

FACTUAL HISTORY

On October 30, 2015 appellant, then a 52-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 28, 2015 he injured his back in the performance of duty. On the claim form he indicated that while loading his cart he stood up and felt a sharp back pain. Appellant stopped work on October 28, 2015.

Appellant submitted a duty status report (Form CA-17) dated October 28, 2015 from Dr. Neal L. Erkes, an internist. The report is difficult to read, but contains a diagnosis of a lumbosacral injury and work restrictions.

By letter dated November 8, 2015, OWCP advised appellant that additional medical evidence was necessary to support his claim for compensation. Appellant was afforded 30 days to submit the necessary evidence.

The record contains an undated letter from an employing establishment manager controverting the claim. The manager related that appellant claimed a prior injury on January 30, 2014 for back and hip injuries, which had been denied. According to the manager, appellant had not worked from July 31 to October 27, 2015, as there was no work available within his work restrictions.

In a note dated November 19, 2015, appellant wrote that he injured his back on January 29, 2014, but he did not believe that the alleged October 28, 2015 injury was related to the prior injury. As to the October 28, 2015 incident, he reported that he was loading his cart with bundles of mail and he started to straighten up and felt a pain in his back.

Appellant submitted a November 11, 2017 Form CA-17 from Dr. Erkes, reporting an October 28, 2015 incident where he was loading a cart. Dr. Erkes noted acute right lumbago and right lumbosacral radiculopathy.

OWCP also received a magnetic resonance imaging (MRI) scan report dated November 30, 2015 from Dr. Kevin Mistry, a radiologist. Dr. Mistry reported multilevel degenerative disc disease without significant interval change from a June 26, 2014 study. He noted severe canal stenosis L3-4, and severe right L4-5 foraminal stenosis.

By decision dated December 10, 2015, OWCP denied the claim for compensation. It found that the alleged incident occurred, but that the medical evidence of record was insufficient to establish that a medically diagnosed condition was causally related to the accepted incident.

On December 17, 2015 appellant, through counsel, requested a hearing before an OWCP hearing representative. He submitted a December 7, 2015 report from Dr. Steven Valentino, an osteopath and Board-certified orthopedic surgeon. Dr. Valentino provided a history that on October 28, 2015 appellant was lifting mail out of a bag and twisted his back. He also noted that appellant had a separate injury on January 29, 2014 when he slipped and twisted his back. Dr. Valentino reported that appellant was out of work for five months due to family issues and then returned to light-duty work. He provided results on examination and diagnosed sprain/strain of the lumbosacral joint/ligament, L4-5 spondylolisthesis, lumbar stenosis with neurogenic claudication, and lumbar facet joint syndrome.

A hearing was held on March 3, 2016. Appellant submitted a February 25, 2016 report from Dr. Valentino, who wrote that appellant was seen on December 7, 2015 complaining of low back pain radiating into the legs. Dr. Valentino again reported that appellant twisted his back lifting mail out of a bag. He concluded that appellant “suffered a work-related injury on [October 28, 2015]. This resulted in aggravation of lumbar degenerative disc disease, stenosis, facet arthropathy, and spondylolisthesis along with sciatica. These diagnoses are related to the [October 28, 2015] work injury by aggravation.” Dr. Valentino wrote that appellant had not returned to baseline and continues to experience residuals of a work injury.

By decision dated May 19, 2016, the hearing representative affirmed the December 10, 2015 OWCP decision. He found that the medical evidence from Dr. Valentino was insufficient to establish the claim for compensation. The hearing representative concluded that a medical condition had now been diagnosed, but the medical evidence of record still did not establish causal relationship between the accepted employment incident and the diagnosed condition.

On September 20, 2016 appellant, through counsel, requested reconsideration. Counsel submitted a note dated August 25, 2016 from Dr. Valentino. Dr. Valentino wrote that appellant had sustained a lifting injury, and this would involve a flexion and rotational force. He opined that appellant had preexisting degenerative changes such that his back was already in a weakened state, and “[c]learly the flexion and rotational force placed on [appellant’s] lumbar spine in the work-related injury was the culprit in aggravating degenerative disc disease which went on to require treatment.”

By decision dated November 30, 2016, OWCP reviewed the merits and denied modification. It found that the evidence from Dr. Valentino was of insufficient probative value to establish the claim for compensation.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish that he or she sustained an injury while in the performance of duty.⁴ In order to determine whether an employee actually sustained an 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 which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury, and generally this can be established only by rationalized medical evidence.⁵

Rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background, of reasonable medical certainty, and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the

³ *Id.*

⁴ *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

⁵ *See John J. Carlone*, 41 ECAB 354, 357 (1989).

specific employment factors identified by the claimant.⁶ The physician must provide a medically sound explanation for the opinion offered.⁷ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁸

ANALYSIS

In the present case, appellant has alleged that, on October 28, 2015 he was loading a cart and when he stood up, he felt a sharp pain in his back. OWCP accepted that the employment incident occurred as alleged on October 28, 2015.

The Board has reviewed the medical evidence of record and finds that it is insufficient to meet appellant's burden of proof to establish that his diagnosed medical conditions were causally related to the accepted employment incident.

The CA-17 reports from Dr. Erkes provide little detail and do not provide a rationalized medical opinion on causal relationship. He referred to a lumbar injury and radiculopathy, but did not provide a complete history or a rationalized medical opinion regarding a specific diagnosis and the October 28, 2015 employment incident. Medical reports that do not provide an opinion on causal relationship based on a complete factual and medical background are of little probative value.⁹

Appellant has also submitted reports from Dr. Valentino. In a December 7, 2015, report, Dr. Valentino provided results on examination. He reported a history that briefly noted a January 29, 2014 injury when appellant slipped and twisted his back. Dr. Valentino did not discuss in any detail appellant's preexisting back condition, or clearly indicate that he was aware appellant had not been working since July 2015 due to claimed back and hip problems. A well-rationalized opinion is particularly warranted when there is a history of a preexisting condition.¹⁰ As to the October 28, 2015 employment incident, Dr. Valentino reported that appellant twisted his back while lifting. Appellant did not describe a twisting injury, but reported pain when he stood up and the December 7, 2015 report contains diagnoses that included sprain/strain of the lumbosacral joint/ligament, L4-5 spondylolisthesis, lumbar stenosis with neurogenic claudication, and lumbar facet joint syndrome. Dr. Valentino did not provide an opinion in his December 7, 2015 report on causal relationship based upon an accurate history of the October 28, 2015 employment incident. Appellant has the burden of proof to submit medical

⁶ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

⁷ *See Ronald D. James, Sr.*, Docket No. 03-1700 (issued August 27, 2003); *Kenneth J. Deerman*, 34 ECAB 641 (1983) (the evidence must convince the adjudicator that the conclusion drawn is rational, sound and logical).

⁸ *Supra* note 6.

⁹ *See B.D.*, Docket No. 17-0402 (issued June 12, 2017).

¹⁰ *See D.M.*, Docket No. 16-0346 (issued June 15, 2017).

evidence based on a complete and accurate history explaining how the employment incident described caused or contributed to the diagnosed medical condition.¹¹

The February 25, 2016 report from Dr. Valentino asserts that the October 28, 2015 incident had aggravated numerous conditions: lumbar degenerative disc disease, stenosis, facet arthropathy, spondylolisthesis, and sciatica. There is no explanation as to how the employment incident aggravated all of these conditions, or the nature and extent of such aggravation. In the brief note dated August 25, 2016, Dr. Valentino reports that there was some flexion and rotational force in the lifting injury that aggravated lumbar degenerative disc disease. He provides no detail as to the nature and extent of any aggravation, or discuss the other conditions referred to in the February 25, 2016 report. An opinion with respect to aggravation must differentiate between the effects of the work-related injury or disease and the preexisting condition.¹² The Board has held that the physician must clearly explain the nature and extent of any aggravation, including whether it was temporary or permanent.¹³

The record does not contain a medical report with a rationalized medical opinion, based on a complete and accurate background, that explains how the accepted employment incident physiologically caused the diagnosed condition. A medical opinion should reflect a correct history and offer a medically sound explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions.¹⁴ It is appellant's burden of proof, and the Board finds that appellant did not meet his burden of proof in this case.

On appeal, counsel argues that the evidence from Dr. Valentino is sufficient to establish the claim for compensation. For the reasons discussed above, the Board finds that the medical evidence is of diminished probative value to the issue presented.

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 established an injury causally related to the accepted October 28, 2015 employment incident.

¹¹ See *R.S.*, Docket No. 16-1469 (issued December 8, 2016).

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(e) (January 2013).

¹³ See *R.H.*, Docket No. 15-1785 (issued January 29, 2016).

¹⁴ See *E.R.*, Docket No. 16-1634 (issued May 25, 2017).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 30, 2016 is affirmed.

Issued: August 22, 2017
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board