

FACTUAL HISTORY

On October 15, 2014 appellant, then a 53-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained injuries as a result of his federal employment. On the claim form he reported that he had two previous disc fusions and that he had come to believe they were related to his job, as he had a substantial increase in pain over the past three to four months from performing his regular duties. Appellant identified standing, walking, driving, twisting, bending, reaching, and lifting as causing pain in his neck and lower back. He indicated that he first realized his condition was employment related on March 15, 2014, and noted that he had previously filed a traumatic injury claim (Form CA-1) for injury on March 15, 2014.³ Appellant stopped work on March 15, 2014.

In a narrative statement received on October 16, 2014, appellant reported working as a letter carrier for almost 30 years and asserted that he had been treated for numerous muscle strains in his neck, shoulders, and back, that in retrospect he should have filed claims with OWCP. He related that on March 15, 2014 he felt increasing pain in his neck and back, radiating into his right arm and right leg. According to appellant, he was forced to return to work on April 3, 2014 to modified duty, but was continually pushed by the employing establishment to perform duties that caused additional pain. Appellant noted an injury to his neck on June 7, 2014 when he was struck in the head with a small parcel. He described his job duties as sorting mail with reaching above shoulders, lifting and unloading trays, along with delivery duties of walking and carrying mail.

The employing establishment controverted the claim in a letter dated October 2, 2014. It was noted that appellant had already filed a traumatic injury claim for March 15, 2014, and the current claim was based on preexisting conditions.

As to medical evidence, appellant submitted a Form CA-20 report dated October 6, 2014 from Dr. Curt Freudenberger, a Board-certified orthopedic surgeon. Dr. Freudenberger diagnosed postoperative neck pain and checked a box marked “yes” that the condition was employment related.

By letter dated November 4, 2014, OWCP requested that appellant submit additional evidence in support of his claim. It afforded him 30 days to submit further medical evidence.

On November 7, 2014 OWCP received a September 22, 2014 report from Dr. Freudenberger, who reported that appellant was injured on March 15, 2014 and referred to an April 2, 2014 report.⁴ Dr. Freudenberger reported that appellant had undergone a C6-7 laminoforaminotomy due to his injury.⁵

³ OWCP denied the traumatic injury claim in decisions dated August 14, 2014 and May 22, 2015, OWCP file number xxxxxx481. The Board affirmed the May 22, 2015 decision on September 8, 2015. Docket No. 15-1369 (issued September 8, 2015).

⁴ The traumatic injury claim contains an April 2, 2014 report from Dr. Freudenberger, noting that on March 15, 2014 appellant was working on a task that required a lot of twisting, and appellant reported right upper extremity pain. Dr. Freudenberger diagnosed cervical spondylosis, cervical stenosis, cervical radiculopathy, and lumbar spondylosis.

⁵ The surgery took place on July 29, 2014.

The record contains a surgery report dated November 22, 2005 from Dr. Robert Hash, a Board-certified neurosurgeon, indicating that appellant underwent a C5-6 anterior discectomy and fusion. In a report dated November 16, 2011, Dr. John Johnson, a Board-certified neurosurgeon, indicated appellant underwent a C6-7 discectomy and fusion on that date.

By decision dated December 8, 2014, OWCP denied the claim for compensation. It found the medical evidence of record insufficient to establish a diagnosed medical condition causally related to the identified employment factors.

On June 4, 2015 appellant, through counsel, requested reconsideration. Counsel argued that sufficient medical evidence had been submitted in support of the claim. Appellant submitted reports dated March 16, 2015, and April 6, 2015 from Dr. Alan Elliott, a Board-certified internist. Dr. Elliott provided results on examination and diagnosed myalgia, myositis, fibromyalgia, polyarthropathy, fatigue, and degenerative disc disease, but did not address the cause of these conditions.

By decision dated July 9, 2015, OWCP reviewed the case on its merits and denied modification. It again found that the medical evidence of record was insufficient to establish the claim for compensation.

Appellant, through counsel, requested reconsideration by letter dated December 2, 2015. He submitted a November 25, 2015 report from Dr. William Somers, a Board-certified orthopedic surgeon. Dr. Somers noted that appellant had been working at the employing establishment for nearly 30 years, and approximately 15 to 20 years ago began to experience neck pain. He reviewed appellant's medical history, noting the previous surgeries performed. Dr. Somers provided results on examination and diagnosed multi-level cervical degenerative disc disease "accelerated/aggravated approximately 2011," status post surgeries in 2005, 2011, and 2014, suspected nonunion C6-7, and mild lumbar degenerative disc disease. He wrote that the "primary scenario" was aggravation of preexisting cervical disc disease, asserting that appellant's condition was "continually aggravated by the heavy physical demand work required of a city letter carrier."

By decision dated January 4, 2016, OWCP reviewed the merits of the claim and denied modification. It found that the medical evidence from Dr. Somers was insufficient to establish the claim for compensation.

In a letter dated February 8, 2016, appellant, through counsel, again requested reconsideration. Appellant submitted a February 6, 2016 e-mail from Dr. Somers, who asserted that he had provided medical rationale in his prior report. Dr. Somers wrote that appellant "clearly got better, not well but better, when the physical demands were decreased while in a managerial position. It is difficult to separate natural progression from job aggravation, but in this case, the type of work he was doing clearly aggravated his problem." He noted that there is a 10 to 15 percent increased risk for degenerative disc disease in a segment adjacent to a fusion and with preexisting change, related to increased stress on the remaining motion segments. Dr. Somers also noted that appellant has some evidence for C4 problems above the fusions and some evidence on studies that there is a pseudarthrosis at the C6 level. He opined, "All of this could be explained by natural progression, but you still have the aggravation with his work activity and decreased symptoms when his work load was decreased documenting the work aggravation. By the way, adjacent disc degeneration would fall under acceleration. Although

implied in my report, adjacent segment degeneration was not explicitly mentioned as a cause for acceleration.”

By decision dated February 19, 2016, OWCP reviewed the merits of the claim and denied modification. It found that the medical evidence of record was not of sufficient probative value to establish the claim for compensation. OWCP also found that Dr. Somers’ definition of aggravation differed from established precedent.

LEGAL PRECEDENT

A claimant seeking benefits under FECA has the burden of establishing 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) an 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 sound 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 the duties performed in his federal employment nearly 30 years as a mail carrier contributed to his neck and back conditions. He

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.*

discussed his job duties and activities that included standing, walking, driving, twisting, bending, reaching, and lifting. OWCP does not contest that appellant performed the identified activities.

The issue is whether appellant has submitted probative medical evidence that meets his burden of proof to establish the claim for compensation. In this regard the Board notes that Dr. Freudenberger had diagnosed postoperative neck pain and checked a box marked “yes” that it was causally related to employment. The checking of a box marked “yes” in a form report, without additional explanation or rationale, is insufficient to establish causal relationship.¹¹ As to the reports of Dr. Elliott, he does not provide an opinion on causal relationship with employment. Medical evidence that 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

Dr. Somers has submitted a November 25, 2015 report and a supplementary letter dated February 6, 2016. In his November 25, 2015 report, he did provide a medical history that noted the prior surgeries that included a November 22, 2005 C5-6 fusion, a November 16, 2011 C6-7 fusion, and a July 29, 2014 C6-7 laminoforaminotomy. However, as to the relevant factual history, Dr. Somers does not discuss the specific job duties that appellant has identified or otherwise demonstrate an understanding of the nature and extent of the repetitive activity identified by appellant.

In addition to lacking a complete factual background, Dr. Somers does not provide a medical opinion on causal relationship supported by sound medical rationale. He opined that appellant’s cervical degenerative disc disease was aggravated by his federal employment. OWCP notes in the February 19, 2016 decision that an opinion with respect to aggravation must differentiate between the effects of the work-related injury or disease and the preexisting condition.¹³ The Board has held that the physician must clearly explain the nature and extent of any aggravation, including whether temporary or permanent.¹⁴ The deficiency in the opinion from Dr. Somers is not a failure to understand the definition of aggravation, but a failure to clearly explain how the identified work activity aggravated appellant’s cervical condition. There is no explanation of the pathophysiologic mechanism as to how appellant’s condition was aggravated by employment activity.¹⁵ The only rationale offered by Dr. Somers is a reference to symptoms decreasing when appellant’s work load decreased. This does not constitute a rationalized medical opinion on causal relationship.¹⁶

On appeal, appellant’s counsel argues the reports from Dr. Somers are sufficient to meet appellant’s burden of proof. For the above reasons, the Board finds that appellant has not met his burden of proof in this case.

¹¹ See *Barbara J. Williams*, 40 ECAB 649, 656 (1989).

¹² *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(e) (January 2013).

¹⁴ See *R.H.*, Docket No. 15-1785 (issued January 29, 2016).

¹⁵ See *William J. Shall*, Docket No. 03-1973 (issued December 8, 2003).

¹⁶ See *D.S.*, Docket No. 15-1257 (issued November 24, 2015) (opinion noting that symptoms decreased when claimant was not at work did not establish causal relationship between work factors and a diagnosed condition).

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 an injury causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 19 and January 4, 2016 are affirmed.

Issued: July 20, 2016
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