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

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| **H.L., Appellant** | ) | |
| **and** | ) | **Docket No. 15-1733** |
| | ) | **Issued: November 13, 2015** |
| **U.S. POSTAL SERVICE, POST OFFICE, Columbus, OH, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

### ***JURISDICTION***

On June 8, 2015 appellant filed a timely appeal of an April 1, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

### ***ISSUE***

The issue is whether appellant has met his burden of proof to establish that he sustained an occupational disease in the performance of duty causally related to factors of his federal employment.

[1] 5 U.S.C. § 8101 *et seq.*

## ***FACTUAL HISTORY***

On January 6, 2015 appellant, then a 46-year-old mail clerk and lobby assistant, filed an occupational disease claim (Form CA-2) alleging that he sustained stress, hip, back, and right knee pain in the performance of duty. He stated that he first became aware of his condition on January 6, 2015. Appellant advised that it was due to the lack of accommodations for relief; between 25 to 30 minutes of walking and standing on solid concrete flooring caused excruciating sharp pain that began shooting through his right hip. He alleged that it also caused a flare up in his back, buttocks and right knee with severe pain shooting down both legs (more on the right). Appellant indicated that his right foot became numb and affected his mood, thought processes, and ability to focus and remember things. He stopped work on January 6, 2015.[2]

In a June 6, 2015 statement, appellant indicated that he was "stressed the hell out." He indicated that he was experiencing excruciating pain in his right hip due to the excessive standing and walking on concrete flooring due to the lack of accommodations for relief. Appellant indicated that his other documented injuries continued to be aggravated as well and it was causing him emotional distress.

In a January 13, 2015 statement, Michael B. Alter, a health and resource management specialist from the employing establishment, controverted the claim. He provided a copy of the modified job offer of a lobby assistant, which was given to appellant on December 22, 2014 with a start date of December 27, 2014. Mr. Alter noted that appellant did not start until three days after the reporting date, December 30, 2014. He indicated that when appellant reported he requested a "special chair." Mr. Alter confirmed that the chair was provided to appellant by his supervisor and he was able to sit and stand as needed while performing the duties of a lobby assistant. He noted that it was the employing establishment's belief that appellant did not want to work as he did not report until three days after his anticipated start date. Furthermore, Mr. Alter confirmed that the employing establishment accommodated appellant's restrictions, yet "he claimed that was not enough." A copy of the modified job offer accompanied his letter. A January 14, 2015 letter from Mr. Alter to appellant was also provided. In that letter, Mr. Alter informed appellant that he would be assigned to assist him with his claim and the return to work process.

January 6, 2015 emergency room records from Dr. Charles B. May, a Board-certified orthopedic surgeon, revealed that appellant had degenerative arthritis and osteoarthritis. In a January 13, 2015 attending physician's report (Form CA-20), Dr. May noted a history of a lumbar injury incurred on October 15, 2011 while appellant was helping hold pallets of mail. He also reported that appellant had a 1992 lumbar injury in the military. Dr. May diagnosed lumbar facet arthropathy at L5-S1 and disc bulge. He checked the box "yes" in response to whether he believed the condition was caused or aggravated by an employment activity. Dr. May noted that appellant was unable to perform the job as a lobby director as the restrictions were not being followed. He concluded that appellant was totally disabled commencing November 16, 2012.

[2] The record reflects that appellant also filed a traumatic injury claim (Form CA-1) for a right hip condition sustained on January 6, 2015. Appellant has filed a separate appeal regarding this claim, Docket No. 15-1386, which is proceeding to adjudication separately from the present matter.

Dr. May noted that he was able to resume light duty on December 27, 2011 and provided restrictions to include weight limits of 15 pounds for continuous lifting and 10 to 20 pounds for intermittent lifting.

By letter dated January 16, 2015, OWCP advised appellant that additional factual and medical evidence was needed to establish his claim for an occupational disease. It also explained that a physician's opinion was crucial to appellant's claim and afforded him 30 days within which to submit the requested information.

In a January 16, 2015 statement, appellant indicated that, while he was at work on January 6, 2015, he called his supervisor and informed him that he needed to go to the hospital. He noted that his manager was unaware of which form he needed but provided him with a Form CA-2 and told him to go on his own. Appellant indicated that he could not focus, his chest and head felt tight and he had severe sharp pain shooting through his right hip; in addition to his back, his knees and feet hurt from walking and standing on the concrete floors with nowhere to go for relief. He noted that on that morning, he had a heated conversation with coworker 1 for loudly and unprofessionally complaining to coworker 2 about him. Appellant noted that on January 5, 2015 approximately 15 minutes before it was time for him to go home he was in the lobby helping a customer when he heard coworker 1 in the back yelling to coworker 2 about him. Appellant noted that he informed coworker 1 that he had limitations and that her behavior upset him. He noted that he spoke to coworker 3 before he left, asking him to talk to coworker 1 about her hostile tones. Appellant also noted that on or about January 2, 2015 he spoke with his manager and asked him to talk to coworker 1 about her telling him what his responsibilities were. He noted that he tried to explain his duties to her on December 30, 2014, after she rudely interrupted a conversation with him and a customer.

Appellant indicated that on January 5, 2015, he informed his manager that he did not have anywhere to sit and nothing to stand on, and he was hurting and his feet were going numb. He indicated that he needed an ergonomic chair, mat, and desk to case mail due to excruciating back, knee, and foot pain. However, when he arrived, appellant was informed that they only had small chairs and nothing else. He noted that he accepted the lobby director position on December 24, 2014, through a good faith settlement that his permanent restrictions and accommodations would be honored. Appellant indicated that on his first day back to work, December 30, 2014, he met with his manager and they had a dispute about the hours he was to start working. He also indicated that they gave him a "school-age metal folding chair with a pad" when he asked for an ergonomic chair and antifatigue mat. Appellant was told that they would look into it but that was all they had. He advised that his restrictions were "Not preinjury work," but he was given work outside his restrictions. Appellant argued that he "was coerced and mislead to working outside my restrictions and placed in a hostile work environment which induced stress and injury." He stated that he had not slept well since starting the job and the employer refused to provide him with reasonable accommodations. Appellant argued that he was placed in a work environment that caused continued stress and anxiety. He indicated that he was out of work for two years due to the employing establishment's failing to provide him with reasonable accommodation and/or offering him a position that would decrease flare ups and aggravation of injuries.

OWCP received a January 6, 2015 work release form from Dr. David Allen, an osteopath, specializing in emergency medicine, in which he indicated that appellant could return to work on January 7, 2015 and continue to work with the restrictions imposed by Dr. May. It also received a form on degenerative arthritis, emergency department discharge instructions from Dr. May, and radiology orders for an x-ray of the hip.

By decision dated April 1, 2015, OWCP denied appellant's claim. It found that the medical evidence of record did not contain a medical diagnosis and did not demonstrate that the claimed medical condition was related to established work factors.

## ***LEGAL PRECEDENT***

Workers' compensation law does not apply to each and every illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA. On the other hand the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.[3]

Appellant has the burden of establishing by the weight of the reliable, probative, and substantial evidence that the condition, for which he claims compensation was caused or adversely affected by employment factors.[4] This burden includes the submission of a detailed description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions, for which compensation is claimed.[5]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP as part of its adjudicatory function, must make findings of fact regarding, which working conditions are deemed compensable factors of employment and are to be considered by the physician when providing an opinion on causal relationship and, which working conditions are not deemed factors of employment and may not be considered.[6] If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of the

[3] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 126 (1976).

[4] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[5] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[6] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

matter establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.[7]

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 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 claimant.[8]

## ***ANALYSIS***

Appellant has alleged several factors of employment which caused his alleged medical conditions, including that he sustained stress from heated conversations with coworker 1, and that she was "yelling" to coworker 2 about his work performance. He has also alleged an interaction with his manager.[9] Appellant further alleged that walking on hard floors aggravated his physical condition. OWCP denied his claim because he did not submit medical evidence containing a medical diagnosis, nor did he establish that a diagnosed medical condition is causally related to the accepted employment factors.

The Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP as part of its adjudicatory function, must make findings of fact regarding, which working conditions are deemed compensable factors of employment.[10] Although, OWCP did not make specific findings of fact, with respect to the allegations of "heated" conversations with coworker 1 "yelling" to coworker 2 about appellant's work performance and an interaction with his manager, the Board finds that these allegations are generally accepted as there is no contradictory evidence and OWCP denied the claim based upon insufficient medical evidence in support of his claim. There also is no dispute that appellant's job required him to walk on concrete floors.

However, the Board finds that the medical evidence of record is insufficient to establish that a medical condition was caused or aggravated by these activities or any other specific factors of appellant's federal employment. The Board notes that January 6, 2015 emergency room records from Dr. May revealed that appellant had degenerative arthritis and osteoarthritis.

[7] *Id.*

[8] *Solomon Polen*, 51 ECAB 341 (2000).

[9] Although appellant argued that he was also stressed due to the employing establishment's failure to provide him with reasonable accommodations, the employing establishment documented that he was provided with a special chair and allowed to sit and stand as needed.

[10] *See supra* note 6.

However, Dr. May did not specifically address whether appellant's work duties contributed to an emotional condition and this report is, therefore, insufficient to establish the claim.[11]

In a January 13, 2015 attending physician's report, Dr. May noted a history which included that in October 2011 appellant injured his back while helping hold pallets of mail. He also noted that appellant had a 1992 lumbar injury while serving in the military. Dr. May diagnosed lumbar facet arthropathy at L5-S1 and disc bulge. He checked the box "yes" in response to whether he believed the condition was caused or aggravated by an employment activity. Dr. May found that appellant was unable to perform the job as a lobby director as his medical restrictions were not being followed. The Board notes that this report does not support appellant's argument that he sustained a stressful condition in the performance of duty. It also is insufficient to establish that a physical condition was caused or aggravated by his employment duties as the Board has held that the checking of a box "yes" in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.[12]

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[13] Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[14] Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.

As there is no reasoned medical evidence explaining how appellant's employment duties caused or aggravated an emotional or physical condition, appellant has not met his burden of proof to establish that he sustained a medical condition in the performance of duty causally related to factors of his employment.

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 that he sustained an occupational disease in the performance of duty causally related to factors of his federal employment.

[11] *See Michael E. Smith*, 50 ECAB 313 (1999) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[12] *Calvin E. King*, 51 ECAB 394 (2000).

[13] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[14] *Id.*

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the April 1, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 13, 2015
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board