

FACTUAL HISTORY

On July 31, 2014 appellant, then a 38-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging an injury from “moving trays, packages, and excessive work to cover the route.” He indicated on the claim form that he first became aware of the injury and related it to his federal employment on April 24, 2013. The reverse side of the claim form noted that appellant had stopped work on April 23, 2013, briefly returned to work on April 30, 2013, stopped work again on May 1, 2013, and had not worked since.

In a statement dated September 16, 2014, appellant indicated that he had two prior employment injuries: a July 6, 2010 motor vehicle accident, accepted for lumbar sprain, assigned OWCP File No. xxxxxx805, and a March 13, 2012 lifting incident that was accepted for lumbosacral sprain, assigned OWCP File No. xxxxxx685. He reported that on April 24, 2013 he was unable to get out of bed with neck and shoulder pain, and was treated at a hospital. Appellant indicated that he tried to return to work on April 30, 2013, but had pain and left work early. According to appellant, he had filed claims for recurrences of disability (Form CA-2a) with respect to the prior claims, but these were denied. Appellant indicated that he believed his current medical condition was related to sorting mail, which required repetitive overhead reaching, loading trays of mail, and delivering mail. He reported that he had been working approximately nine years, and sorted mail two hours per day.

With respect to evidence in the prior claims, the record indicated that appellant was treated on April 24, 2013 by Dr. Pierre Maldjian, a Board-certified radiologist, who reported x-rays of that date showed straightening of the normal cervical lordosis with no fracture or subluxation. The history indicated that appellant reported severe back and neck pain, with a prior motor vehicle accident in 2010 producing back pain since that time.

In the present case, appellant submitted a March 21, 2014 note from Dr. Athena Lolis, a Board-certified neurologist. Dr. Lolis reported that appellant was under her care for management of severe neck and back pain. She indicated that appellant remained disabled. By letter dated August 19, 2014, OWCP requested that appellant submit additional evidence to support his claim for compensation.

On October 7, 2014 appellant submitted additional evidence. The record contains a May 6, 2013 report from Dr. Felix Almentero, a Board-certified physiatrist, with a history of neck pain, with numbness and tingling in the fingers, for two weeks. Dr. Almentero provided results on examination and diagnosed mild bilateral median nerve neuropathy at the wrist, and mild bilateral sensory peripheral neuropathy in the upper extremities. A magnetic resonance imaging (MRI) scan report dated May 30, 2013 from Dr. Robert Traflet, a Board-certified radiologist, diagnosed C5-7 disc herniation and C4-5 bulging annulus, cervical lordosis straightening and spondylosis. A February 17, 2014 MRI scan report from Dr. Karen Weingarten, a Board-certified radiologist, showed no significant change from the prior MRI scan.

By decision dated October 9, 2014, OWCP denied appellant's claim for compensation. It found the evidence of record did not establish "the injury or event(s) occurred as [appellant] described" and that the medical evidence was insufficient to establish the claim.³

On October 21, 2014 appellant, through counsel, requested a hearing before an OWCP hearing representative. He submitted a November 12, 2014 report from Dr. Eddie Rosa, a Board-certified internist. Dr. Rosa reported that appellant had neck pain due to cervical disc herniations, hand pain and numbness due to carpal tunnel syndrome, and low back pain due to a herniated lumbar disc. He wrote that there were two types of employment injuries that correspond to appellant's current chronic pain symptoms. One was traumatic injuries, and appellant had a motor vehicle accident a few years prior that caused neck and back pain. The other type was repetitive activity, such as twisting, reaching, and carrying a mailbag. Dr. Rosa opined that appellant was "a park and loop route carrier; thereby, all above actions caused his underlying carpal tunnel syndrome and exacerbated his pain symptoms (neck, hands, upper and lower back) *via* constant daily injury."

A hearing was held on May 18, 2015. At the hearing counsel noted that appellant's prior claims involved the back, while the current claim was with respect to the neck and right arm.

By decision dated July 29, 2015, the hearing representative found that appellant had not established his claim for compensation. She also found that there was no dispute of record that appellant performed the identified duties, but the medical evidence of record was insufficient to establish the claim.

Appellant, through counsel, requested reconsideration on September 21, 2015. Counsel submitted a September 19, 2015 report from Dr. Rosa, who noted that appellant had a May 30, 2013 MRI scan showing cervical herniated discs. He reported that these findings explained appellant's symptoms. Dr. Rosa opined that the "herniated discs were caused by chronic repetitive microtrauma due to his work, like reaching and lifting above his head, landing, sorting out mail which entails consistent neck flexion and extension-type movements." He referred to a medical journal article reporting cervical herniated discs were seldom the result of single traumatic events. Dr. Rosa indicated that repetitive movements can cause tears in the annulus (fibrous lining of the disc) which in turn leads to bulging discs and subsequently disc herniation. According to another journal article, carrying a mailbag can exert pressure on one side causing weakening of the spinal discs and can lead to herniation. Dr. Rosa concluded that appellant's current weakness, numbness, and symptomology in his neck, shoulders, and arms were caused by his cervical disc due to long-term employment as a mail carrier.

By decision dated February 18, 2016, OWCP denied modification of the July 29, 2015 decision. It noted that appellant had filed recurrence of disability claims and his "statements do

³ The decision found the only evidence submitted in response to the August 19, 2014 letter was an August 4, 2014 note with an illegible signature.

not exactly establish that the events occurred as you describe.”⁴ In addition, OWCP found that the medical evidence of record was insufficient to establish the claim for compensation.

LEGAL PRECEDENT

A claimant seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.⁶

To establish that an injury was sustained in the performance of duty, a claimant must submit: (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 diagnosed condition is causally related to the employment factors identified by the claimant.⁷

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁸ 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 must be based on a complete factual and medical background of the claimant.⁹ Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant’s specific employment factors.¹⁰

ANALYSIS

In the present case, appellant has alleged that his employment duties as a mail carrier caused a cervical or right arm injury. He identified work duties as a mail carrier, including moving trays, casing mail, and carrying a mailbag. The February 18, 2016 OWCP decision found that appellant did not establish the factual element of the claim, referring to filing of recurrences for prior claims before filing the current claim, but the current claim clearly identified job duties appellant performed as a mail carrier. As noted by the hearing

⁴ OWCP found that appellant had reported on April 23, 2013 having neck pain since the 2010 motor vehicle accident.

⁵ *Supra* note 2.

⁶ 20 C.F.R. § 10.115(e), (f) (2005); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁷ *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁸ *See Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁰ *Id.*

representative in the July 29, 2015 decision, the record does not provide evidence of dispute that appellant performed the identified work duties.¹¹ The Board therefore finds that appellant has established factors of his federal employment.¹² The next issue is whether there was sufficient medical evidence to establish a diagnosed condition as causally related to the identified work activity.

A rationalized medical opinion, as noted above, must be based on a complete factual and medical background. The medical history in this case includes a motor vehicle accident on July 6, 2010, and a lifting incident on March 12, 2012. With respect to the neck, appellant was treated on April 24, 2013 for severe neck and back pain, and did not return to work other than a brief return on April 30, 2013. A May 30, 2013 MRI scan report diagnosed C5-7 disc herniation and C4-5 bulging annulus, cervical lordosis straightening, and spondylosis.

Appellant submitted a November 12, 2014 report from Dr. Rosa, who referred to a number of diagnoses and symptoms, including cervical disc herniations, carpal tunnel syndrome, and herniated lumbar discs. Dr. Rosa noted that appellant had an accident a few years earlier when he was hit by a vehicle on left side, causing neck and lower back pain from cervical and lumbosacral disc herniations. He also noted that appellant engaged in repetitive motion activities such as repeated twisting, stretching to reach mail above head, reaching for mail, in the back of the delivery vehicle, mail handling with hands, carrying a full mailbag.

In the September 19, 2015 report, Dr. Rosa discussed the diagnosis of cervical herniated discs shown in the May 30, 2013 MRI scan. He opined the herniated discs were caused by repetitive microtrauma due to his work, such as reaching and lifting above his head, landing, sorting out mail which entails consistent neck flexion and extension-type movements. Dr. Rosa indicated that repetitive movements at work caused appellant's cervical herniated discs, as such activity can cause tears in the lining of the disc and lead to disc herniations, and he also referred to a medical journal regarding the carrying of a mailbag.

The Board finds that Dr. Rosa provided probative, uncontroverted medical evidence in support of appellant's claim. Proceedings under FECA are not adversarial in nature and while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.¹³ The uncontroverted medical evidence from Dr. Rosa is sufficient to require further development of the medical evidence.¹⁴ On return of the case record, OWCP should further develop the medical evidence to determine whether appellant has sustained a diagnosed spine or arm condition causally related to his federal employment. After such development as is deemed necessary, OWCP should issue a *de novo* decision.

¹¹ An employee's statement that an injury occurrence at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence. *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

¹² *See supra* note 7.

¹³ *Phillip L. Barnes*, 55 ECAB 426 (2004).

¹⁴ *See W.H.*, Docket No. 16-1047 (issued October 25, 2016); *C.V.*, Docket No. 14-1940 (issued May 26, 2015).

CONCLUSION

The Board finds that appellant has established factors of his federal employment. However, the case is not in posture for decision regarding whether his right arm condition is causally related to the implicated employment factors. The case is remanded to OWCP for further development.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 18, 2016 is modified to reflect that appellant has established factors of his federal employment. The decision is affirmed in part as modified. The decision is set aside in part and the case remanded for further action consistent with this decision of the Board regarding whether appellant's right arm condition is employment related.

Issued: December 22, 2016
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