

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

L.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Tustin, CA, Employer**

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**Docket No. 16-0172
Issued: July 13, 2016**

Appearances:

*Alan J. Shapiro, Esq.,¹ for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On November 9, 2015 appellant, through counsel, filed a timely appeal from a September 30, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

¹ Please take notice that in all cases in which a representative has been authorized by the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless and until approved by the Board. 20 C.F.R. 501.9(e). No contract for a stipulated fee or on a contingent fee can be charged for representation before the Board at any time and will not be approved. *Id.* In *Re Edward Snider*, Docket No. 88-1091 (issued August 30, 1988). Collecting a fee without the approval of the Board may constitute a misdemeanor, subject to fine or imprisonment for up to a year or both for the representative. 18 U.S.C. § 292. Demands for payment of fees to a representative prior to approval by the Board may be reported to the Clerk of the Appellate Boards.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a low back condition on March 22, 2014 causally related to the accepted employment incident.

FACTUAL HISTORY

On March 24, 2014 appellant, then a 50-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that, while delivering mail on March 22, 2014, he felt low back pain, which radiated down both of his legs. He explained that the pain worsened until he could no longer walk. Appellant stopped work on the date of injury and returned to work on March 27, 2014.³

In support of his current claim, appellant submitted a March 22, 2014 release for activity note from Western Medical Center, which placed him on temporary total disability status through March 27, 2014 and a March 25, 2014 duty status report from Performance Medical Health, which placed him on temporary total disability status through June 1, 2014.

In an April 4, 2014 letter, OWCP advised appellant of the deficiencies in his claim and requested additional factual and medical evidence, including a detailed narrative report from his physician which included a history of the injury and a medical explanation with objective evidence of how the reported work incident caused or aggravated the claimed back condition. OWCP also noted appellant's case history under File No. xxxxxx582 and requested additional factual information. Appellant was afforded 30 days to submit the requested evidence.

In an April 24, 2014 statement, appellant indicated that he had been delivering mail for approximately 1 hour and 15 minutes on March 22, 2014 when he felt a pop and severe pain in his upper and lower back and down both of his legs. He was transported to the emergency room. Appellant also discussed the job offer made to him by the employing establishment. OWCP received: a copy of the March 21, 2014 job offer, a March 22, 2014 accident notification report, and copies of March 25 and 26, 2014 magnetic resonance imaging (MRI) scans of the lumbar spine.

In a March 25, 2014 report, Dr. Hosea Brown, III, an internist, noted that appellant had a previously accepted claim pertinent to his low back for which surgical intervention had been recommended. He noted the history of the March 22, 2014 injury, provided examination findings, reviewed diagnostic tests, and diagnosed lumbosacral radiculopathy (permanent aggravation), lumbosacral spine degenerative disc disease, multiple levels (permanent aggravation), and lumbar intervertebral disc syndrome with myelopathy. Dr. Brown opined that appellant's medical injuries to his low back occurred as a direct result of the March 22, 2014 incident. He explained that appellant was bending down to place mail into the appropriate slot

³ The record reflects that under OWCP File No. xxxxxx582, appellant has an August 17, 2013 occupational disease claim accepted for permanent aggravation of a degenerative disc condition and lumbosacral disc bulge with right leg radiculopathy. On January 6, 2014 the employing establishment offered him a full-time modified position, which he accepted under protest. By decision dated March 26, 2014, OWCP terminated appellant's wage-loss compensation benefits for that claim. (OWCP File No. xxxxxx582)

and felt the acute onset of severe paroxysmal low back pain with radiation of his pain into the posterior aspects of both legs associated with sudden bilateral lower extremity weakness. Dr. Brown explained that the biomechanical maneuver associated with bending over and placing the mail into the slot precipitated an acute lumbosacral radiculopathy and permanently aggravated the lumbosacral spine degenerative disease as well as the intervertebral lumbar disc herniations that had previously been noted at L4-5 and L5-S1 by prior MRI scan studies. He also noted that the fact that appellant experienced acute exacerbation of bilateral lower extremity weakness indicated that he was experiencing acute neurological compromise due to the decompression and irritation of the spinal nerves as an exit from the lumbar spine at those levels. Appellant was instructed to remain off work until June 1, 2014.

In an April 8, 2014 report, Dr. Brown continued appellant off work until June 1, 2014 due to the conditions of diagnosed lumbosacral radiculopathy (permanent aggravation), lumbosacral spine degenerative disc disease, multiple levels (permanent aggravation), and lumbar intervertebral disc syndrome with myelopathy. He noted that appellant had been placed on temporary total disability status since March 22, 2014 due to his severe low back condition. Dr. Brown also indicated that a March 26, 2014 MRI scan study revealed multilevel disc bulging and herniations throughout the entire lumbar spine that were most significant at L4-5 and L5-S1 in addition to T11 and T12 with central spinal canal stenosis and neuroforaminal narrowing. Duty status reports dated March 25 and April 8, 2014 were also provided.

In an April 22, 2014 report, Dr. Brown provided a detailed description of appellant's job duties and noted the history of the March 22, 2014 injury. He indicated that on March 21, 2014 appellant had received a new job offer which he accepted under protest, working eight hours a day with no restrictions. Appellant was to perform two hours of casing, two hours of business, and four hours of park-and-loop. Dr. Brown indicated that appellant attempted to deliver his route on March 22, 2014 and his back pain and discomfort steadily increased as he was loading his vehicle. As appellant bent down to place mail into a gang box, he experienced a popping sensation with severe pain, numbness, and tingling in his low back with radiation into both legs, and he could not walk. He went by ambulance to the emergency room. Dr. Brown provided examination findings and noted his review of diagnostic studies and medical records. He noted that appellant has a previously accepted claim with a date of injury of June 17, 2013 for the conditions of degeneration of lumbar or lumbosacral intervertebral discs and displacement of lumbar intervertebral discs without myelopathy, and that he had previously been working six hours daily with restrictions in that claim when he was offered an inappropriate job offer of modified assignment on March 21, 2014.

Dr. Brown found that the work activities were outside of appellant's previous restrictions and he was injured in the performance of duty on March 22, 2014. He diagnosed lumbosacral radiculopathy (permanent aggravation), lumbosacral spine degenerative disc disease, multiple levels (permanent aggravation), and lumbar intervertebral disc syndrome with myelopathy and opined that appellant's injuries to his low back occurred as a direct result of the March 22, 2014 incident. Dr. Brown explained that appellant was bending down to place mail into the appropriate slot when the acute onset of severe paroxysmal low back pain with radiation occurred. He further explained that the biomechanical maneuver associated with bending over and placing the mail into the slot precipitated an acute lumbosacral radiculopathy and permanently aggravated appellant's lumbosacral spine degenerative disc disease as well as the

intervertebral lumbar disc herniations that had been previously noted at L4-5 and L5-S1 by prior MRI scan studies and previously accepted in his prior claim. Also, the fact that appellant experienced an acute exacerbation of bilateral lower extremity weakness indicated that he had progressive neurological compromise due to the decompression and irritation of the spinal nerves as they exited from the lumbar spine at those levels. Dr. Brown opined that it was medically reasonable to infer a relationship of reasonable medical probability between appellant's extensive medical injuries to his low back and his work duties on March 22, 2014. He also opined that appellant required urgent surgical intervention and remained temporarily totally disabled due to severe low back instability. Duty status reports of April 22, May 12, and June 9, 2014 were provided.

By decision dated July 2, 2014, OWCP denied appellant's claim, finding that the medical evidence of record failed to establish that his present back condition was causally related to the accepted work incident of March 22, 2014.⁴

On July 8, 2014 appellant, through his counsel, requested a telephonic hearing before an OWCP hearing representative, which was held February 27, 2015. He testified that under a prior work-related claim, an OWCP physician released him to work eight hours a day on March 22, 2014 and that he began work on March 22, 2014. Appellant described his work duties of March 22, 2014 as well as his increased back symptoms, which had cumulated to the point he could not continue to work.

OWCP received medical records and treatment notes from Sunshine Medical Center and Downey Medical Center and from Dr. Terence Mayers, a Board-certified surgeon, intermittently from March 26, 2014 to January 21, 2015, diagnostic test results, and a November 10, 2014 operative report.

In a July 28, 2014 report, Dr. Brown opined that the facts of this case clearly indicated that appellant sustained a new acute traumatic injury to his low back as a direct result of the performance of his duties on March 22, 2014. He indicated that appellant was offered an inappropriate modified-job assignment on March 21, 2014 as the restrictions were outside of the medical restrictions he placed on appellant. Dr. Brown advised that his medical rationale was set forth in his April 22, 2014 report wherein he advised that appellant was in the performance of his work duties and experienced severe paroxysmal low back pain with radiation into the posterior aspects of both legs and associated with sudden bilateral lower extremity weakness while bending down to place mail into the appropriate slot. He noted excerpts from his April 22, 2014 report wherein he explained that "the biomechanical maneuver associated with bending over and placing the mail into the slot clearly precipitated an acute lumbosacral radiculopathy and permanently aggravated appellant's lumbosacral spine degenerative disc disease as well as the intervertebral lumbar disc herniations that had previously been noted at L4-5 and L5-S1 by prior MRI scan studies and previously accepted by his prior claim. The fact that appellant experienced an acute exacerbation of bilateral lower extremity weakness indicated that he was experiencing progressive neurological compromise due to the decompression and irritation of the spinal nerves

⁴ OWCP noted that given the severity of appellant's preexisting back condition and the personnel issues that arose on March 21, 2014 under claim number xxxxx582, the evidence of file was insufficient to establish that he experienced a new injury on March 22, 2014.

as they exited from the lumbar spine at those levels. Therefore, in view of the aforementioned medical rationale, it is medically reasonable to infer a relationship of reasonable medical probability between appellant's extensive medical injuries to his low back and the performance of the duties of his occupation as a city letter carrier on March 22, 2014."

Dr. Brown opined that the diagnosed lumbosacral radiculopathy (permanent aggravation), lumbosacral spine degenerative disc disease, multiple levels (permanent aggravation), and lumbar intervertebral disc syndrome with myelopathy conditions occurred as a direct result of the March 22, 2014 incident. He further advised that appellant continued to experience progressive neurological compromise of lumbar radiculopathy, as well as cauda equine syndrome with a new acute episode of focal and urinary incontinence on July 26, 2014 as a direct result of his work-related injury.

By decision dated May 7, 2015, an OWCP hearing representative affirmed the July 2, 2014 decision. She found that there was no rationalized medical evidence of record to establish that appellant sustained an injury on March 22, 2014 as alleged.

On July 8, 2015 appellant requested reconsideration. Copies of MRI scan reports of the lumbar spine dated June 19, 2013, March 26, 2014, and July 8, 2015 were also received.

In a June 30, 2015 report, Dr. Brown opined that the conditions accepted under File No. xxxxxx582, degeneration of lumbar or lumbosacral intervertebral disc and displacement of lumbar intervertebral disc without myelopathy, were permanently aggravated, and progressed to a severe lumbosacral radiculopathy as well as a lumbar intervertebral disc syndrome with myelopathy as a direct result of the March 22, 2014 incident. He indicated that on March 22, 2014 appellant was performing business mail delivery when, after bending down to place mail into an appropriate slot at a business site, he developed acute paroxysmal onset of severe low back pain with radiation of the pain into the posterior aspects of both legs with associated inability to ambulate with sudden paralysis due to severe lower extremity weakness. Dr. Brown advised that the biomechanical maneuver of bending down to place mail into the appropriate slot caused an acute permanent aggravation of appellant's previously accepted medical conditions with regard to degeneration of lumbar or lumbosacral disc as well as displacement of the lumbar intervertebral disc, which were clearly documented on the MRI scans. He noted that the June 19, 2013 MRI scan indicated that appellant had lumbar disc herniations at L5-S1, which caused borderline central spinal stenosis, and the March 26, 2014 MRI scan study, performed four days after the March 22, 2014 incident, revealed evidence of progressive lumbar disc herniation at both of those levels which he noted. Dr. Brown indicated that those pathological changes with progressive intervertebral disc herniation were clearly documented and consistent with appellant's symptoms of sudden weakness and paralysis upon bending down to place mail into the appropriate slots on March 22, 2014. He advised that from the medical facts, as documented on appellant's MRI scan studies and physical examinations, appellant experienced an acute permanent aggravation of lumbosacral radiculopathy as well as an acute permanent aggravation of lumbosacral spine degenerative disc disease and lumbar intervertebral disc syndrome as a direct result of the March 22, 2013 incident. Dr. Brown stated that appellant's symptomatology after the March 22, 2014 incident was so severe that he had to be transported to the hospital as he was unable to ambulate as a result of his severe bilateral lower extremity weakness.

Dr. Brown further indicated that appellant's physical examination findings worsened subsequent to the March 22, 2014 incident with clear documentation of increasing weakness of his lower extremities as well as inability to ambulate without the assistance of crutches. Appellant was also noted to have severe intractable low back pain as a direct result of the progressive lumbar disc herniation causing the severe lumbosacral radiculopathy. He further indicated that the March 22, 2014 incident permanently aggravated appellant's lumbar spine condition which necessitated surgical intervention on November 10, 2014, and as a result of the March 22, 2014 work incident, appellant suffered lumbosacral radiculopathy (permanent aggravation), lumbosacral spine degenerative disc disease, multiple levels (permanent aggravation), lumbar intervertebral disc syndrome with myelopathy, and cauda equine syndrome.

By decision dated September 30, 2015, OWCP denied modification of its prior decision. It cited an August 25, 2014 medical report from a second opinion physician in appellant's other claim, and found that he had not established that his current back condition was not due to a preexisting back condition, or his other accepted injury.⁵

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 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.⁶ 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.⁷

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered conjunctively. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident that is alleged to have occurred.⁸ An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁹ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.¹⁰

⁵ The cited second opinion report pertaining to appellant's other claim does not appear in this record.

⁶ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ See *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁸ *Gary J. Watling*, 52 ECAB 278 (2001).

⁹ *S.N.*, Docket No. 12-1222 (issued August 23, 2013); *Tia L. Love*, 40 ECAB 586, 590 (1989).

¹⁰ *Deborah L. Beatty*, 54 ECAB 340 (2003).

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.¹¹ Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹²

ANALYSIS

OWCP accepted that the March 22, 2014 incident occurred as alleged, but denied the claim as the medical evidence of record did not establish causal relationship between the March 22, 2014 incident and the claimed back condition.

Appellant has a prior claim under File No. xxxxxx582 for permanent aggravation of a degenerative disc condition and lumbosacral disc bulge with right leg radiculopathy and was given a new modified-job assignment, which he started on March 22, 2014.

In support of his claim, appellant submitted a series of reports from Dr. Brown who placed appellant off work and opined that the work injury of March 22, 2014 caused lumbosacral radiculopathy (permanent aggravation), lumbosacral spine degenerative disc disease, multiple levels (permanent aggravation), lumbar intervertebral disc syndrome with myelopathy, and eventually cauda equine syndrome. Dr. Brown noted that the conditions accepted under File No. xxxxxx582, degeneration of lumbar or lumbosacral intervertebral disc and displacement of lumbar intervertebral disc without myelopathy, were permanently aggravated and progressed to a severe lumbosacral radiculopathy as well as a lumbar intervertebral disc syndrome with myelopathy as a direct result of the March 22, 2014 incident. He indicated a history of injury in all of his reports. Dr. Brown noted that, on March 22, 2014 appellant was performing business mail delivery when, after bending down to place mail into an appropriate slot at a business site, he developed the acute paroxysmal onset of severe low back pain with radiation of the pain into the posterior aspects of both legs with associated inability to ambulate with sudden paralysis due to severe lower extremity weakness. He also advised in all his reports that the biomechanical maneuver of bending down to place mail into the appropriate slot caused an acute permanent aggravation of appellant's previously accepted medical conditions with regards to degeneration of lumbar or lumbosacral disc as well as displacement of the lumbar intervertebral disc, which were clearly documented on the MRI scan studies. In his June 30, 2015 report, Dr. Brown specifically noted that the June 19, 2013 MRI scan study indicated that appellant had lumbar disc herniations at L5-S1, which caused borderline central spinal stenosis, and the March 26, 2014 MRI scan study, performed four days after the March 22, 2014 incident, revealed evidence of

¹¹ *Solomon Polen*, 51 ECAB 341 (2000).

¹² *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

progressive lumbar disc herniation at both of those levels which he noted. He indicated that those pathological changes with progressive intervertebral disc herniation were clearly documented and consistent with appellant's symptoms of sudden weakness and paralysis upon bending down to place mail into the appropriate slots on March 22, 2014. Dr. Brown advised that, from the medical facts, as documented on appellant's MRI scan studies and physical examinations, that appellant experienced an acute permanent aggravation of lumbosacral radiculopathy as well as an acute permanent aggravation of lumbosacral spine degenerative disc disease and lumbar intervertebral disc syndrome as a direct result of the March 22, 2014 incident. He stated that appellant's symptomatology after the March 22, 2014 incident was so severe that he had to be transported to the hospital as he was unable to ambulate as result of his severe bilateral lower extremity weakness. Dr. Brown also indicated that appellant's physical examination findings worsened subsequent to the March 22, 2014 incident with clear documentation of increasing weakness of his lower extremities as well as inability to ambulate without the assistance of crutches. Appellant was also noted to have severe intractable low back pain as a direct result of the progressive lumbar disc herniation causing the severe lumbosacral radiculopathy.

The Board finds that Dr. Brown's reports support a causal relationship between appellant's traumatic injury of March 22, 2014 and his current back conditions. These reports from Dr. Brown contain a history of injury, diagnosis, and an opinion that appellant's bending to place mail in slots with resulting symptomatology precipitated an acute lumbosacral radiculopathy and permanently aggravated appellant's lumbosacral spine degenerative disc disease as well as the intervertebral lumbar disc herniations previously accepted in his prior claim. Dr. Brown explained that the fact that appellant experienced an acute exacerbation of bilateral lower extremity weakness indicated that he was experiencing progressive neurological compromise due to the decompression and irritation of the spinal nerves as they exited from the lumbar spine at those levels.

The Board finds that while these reports are not sufficient to meet appellant's burden of proof as they are not sufficiently rationalized, they do raise an uncontested inference of causal relationship between his current back condition and the March 22, 2014 incident, sufficient to require further development of his claim. Proceedings under FECA are not adversary in nature nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.¹³ In view of the noted medical evidence, OWCP should have referred the matter to an appropriate medical specialist to determine whether appellant sustained a compensable back injury on March 22, 2014.¹⁴ The Board also notes while OWCP noted a report from a second opinion physician who performed an examination for issues relevant to appellant's other accepted claim, this report is not of record and OWCP did not find that it constituted the weight of the evidence in this case.

¹³ See *J.B.*, Docket No. 08-2009 (issued April 7, 2009); see also *Jimmy A. Hammons*, 51 ECAB 219 (1999); *Marco A. Padilla*, 51 ECAB 202 (1999); *John W. Butler*, 39 ECAB 852 (1988).

¹⁴ *C.V.*, Docket No. 14-1940 (issued May 26, 2015); *C.B.*, Docket No. 13-1091 (issued September 16, 2013); *W.B.*, Docket No. 12-1896 (issued March 26, 2013); *John J. Carbone*, 41 ECAB 354, 358-60 (1989).

On remand, OWCP should prepare a statement of accepted facts and refer appellant to a second opinion physician for an opinion as to whether he sustained a low back condition causally related to the accepted March 22, 2014 employment incident.

The case will be remanded for further adjudication of appellant's claim for a traumatic injury. Following such further development of the medical evidence as OWCP deems necessary, it should issue *de novo* decision on his traumatic injury claim.

CONCLUSION

The Board finds that this case is not in posture for decision as further development of the medical evidence is required.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 30, 2015 is set aside and the case remanded for proceedings consistent with this decision of the Board.

Issued: July 13, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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