

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

J.A., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Norfolk, VA, Employer**

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**Docket No. 15-1308
Issued: September 17, 2015**

Appearances:
William H. Brawner, Esq., for the appellant
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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 22, 2015 appellant, through counsel, filed a timely appeal from a May 14, 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 this case.

ISSUE

The issue is whether appellant met his burden of proof to establish disability on or after September 28, 1979 due to his accepted work injuries.

FACTUAL HISTORY

OWCP accepted that on November 4, 1978 appellant, then a 40-year-old letter carrier, sustained cervical and low back strains when his postal vehicle was struck from behind by

¹ 5 U.S.C. §§ 8101-8193.

another vehicle.² In a November 20, 1978 report, Dr. Leopold Garbutt, an attending Board-certified orthopedic surgeon, referenced the November 4, 1978 vehicular accident and stated that a review of appellant's systems was "benign except for musculoskeletal where he has a complaint of low back pain." He diagnosed lumbosacral strain.

Appellant received continuation of pay from November 7 to December 25, 1978 and disability compensation for intermittent periods between December 26, 1978 and August 29, 1979. He returned to limited-duty work on a full-time basis on August 30, 1979 without any wage loss. Appellant resigned from the employing establishment effective September 28, 1979. He filed a claim alleging that he was entitled to disability compensation beginning September 28, 1979 due to his accepted work injuries.

In support of his claim, appellant submitted reports of Dr. Roger L. Weir, an attending Board-certified neurologist. Dr. Weir began treating appellant in 1981. On February 22, 1984 he opined that appellant's problems with his back and neck were "caused by processes which were induced by his injuries in 1972 and 1978." Dr. Weir noted that appellant's work limitations were "due to these injuries." In a May 8, 1984 report, he noted that appellant was first seen in January 1981 when he presented with pain in his back, neck, and legs. Appellant reported that "his back had been going out" since the fall of 1981 and that he would fall to the ground and be unable to get up.

By decision dated January 9, 1986, OWCP denied appellant's claim. It found that he failed to submit sufficient medical evidence to establish that he was disabled on or after September 28, 1979 due to his accepted work injuries.

On August 15, 2011 appellant requested reconsideration of his claim and submitted additional reports of Dr. Weir. On August 13, 1987 Dr. Weir indicated that appellant's symptoms seemed to fluctuate and opined, "[Appellant's] symptoms may be exacerbated by returning to a job with sustained physical activities." He diagnosed back pain, neck pain, and muscle spasms. In a January 9, 1991 report, Dr. Weir indicated that appellant's symptoms were markedly exacerbated by his prior work. He diagnosed back pain, neck pain, muscle spasm, hypertension, and hypercholesterolemia.

In an April 8, 2013 decision, OWCP affirmed the denial of appellant's claim. It found that he had not submitted sufficient medical evidence to establish disability on or after September 28, 1979 due to his accepted work injuries.

In an April 9, 2014 decision,³ the Board affirmed OWCP's April 8, 2013 decision finding that appellant had not met his burden of proof to establish disability on or after September 28, 1979 due to his accepted work injuries. The Board determined that the medical evidence submitted by appellant, including the reports of Dr. Weir, did not contain a rationalized opinion

² OWCP previously accepted that appellant sustained a lumbar strain on January 8, 1972 due to lifting encyclopedias at work.

³ Docket No. 13-1910 (issued April 9, 2014).

that he sustained any disability due to his January 8, 1972 or November 4, 1978 work injuries for any specific period.

Appellant submitted a number of new medical reports after OWCP issued its April 8, 2013 decision. The new evidence was not available to the Board on his prior appeal. In a June 13, 2013 report, Dr. Allen H. Macht, an attending Board-certified general surgeon, discussed appellant's January 8, 1972 work injury, which affected his low back, and his November 4, 1978 work injury, which affected his neck and low back.⁴ He detailed the treatment of appellant's neck and low back problems after his November 4, 1978 work injury and noted that he presently continued to complain of severe constant pain in his neck and back.⁵ Dr. Macht indicated that on physical examination appellant exhibited tenderness upon palpation of his posterior neck and low back and noted that he had limited range of motion in his neck and back. He determined that appellant was unable to perform his prior position of letter carrier. Dr. Macht noted that appellant was totally and permanently disabled from work and opined:

“It appears that this disability is causally related to the November 4, 1978 accident at work. There is no evidence of any other accidents or injuries in [appellant's] medical records. His arthritic changes due to his aging as documented in his medical records does [*sic*] not seem sufficient to be approximate [*sic*] cause of his disability. [Appellant] only has a mild-to-moderate degree of arthritis of the left wrist and the back region.”

In a June 27, 2013 report, Dr. Macht reported that appellant “continued to suffer residual industrial loss from injuries sustained in the accidents of January 8, 1972 and November 4, 1978.” He indicated that these “residual impairments” were permanent.

In a May 16, 2014 report, Dr. Macht discussed appellant's January 8, 1972 and November 4, 1978 work injuries and his treatment for neck and low back problems. He noted that appellant continued to exhibit tenderness upon palpation of his posterior neck and low back and had limited range of motion in his neck and back. Dr. Macht discussed diagnostic testing of appellant's neck and back obtained in 1984 and 1991 and diagnosed musculoligamentous sprain of his neck and back with mild-to-moderate spondylosis and left carpal tunnel syndrome with moderate arthritic changes of his left wrist. He noted that appellant was totally and permanently disabled from work due to his November 4, 1978 work injury and opined:

“It appears that this disability is causally related to the November 4, 1978 accident at work. There is no evidence of any other accidents or injuries in [appellant's] medical records. His arthritic changes due to his aging as documented in his medical records does [*sic*] not seem sufficient to be approximate [*sic*] cause of his disability. [Appellant] only has a mild-to-moderate degree of arthritis of the left wrist and the back region.

⁴ Dr. Macht indicated that on November 4, 1978 appellant's vehicle was struck from behind by another vehicle while he was at a stop and his vehicle was forced into another vehicle in front of him. He noted that appellant was “thrown about injuring his neck.”

⁵ Dr. Macht discussed diagnostic testing of appellant's back obtained in 1991 and 1993.

“[Appellant’s] injuries are not trivial. His November 4, 1978 accident required a nearly two-week hospitalization. Even though no fractures or dislocations have been noted, [appellant] has significant disc disease, especially in the neck region. He also has left carpal tunnel syndrome. Based on medical probability, these conditions are due to the January 8, 1972 and November 4, 1978 accidents. At the time of [appellant’s] 1978 accident he was only 40 years old. The significant changes noted on the studies presented above are more likely accidental than age related considering his age at the time. These injuries have not ‘healed on their own.’ I would not use the term ‘healed’ to describe [appellant’s] current condition.”

By letter dated May 28, 2014, counsel, on behalf of appellant, requested reconsideration of OWCP’s denial of appellant’s claim for disability compensation beginning September 28, 1979. He argued that the reports of Dr. Macht established that appellant had disability beginning September 28, 1979 due to his accepted work injuries.

In an August 25, 2014 decision, OWCP denied appellant’s request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a) noting that the evidence that he submitted was “cumulative and thus substantially similar to evidence or documentation that is already contained in the case file and was previously considered.”

In a January 9, 2015 decision,⁶ the Board set aside OWCP’s August 25, 2014 decision and remanded the case to OWCP for further development. The Board found that the evidence appellant submitted in support of his May 2014 reconsideration request, including reports of Dr. Macht, constituted relevant and pertinent evidence which had not previously been considered by OWCP. Therefore, the submission of this new and relevant evidence required reopening of appellant’s claim for merit review. The Board directed that the case be remanded to OWCP for it to conduct a merit review of appellant’s claim, pursuant to 5 U.S.C. § 8128(a), and to issue an appropriate merit decision regarding his claim for disability compensation.⁷

By decision dated May 14, 2015, OWCP found that appellant did not meet his burden of proof to establish disability on or after September 28, 1979 due to his accepted work injuries. It determined that the medical evidence submitted by him, including the reports of Dr. Macht, did not contain a rationalized medical opinion relating his disability on or after September 28, 1979 to residuals of his January 8, 1972 or November 4, 1978 work injuries.

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 of FECA, that an injury was sustained in the performance of duty as alleged

⁶ Docket No. 14-1939 (issued January 9, 2015).

⁷ In a January 15, 2015 letter, counsel referenced the Board’s January 9, 2015 decision and again requested reconsideration on behalf of appellant. A copy of Dr. Macht’s May 16, 2014 report was resubmitted.

and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁸ The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. 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.⁹ Whether a particular employment injury causes disability for employment and the duration of that disability are medical issues, which must be proved by a preponderance of reliable, probative, and substantial medical evidence.¹⁰

ANALYSIS

OWCP accepted that on November 4, 1978 appellant sustained cervical and low back strains when his postal vehicle was struck from behind by another vehicle.¹¹ Appellant received continuation of pay from November 4 to December 25, 1978 and disability compensation for intermittent periods between December 26, 1978 and August 29, 1979. He returned to limited-duty work on a full-time basis on August 30, 1979 without any wage loss. Appellant resigned from the employing establishment effective September 28, 1979 and claimed that he was entitled to receive disability compensation beginning September 28, 1979 due to his accepted work injuries. In January 9, 1986 and April 8, 2013 decisions, OWCP denied his claim for work-related disability on and after September 28, 1979 because he did not submit sufficient medical evidence to establish such a claim.

In an April 9, 2014 decision, the Board affirmed OWCP's April 8, 2013 decision finding that appellant had not met his burden of proof to establish disability on or after September 28, 1979 due to his accepted work injuries. On January 9, 2015 the Board remanded the case to OWCP to conduct a merit review and consider the new and relevant evidence appellant submitted after OWCP issued its April 8, 2013 decision.

The Board now finds that appellant did not submit sufficient medical evidence to meet his burden of proof to establish that he had disability on or after September 28, 1979 due to his accepted work injuries. Appellant submitted several reports from Dr. Macht, an attending Board-certified general surgeon, but these reports do not contain the requisite rationalized medical evidence to establish his disability claim.¹²

⁸ *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

⁹ *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

¹⁰ *W.D.*, Docket No. 09-658 (issued October 22, 2009).

¹¹ OWCP previously accepted that appellant sustained a lumbar strain on January 8, 1972 due to lifting encyclopedias at work.

¹² Appellant previously submitted reports of Dr. Weir, an attending Board-certified neurologist. In its April 9, 2014 decision, the Board explained that these reports did not establish his claim because they lacked medical rationale showing that he had disability on or after September 28, 1979 due to his accepted work injuries.

In a June 13, 2013 report, Dr. Macht noted that appellant was totally and permanently disabled from work and stated, “It appears that this disability is causally related to the November 4, 1978 accident at work.” He noted that there was no evidence of any other accidents or injuries in appellant’s medical records. Dr. Macht indicated that appellant only had mild-to-moderate arthritis of his wrist and back and stated, “[Appellant’s] arthritic changes due to his aging as documented in his medical records does [*sic*] not seem sufficient to be approximate [*sic*] cause of his disability.”

The Board finds, however, that this report is of limited probative value with respect to appellant’s claim that he had work-related disability on or after September 28, 1979 because it does not contain adequate medical rationale in support of its opinion on causal relationship.¹³ Dr. Macht did not explain how appellant’s January 8, 1972 or November 4, 1978 work injuries, which were only accepted for soft tissue injuries to his neck and low back, would be competent to cause disability on or after September 28, 1979. He indicated that appellant was totally disabled at the time he produced his June 13, 2013 report, but he did not identify any specific period of disability or explain how the limited objective findings he observed on that date caused total disability.

In a June 27, 2013 report, Dr. Macht noted that appellant “continued to suffer residual industrial loss from injuries sustained in the accidents of January 8, 1972 and November 4, 1978.” He indicated that these “residual impairments” were permanent. However, this report is of limited probative value because Dr. Macht did not provide any explanation for this conclusory statement on causal relationship. The Board has found that a report is of limited probative value on the issue of causal relationship if it presents a conclusion on causal relationship without an explanation for that conclusion.¹⁴

In a May 16, 2014 report, Dr. Macht also concluded that appellant was totally and permanently disabled from work due to his November 4, 1978 work injury. He repeated his earlier statement that appellant only had mild-to-moderate arthritis of his wrist and back and that his “arthritic changes due to his aging as documented in his medical records does [*sic*] not seem sufficient to be approximate [*sic*] cause of his disability.” Dr. Macht again failed to provide sufficient discussion, highlighting specific medical evidence including diagnostic testing, to support this argument. Moreover, he contradicted himself later in the same report when he suggested that appellant’s disc disease was due to the November 4, 1978 accident rather than due to aging. OWCP has not accepted any condition other than soft tissue injuries, *i.e.*, neck and lumbar strains, and Dr. Macht did not explain how such a condition could have been caused or aggravated by the January 8, 1972 or November 4, 1978 injury. Dr. Macht also suggested that appellant had left carpal tunnel syndrome which was related to the November 4, 1978 accident, but no such condition has been accepted by OWCP or established by the medical evidence of record. He indicated that appellant’s November 4, 1978 injury was not “trivial” and required

¹³ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

¹⁴ See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

hospitalization in 1978, but such general comments would not serve as a substitute for medical rationale explaining how his accepted injuries caused disability on or after September 28, 1979.

On appeal counsel argues that the May 16, 2014 report of Dr. Macht contained adequate medical rationale to establish that appellant had disability on or after September 28, 1979 due to his accepted work injuries. However, he has not provided sufficient support for his argument that Dr. Macht's report contained such probative weight. Counsel argues that appellant's nonwork-related degenerative disc disease had been "ruled out" as a cause of appellant's continuing residuals and disability. However, Dr. Macht also did not explain why appellant's disability on or after September 28, 1979 was not due to some nonwork-related condition, such as the natural progression of underlying degenerative disc disease. Although he posited that appellant's degenerative disc condition was not responsible for his continuing neck and back problems, he did not provide any specific discussion of the medical evidence, including the findings of diagnostic testing, to support this argument.

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 meet his burden of proof to establish disability on or after September 28, 1979 due to his accepted work injuries.

ORDER

IT IS HEREBY ORDERED THAT the May 14, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 17, 2015
Washington, DC

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

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

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