

FACTUAL HISTORY

On May 29, 2014 appellant, then a 56-year-old food service worker, filed an occupational disease claim (Form CA-2) alleging that on November 20, 2013 he first became aware of his back sprain/strain and first realized that his condition was caused or aggravated by bending down to pick up trays of food from carts to be delivered to patients in the performance of duty. He stated that he twisted his back and felt a sharp pain in his right lower back.

By letter dated June 4, 2014, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested factual and medical evidence. OWCP also requested that the employing establishment submit medical evidence, if he had been treated at its medical facility.

On June 30, 2014 appellant clarified that he had pushed carts and delivered trays of food weighing 15 to 20 pounds to patients from 2011 to 2013. Following his claimed back injury, appellant continued to perform full-duty work. He took time off work as his pain worsened and sought medical treatment on November 27, 2013.

In a July 18, 2014 decision, OWCP denied appellant's occupational disease claim. It found that he had failed to submit any medical evidence containing a diagnosis causally related to the accepted work factors of pushing carts and lifting food trays as a food service worker at the employing establishment.

On July 28, 2014 appellant requested a review of the written record by an OWCP hearing representative.

In reports and treatment notes dated January 22, 2012 to April 23, 2014, Dr. Sandeep Guntur, an employing establishment physician Board-certified in internal and occupational medicine, provided a history that, appellant had sustained, work-related back injuries in 2005 while working as a security guard, on January 22, 2012 when he fell, and on November 20 and 26, 2013. He provided examination findings and diagnosed acute or chronic lumbar strain, sub acute back pain, multilevel degenerative changes of the lumbar spine, and preexisting L4-L5 disc herniation. Dr. Guntur addressed appellant's work capacity, work restrictions, and treatment plan. In a December 6, 2013 treatment note and a January 16, 2014 addendum to this note, he advised that appellant had aggravated his chronic back pain a day or two before his November 27, 2013 office visit. Dr. Guntur stated that the disease pathology shown on an x-ray was consistent with chronic pathology and inconsistent with any acute injury or fall. He concluded that appellant's current job at the employing establishment had at least or had likely aggravated his prior back pain. Dr. Guntur advised that his current acute chronic lumbar strain occurred over a period of time and qualified for an occupational disease claim.

In a February 20, 2015 decision, an OWCP hearing representative affirmed the July 18, 2014 decision. He found that the medical evidence did not sufficiently establish the causal relationship between the accepted employment factors and the diagnoses, supported by medical rationale.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing the essential elements of his 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.³ 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.⁴

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 medical evidence required to establish a causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable 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 employee.⁵ Neither the fact that appellant's condition became apparent during a period of employment nor, his belief that the condition was caused by his employment is sufficient to establish a causal relationship.⁶

ANALYSIS

OWCP accepted that appellant pushed carts containing food trays and lifted these food trays while working as a food service worker at the employing establishment. The Board finds, however, that the medical evidence of record is insufficient to establish that he sustained a back injury caused or aggravated by the work factors accepted by OWCP.

In reports dated January 22, 2012 to April 23, 2014, Dr. Guntur, an employing establishment physician, provided examination findings and diagnosed acute or chronic lumbar strain, sub acute back pain, multilevel degenerative changes of the lumbar spine, and preexisting L4-L5 disc herniation. None of these records, however, provided a rationalized medical opinion stating that appellant's lumbar conditions were causally related to the established employment factors. Dr. Guntur concluded that appellant's current job at the employing establishment had at

² 5 U.S.C. §§ 8101-8193.

³ C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 4 at 351-52.

⁶ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

least, or had likely, aggravated his prior back pain. He opined that appellant's lumbar strain occurred over a period of time and qualified for an occupational disease claim. Medical opinions that are speculative or equivocal in character are of diminished probative value.⁷ The Board thus finds that Dr. Guntur's reports are insufficient to establish appellant's claim.

On appeal, appellant contends that he and his doctor have provided all the information needed to establish his claim. As discussed, the medical evidence did not contain a rationalized medical opinion addressing whether appellant sustained a back injury caused or aggravated by the established employment factors.

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 failed to meet his burden of proof to establish a back injury causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the February 20, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 18, 2015
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

⁷ See *D.D.*, 57 ECAB 734 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004).