



attributed his condition to standing and walking while carrying heavy weights in the performance of his federal job duties. He stated that he was required to twist, bend, and crouch to deliver the mail.

In a letter dated April 5, 2013, OWCP requested additional factual and medical evidence in support of appellant's occupational disease claim. It noted that he had not provided medical evidence of a diagnosed condition and requested a medical report addressing the diagnosis, the implicated employment duties and providing an opinion on the causal relationship between his duties and his diagnosed condition.

Appellant provided electrodiagnostic test results including a magnetic resonance imaging (MRI) scan dated February 22, 2013 diagnosing C5-6 degenerative disc disease with disc herniation resulting in right-sided nerve root compression and spinal canal stenosis and C6-7 degenerative disc disease. A computerized tomography (CT) scan dated March 11, 2013 demonstrated multilevel disc disease in the lumbar spine at L3-4 and L4-5 with mild central canal stenosis at those levels as well as mild degenerative facet joint arthritis. Counsel argued on April 30, 2013 that appellant had submitted sufficient evidence to establish his claim for occupational injury to his neck, back, hands, and legs. She stated that appellant was experiencing an emotional condition aggravated by the constant stress at work and the physical pain that he suffered. Counsel reviewed each diagnosed condition and the specific work factors which she felt caused or contributed to these conditions.

OWCP denied appellant's claim by decision dated June 17, 2013, finding that appellant had not submitted the necessary medical evidence sufficient to establish his claim for a diagnosed condition due to his federal employment duties. Thus, fact of injury had not been established. OWCP noted that counsel's opinion regarding the causal relationship was not probative as she was not a physician for the purposes of FECA.

Appellant requested an oral hearing from OWCP's Branch of Hearings and Review on July 10, 2013. He submitted a report from Dr. J.E. Rosado, a Board-certified neurosurgeon, who had examined appellant on June 13, 2013. Dr. Rosado diagnosed cervical disc degeneration with myelopathy. He performed an anterior cervical discectomy with arthroplasty at C5-6 on June 21, 2013.

Counsel requested a review of the written record rather than an oral hearing from OWCP's Branch of Hearings and Review on August 26, 2013. She submitted a September 9, 2013 report from Dr. Melba Sotomayor, a neurologist, who noted that she had treated appellant since February 21, 2013 for progressive shoulder, cervical, and lumbar spine pain. Dr. Sotomayor examined appellant and diagnosed compressive cervical myelopathy due to C5-6 and C6-7 disc protrusion, bilateral cervical radiculopathy, severe bilateral median entrapment neuropathy, bilateral shoulder tendinitis, and osteoarthritis, mild knee osteoarthritis, plantar fasciitis, and bilateral L5-S1 radiculopathy, bilateral elbow epicondylitis, and bilateral wrist tendinitis as well as depression. She found that appellant was totally disabled.

The record contains 57 pages of documents, primarily medical in nature, in a mixture of Spanish and English languages dated beginning June 21, 2013.

By decision dated December 11, 2013, an OWCP hearing representative found that the medical evidence did not contain an opinion that appellant's diagnosed conditions were caused or contributed to by his implicated employment duties. The hearing representative concluded that appellant failed to meet his burden of proof to establish an occupational disease causally related to his employment and affirmed the June 17, 2013 decision of OWCP.

Counsel requested reconsideration on June 2 and July 7, 2014. She argued that all of appellant's diagnosed conditions were related to his job duties. Counsel stated, "We see that Dr. Melba Sotomayor did not address the direct cause of his conditions, but the claimant has no other sources of injury outside of his employment. These conditions arose under the normal scope of performance of duty...." In a note dated June 11, 2013, Dr. Rosado reported that Dr. Sotomayor referred appellant to him due to progressive cervical pain associated with arm weakness. He diagnosed cervical radiculopathy associated with a herniated disc at C5-6.

Appellant resubmitted his diagnostic testing, Dr. Sotomayor's September 9, 2013 report, as well as hospital notes from his June 21, 2013 cervical spine surgery, and submitted prescriptions and disability slips on June 16, 2014. Several of these groups of documents are in a mixture of Spanish and English. Appellant submitted a series of medical documents largely in Spanish regarding a hospitalization beginning on January 22 through 28, 2014 for severe depression and other emotional conditions. Appellant requested disability retirement on July 7, 2014 and social security benefits on March 18, 2014.

By decision dated January 13, 2015, OWCP reviewed the evidence submitted and noted that the opinions of appellant's counsel regarding the causal relationship between his condition and his employment duties was not probative as she was not a physician. It found that none of the medical evidence submitted addressed appellant's work activities or provided an opinion that appellant's diagnosed conditions were related to his employment duties.

### **LEGAL PRECEDENT**

OWCP's regulations define an occupational disease as "a condition produced by the work environment over a period longer than a single workday or shift."<sup>2</sup> 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; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors.

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<sup>2</sup> 20 C.F.R. § 10.5(q).

The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.<sup>3</sup>

### ANALYSIS

The Board finds that the case is not in posture for decision.

OWCP accepted that appellant was required to stand, walk, carry heavy weights, twist, bend, and crouch to deliver the mail. It also accepted that appellant had medical evidence of a diagnosed condition including cervical disc degeneration, herniated disc at C5-6 bilateral cervical radiculopathy, severe bilateral median entrapment neuropathy, bilateral shoulder tendinitis and osteoarthritis, mild knee osteoarthritis, plantar fasciitis and bilateral L5-S1 radiculopathy, bilateral elbow epicondylitis, and bilateral wrist tendinitis as well as depression based on the reports of Drs. Sotomayor and Rosado. OWCP denied appellant's claim on the grounds that the medical evidence did not establish a causal relationship between his diagnosed conditions and his implicated employment duties. The case record, however, does not contain a translation of the Spanish portions of the medical records which include both of appellant's hospitalizations. The Board has held that it is unreasonable for OWCP to deny a claim before it attempts to secure an accurate translation of the relevant evidence.<sup>4</sup> For OWCP and the Board to properly consider all evidence of record, an accurate translation of the Spanish medical records is needed. Therefore, the case will be remanded for this purpose and, after conducting such further development as it may find necessary, OWCP shall issue a *de novo* decision.

### CONCLUSION

The Board finds that the case is not in posture for a decision and must be remanded for further development of the record.

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<sup>3</sup> *Lourdes Harris*, 45 ECAB 545, 547 (1994).

<sup>4</sup> *Ana D. Pizarro*, 54 ECAB 430 (2003) (finding that appellant submitted medical evidence in Spanish, that OWCP did not analyze or seek a translation of this medical evidence and remanding the case for this purpose); *Armando Colon*, 41 ECAB 563 (1990) (OWCP abused its discretion in denying an employee's request for reconsideration on the grounds that the evidence submitted lacked probative value because it was in a foreign language); *see also H.S.*, Docket No. 11-1170 (issued December 14, 2011); *M.T.*, Docket No. 09-208 (issued November 9, 2009); and *A.G.*, Docket No. 08-206 (issued May 12, 2008).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 13, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 17, 2015  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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