

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

S.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
O'Fallon, IL Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 15-1249
Issued: November 18, 2015**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 13, 2015 appellant, through counsel, filed a timely appeal from a February 25, 2015 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 case.

ISSUE

The issue is whether appellant has established an injury in the performance of duty on February 13, 2010, as alleged.

Appellant's counsel contends on appeal that OWCP's decision is contrary to fact and law.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board on two occasions. The facts as set forth in the Board's prior decision² and order³ are incorporated herein by reference. The relevant facts follow.

On February 22, 2010 appellant, then a 45-year-old mail carrier, filed a traumatic injury claim alleging that, on February 13, 2010 due to weather conditions, he slipped and fell on concrete injuring his head and hip. In a September 9, 2011 decision, the Board affirmed OWCP's October 20, 2010 denial of his claim. The Board found that, although appellant had established an employment-related incident he had failed to establish that an injury resulted from the fall.⁴

Following the Board's decision, on December 22, 2011 appellant submitted a November 12, 2011 report by Dr. William H. Thorn, a physician Board-certified in anesthesiology and pain medicine, who discussed appellant's medical history, including objective tests, and the history of his employment incident of February 13, 2010. Dr. Thorn also discussed the results of appellant's physical examination. He diagnosed appellant with acute upon chronic lumbar radiculopathy, lumbar disc herniation, spinal stenosis, accidental fall out of building, late effects of accidental fall, myalgia/myospasm, lumbago, pain in limb, sacroilitis, disturbance of skin sensation, and pain in thoracic spine. Dr. Thorn noted that it was his professional medical opinion that the work incident was the direct and proximate cause of the listed diagnoses based on a reasonable degree of medical certainty. He noted that some of appellant's findings are chronic in nature and there may be additional causes of his symptoms and medical conditions, but one of the primary causes of the occurrence, progression, and persistence of his symptoms was clearly the work incident as described by appellant.

In a letter received by OWCP on January 13, 2012, counsel advised that he was submitting "medical documentation to support the claim." He submitted an undated report by Dr. Rob Fast, a chiropractor. Dr. Fast noted that he first saw appellant on April 3, 2010. He described appellant's employment incident, subjective complaints, findings on physical examination, and the mechanical tests performed. Dr. Fast diagnosed appellant with lumbar sprain/strain, lumbar disc degeneration, lumbar disc bulge, lumbar facet syndrome, lumbar radiculitis, cervical sprain/strain, headache, and cervical disc degeneration. He opined that the facts of injury are the direct and proximate cause of appellant's diagnoses based on reasonable medical probability. Dr. Fast further noted that there may be other causes for these medical problems, but one of the causes was clearly the activities of work described by appellant.

By letter dated February 21, 2012, appellant, through counsel, requested reconsideration. He submitted subsequent requests inquiring into the status of the reconsideration request.

² Docket No. 11-321 (issued September 9, 2011).

³ *Order Remanding Case*, Docket No. 14-1041 (issued November 10, 2014).

⁴ *See supra* note 1.

By decision dated March 5, 2014, OWCP denied modification of the decision after conducting a merit review. It noted earlier reports of Dr. Thorn that were previously of record and had been reviewed by the Board. OWCP found that Dr. Fast did not provide rationale to support causal relationship.

Appellant appealed to the Board on March 27, 2014. In a November 10, 2014 *Order Remanding Case*, the Board found that OWCP had not reviewed all the medical evidence and remanded the case for further consideration by OWCP. The Board noted that, in addition to Dr. Fast's report, appellant had submitted a new November 12, 2011 report by Dr. Thorn.⁵

By decision dated February 25, 2015, OWCP considered the additional medical evidence and denied modification, finding that neither Dr. Fast nor Dr. Thorn established a causal relationship between the diagnosed conditions and the February 13, 2010 employment incident.

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 timely filed within the applicable time limitation period, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.⁶ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁸ To establish fact of injury in an occupational disease claim, 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.⁹

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's 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, must be one of reasonable medical certainty and must be supported by medical

⁵ See *supra* note 3.

⁶ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ See *S.P.*, 59 ECAB 184, 188 (2007).

⁹ See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); see also *P.W.*, Docket No. 10-2402 (issued August 5, 2011).

rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁰

ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish an employment-related injury as a result of the February 13, 2010 accident. The Board finds that neither Dr. Fast nor Dr. Thorn submitted a well-rationalized opinion explaining how appellant's specific medical diagnoses were caused or aggravated by the accepted employment incident.

Dr. Thorn discussed appellant's employment, medical history, objective tests, and the results of his physical examination. He diagnosed appellant with multiple conditions including chronic lumbar radiculopathy, lumbar disc herniation, spinal stenosis, myalgia/myospasm, lumbago, and pain in the thoracic spine. Dr. Thorn opined that the facts of appellant's injury were the direct and proximate cause of the diagnoses. He noted that although there might have been additional causes of appellant's medical conditions, one of the primary causes of the occurrence, progression, and persistence of his symptoms was clearly the activities at work as described by appellant. However, Dr. Thorn did not provide a rationalized opinion explaining how the mechanism of appellant's fall on February 13, 2010 caused the diagnosed conditions.

Dr. Fast also described the employment incident, subjective complaints, findings on physical examination, and the mechanical tests, and diagnosed appellant with multiple conditions including lumbar sprain/strain, lumbar disc degeneration lumbar disc bulge, lumbar facet syndrome, and cervical sprain, strain. He also opined that the facts of appellant's work injury were the direct and proximate cause of appellant's diagnoses based on reasonable probability. However, the Board notes that section 8101(2) of FECA provides that 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.¹¹ If a diagnosis of a subluxation as demonstrated by x-ray is not established, the chiropractor is not a physician as defined under FECA and his or her report is of no probative value to the medical issue presented.¹² Because Dr. Fast has not provided a diagnosis of subluxation demonstrated by x-ray evidence, he is not a physician as defined under FECA. Accordingly, his report lacks probative value and is insufficient to establish appellant's traumatic injury claim.

A medical diagnosis and an opinion on causal relation must be based on rationalized medical opinion evidence.¹³ A physician must accurately describe appellant's work duties and medically explain the process by which these duties would have caused or aggravated his

¹⁰ *I.J.*, 59 ECAB 408 (2008); *supra* note 7.

¹¹ 5 U.S.C. § 8101(2).

¹² *See Jack B. Wood*, 40 ECAB 95, 109 (1988); *see also F.W.*, Docket No. 15-1435 (issued September 15, 2015).

¹³ *M.E.*, Docket No. 14-1064 (issued September 29, 2014).

condition.¹⁴ An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that the condition was caused by his employment is sufficient to establish causal relationship.¹⁵ Because appellant has not provided medical opinion evidence clearly explaining how his accepted employment incident resulted in a specific medical diagnosis, thereby resulting in an employment injury, he failed to meet 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.

CONCLUSION

The Board finds that appellant has not established that he sustained an injury in the performance of duty on February 13, 2010, as alleged.

¹⁴ *Solomon Polen*, 51 ECAB 341 (2000) (rationalized medical evidence must relate specific employment factors identified by the claimant to claimant's condition, with stated reasons by a physician). *See also V.S.*, Docket No. 14-2028 (issued June 3, 2015).

¹⁵ *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 25, 2015 is affirmed.¹⁶

Issued: November 18, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹⁶ James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015.