a vehicle, caused or aggravated his lumbar condition. Thus, the Board finds that Dr. Kiefer’s report is insufficiently rationalized to establish that appellant’s condition was caused or aggravated by factors of his federal employment.

In his reports, Dr. Koch diagnosed herniated lumbar disc, sciatica, and lumbago and reported a history of degenerative joint disease of the lumbar spine since 2006. In an August 16, 2013 report, Dr. Hall diagnosed sciatica and hypertension. The Board has held that medical evidence failing to offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship.¹¹

In support of his claim, appellant also submitted an August 19, 2013 MRI scan. This document does not constitute competent medical evidence as it does not contain rationale by a physician relating appellant’s disability to his employment.¹²

⁹ See *K.W.*, Docket No. 10-98 (issued September 10, 2010).

¹⁰ See *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹¹ See *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹² See 5 U.S.C. § 8101(2). 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.” See also *Paul Foster*, 56 ECAB 208, 212 n.12 (2004); *Joseph N. Fassi*, 42 ECAB 677 (1991); *Barbara J. Williams*, 40 ECAB 649 (1989).

As appellant has not submitted any rationalized medical evidence to support his allegation that he sustained an injury causally related to the accepted employment factors, he failed to meet his burden of proof to establish a claim.

On appeal, counsel contends that OWCP's decision was contrary to fact and law. Based on the findings and reasons stated above, the Board finds his arguments are not substantiated.

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 has not met his burden of proof to establish a lumbar condition in the performance of duty causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the September 22, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 1, 2015
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