



claim. The Board noted that OWCP considered evidence from File No. xxxxxx618 relevant to the low back in its March 2, 2012 decision under File No. xxxxxx042 denying appellant's claim for a lumbar condition. The law and facts of the case as set forth in the Board's prior order are incorporated by reference.

On June 8, 2011 appellant, then a 54-year-old clerk, filed an occupational disease (Form CA-2) claim alleging that, on or before September 8, 2008, he sustained lumbosacral radiculitis, bulging lumbar discs, and sciatic nerve conditions due to repetitive heavy lifting, pushing, and pulling at work.<sup>3</sup> He was on full duty at the time he filed the claim, and continued to perform lifting, pushing, and pulling as required by his position. In associated statements, appellant stated that he first noticed lumbar pain in 1994 when the employing establishment switched to a different type of container. He did not seek medical treatment until September 2008. Appellant described a 2010 hospitalization for lumbar pain, treated with intravenous morphine. He noted that he used sick leave for absences related to his back pain and had not claimed wage-loss compensation.

In a June 15, 2011 letter, OWCP advised appellant of the type of additional evidence needed to establish his claim, including a report from his attending physician diagnosing a medical condition, and explaining how the identified work factors would have caused that condition. It afforded him 30 days to submit such evidence.

In response, appellant submitted a July 1, 2011 report from Dr. Joshua D. Sussman, an attending Board-certified physiatrist, who noted treating appellant from September 22, 2008 onward for lumbosacral radiculitis. A lumbar magnetic resonance imaging (MRI) scan performed on December 2, 2008 revealed bulging discs at L3-4, L4-5, and L5-S1, neuroforaminal stenosis from L3 through S1, with bilateral facet hypertrophy throughout the lumbar spine. A May 5, 2010 MRI scan showed increased disc bulges and stenosis. Epidural injections administered in 2010 improved appellant's symptoms. Dr. Sussman opined that appellant's degenerative disc disease and lumbar degenerative joint disease were exacerbated by an altered activity pattern at work.

By decision dated September 8, 2011, OWCP denied appellant's claim for a lumbar condition as causal relationship had not been established. It accepted that he performed repetitive heavy lifting, pushing, and pulling at work. OWCP found, however, that the medical evidence did not explain how and why those work factors would cause the diagnosed lumbar conditions.

In a September 22, 2011 letter, appellant requested an oral hearing, held telephonically on January 3, 2012. At the hearing, he asserted that he experienced increased back pain when the employing establishment changed container types to a wire bin that weighed 400 pounds when empty. Appellant alleged that he did not have sufficient help when working the bundle sorter and the supervisors did not assign additional workers to handle the mail volume. At the close of the proceeding, the hearing representative gave him a detailed explanation of the type of medical evidence needed to establish his claim, with descriptions of any prior injuries, findings on

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<sup>3</sup> Appellant also submitted a CA-2 form signed by him on October 15, 2009. Appellant's supervisor signed the form on June 8, 2011.

examination, a description of the duties that caused or contributed to the diagnosed condition, and detailed rationale explaining how and why those factors would cause the claimed condition.

Following the hearing, the hearing representative reviewed medical evidence from File No. xxxxxx618.<sup>4</sup> In chart notes from October 31, 2008 to September 19, 2011, Dr. Sussman noted worsening bilateral lumbar radiculopathy, symptomatically relieved by epidural steroid injections. In a January 9, 2012 note, he related appellant's belief that his lumbar pain was related to repetitive bending, grabbing, and lifting heavy mail sacks at work from 1994 through 2005. Appellant was hospitalized for sciatica from April 1 to 5, 2010.<sup>5</sup> He received lumbar acupuncture on five occasions from April 29 to June 7, 2010.

By decision dated and finalized March 2, 2012, an OWCP hearing representative affirmed OWCP's September 8, 2011 decision denying appellant's occupational disease claim. He found that the medical evidence did not contain sufficient rationale supporting a pathophysiologic causal relationship between the accepted work factors of repetitive heavy lifting, pushing, and pulling, and the diagnosed lumbar conditions.

Pursuant to the Board's December 21, 2012 order setting aside the March 2, 2012 decision and remanding the case for doubling of appellant's two claim files, OWCP combined File No. xxxxxx042 and File No. xxxxxx618 on January 28, 2013.

By decision dated June 26, 2013, OWCP denied appellant's occupational disease claim on the grounds that causal relationship was not established. It found that the medical evidence in both File Nos. xxxxxx618 and xxxxxx042, did not contain sufficient explanation supporting a link between the accepted work factors and the claimed lumbar condition.

In a July 24, 2013 letter postmarked on July 26, 2013, appellant requested an oral hearing, held telephonically on February 24, 2014. At the hearing, he reiterated his belief that heavy lifting, pushing, and pulling at work beginning in 1994 caused the lumbar conditions diagnosed by Dr. Sussman. Appellant submitted a September 25, 2013 report from Dr. Sussman, in which the physician noted reviewing a 1980 job description requiring pushing and pulling greater than 400 pounds, and repetitive lifting greater than 30 pounds. Dr. Sussman opined that it was "more likely than not [appellant's] degree of lumbar spine disc disease and arthritis are directly related to repetitive stress and strain he endured as an employee of the [employing establishment] over these last 33 years."

By decision dated and finalized April 9, 2014, an OWCP hearing representative affirmed OWCP's June 26, 2013 decision, finding that Dr. Sussman did not provide sufficient rationale supporting causal relationship to meet appellant's burden of proof.

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<sup>4</sup> Following the Board's December 21, 2012 order, OWCP imaged the reports considered by the hearing representative into the case record. To preserve the chronologic sequence of documents in the case record, OWCP used January 27, 2012 as the imaging date.

<sup>5</sup> The record contains fragments of chart notes from appellant's hospitalization. These documents do not appear to address causal relationship.

## LEGAL PRECEDENT

An employee seeking benefits under FECA 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.<sup>6</sup> 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.<sup>7</sup>

An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift.<sup>8</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) 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 medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medial 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.<sup>9</sup>

## ANALYSIS

Appellant claimed that he sustained lumbosacral radiculitis, bulging lumbar discs, and sciatic nerve conditions due to heavy lifting, pushing, and pulling at work from 1994 through 2005. He continued to perform these duties through the time he filed his claim on June 8, 2011. OWCP denied the claim on the grounds that the medical evidence of record did not contain sufficient rationale supporting a causal relationship between the accepted work factors of heavy lifting, pulling, and pushing and the claimed lumbar conditions.

In support of his claim, appellant submitted reports from Dr. Sussman, an attending Board-certified physiatrist, who treated appellant for lumbosacral radiculitis from September 2008 through September 2013. Dr. Sussman addressed causal relationship in several

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<sup>6</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>7</sup> *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>8</sup> 20 C.F.R. § 10.5(q).

<sup>9</sup> *Solomon Polen*, 51 ECAB 341 (2000).

reports. On July 1, 2011 he diagnosed worsening lumbar disc bulges and degenerative disc disease throughout the lumbar spine, exacerbated by an altered activity pattern at work. However, Dr. Sussman did not specify the date of such alteration, describe the job duties involved, or explain the medical reasons that these duties would cause or aggravate a lumbar condition. In a January 9, 2012 note, he repeated appellant's belief that lifting at work caused his back conditions, but Dr. Sussman provided no independent opinion. Dr. Sussman did not provide a reasoned explanation of the pathophysiologic mechanisms whereby the accepted work factors would cause the claimed lumbar conditions. Therefore, his opinion is insufficient to meet appellant's burden of proof.<sup>10</sup>

On September 25, 2013 Dr. Sussman reviewed a 1980 job description and opined that "more likely than not [appellant's] degree of lumbar spine disc disease and arthritis are directly related to repetitive stress and strain he endured as an employee of the [employing establishment] over these last 33 years." The equivocal nature of this opinion diminishes its probative value.<sup>11</sup> Dr. Sussman has failed to provide a reasoned medical opinion of how appellant's stipulated duties caused or aggravated the appellant's lumbar spine condition.

OWCP advised appellant in a June 15, 2011 letter and at the January 3, 2012 hearing of the necessity of submitting a report from his attending physician explaining with sufficient rationale to establish causal relationship between the accepted work factors and the claimed lumbar spine conditions. However, appellant did not submit such evidence. Therefore, OWCP's April 9, 2014 decision was proper under the law and circumstances of this case.

On appeal, appellant contended that he performed his job honorably and efficiently despite several injuries, including right carpal tunnel syndrome, cervical disc surgery, and multiple hernia repairs. He explained that he continued to work in pain as there was no light duty available. Appellant mentioned an upcoming spinal surgery to replace three discs and insert stabilizing rods. The Board notes that OWCP's decisions denying his occupational disease claim do not indicate any misconduct or dereliction of duty. The Board does not have jurisdiction on the present appeal over medical conditions other than lumbar disc disease, radiculitis, and sciatica as claimed under File No. xxxxxx042. As stated above, the medical evidence of record is insufficient to establish that lifting, pulling, and pushing at work caused the claimed lumbar conditions.

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 did not establish that he sustained a lumbar spine condition in the performance of duty as alleged.

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<sup>10</sup> *Deborah L. Beatty*, 54 ECAB 340 (2003).

<sup>11</sup> *Ricky S. Storms*, 52 ECAB 349 (2001).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 9, 2014 is affirmed.

Issued: February 5, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board