



## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>2</sup> The facts of the case as presented in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On October 27, 2014 appellant, then a 42-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that he sustained a back condition from heavy lifting while loading and unloading trucks. He reported that he first became aware of the condition and its relationship to his federal employment on July 2, 2010.<sup>3</sup> The supervisor's report on the reverse of the claim form contended asserted that the claim appeared to be untimely because appellant was no longer on the employment rolls as of July 13, 2013.<sup>4</sup>

With respect to medical evidence, the record contains "work status" reports from Kaiser Permanente physicians for intermittent dates in July 2010, and March through June 2012. In a report dated April 24, 2014, for example, Dr. Calvin Wood, Board-certified in emergency medicine, diagnosed chronic low back pain and indicated that appellant was placed off work April 24 and 25, 2012.

By decision dated January 26, 2015, OWCP denied the claim for compensation. It found that the claim was timely filed. However, the medical evidence of record did not establish an injury causally related to the identified employment factors.

On February 11, 2015 appellant requested a review of the written record by an OWCP hearing representative. He submitted medical evidence, which included treatment reports for the back from Kaiser Permanente from February 29, 2009 through April 11, 2013. With respect to reports from physicians, the evidence included a report dated November 11, 2010 from Dr. Bharti Nachnani, a Board-certified family practitioner, who provided a history that appellant had low back muscle spasms since February, "probably related to appellant's work as a mail handler." He provided results on examination and diagnosed low back pain. In a report dated July 20, 2011, Dr. Darren Shimabukuro, a Board-certified internist, who reported appellant had chronic back pain "due to occupation, lifts heavy loads" more often since a cut back in staff. In a report dated March 25, 2012, Dr. Anjum Sameena, a Board-certified family practitioner, reported that appellant had complained of low back pain for two days. He noted that appellant did heavy lifting at work and had a history of back problems. Dr. Sameena provided results on examination and diagnosed low back pain. By report dated April 15, 2012, Dr. Wendell Osborne, a Board-certified family practitioner, noted that lumbar x-rays dated August 4, 2010 showed moderate narrowing of the L3-4 disc space with spurring representing degenerative disc disease.

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<sup>2</sup> Docket No. 16-0683 (issued June 3, 2016); *Order Dismissing Appeal*, Docket No. 16-0825 (issued July 22, 2016).

<sup>3</sup> The record contains a second CA-2 form, received by OWCP on October 27, 2014, also claiming a back injury due to loading and unloading trucks. The date appellant was aware of the condition and its relationship to employment was reported as May 24, 2010.

<sup>4</sup> The actual date of last employment was July 13, 2012.

By decision dated July 28, 2015, the hearing representative affirmed the January 26, 2015 OWCP decision. The hearing representative found that the medical evidence of record was insufficient to establish the claim.

Appellant requested reconsideration on August 24, 2015. He argued that based on Board case law, the medical evidence submitted was sufficient to establish the claim.

In a decision dated November 2, 2015, OWCP reviewed the merits of the claim and denied modification. It found that the evidence submitted was not of sufficient probative value to warrant modification of the July 28, 2015 decision.

On February 17, 2016 appellant appealed to the Board. By decision dated June 3, 2016, the Board affirmed the November 2, 2015 OWCP decision.<sup>5</sup> The Board found that the medical evidence of record was insufficient to establish the claim for compensation.

Appellant requested reconsideration on June 17, 2016, expressing his disagreement with OWCP's denial of his claim. As to medical evidence, appellant submitted a treatment note dated April 30, 2016 from Dr. Nareshkumar Arulampalam, a Board-certified psychiatrist. Dr. Arulampalam indicated that appellant was seen for anxiety and sleep problems. He diagnosed anxiety disorder, depression, chronic low back pain, and lumbar spondylosis. As to chronic low back pain, Dr. Arulampalam indicated that the condition had continued from August 3, 2010 to the present. He wrote that appellant had a recurrent muscle injury due to lifting at work while loading and unloading trucks. Appellant also submitted a treatment note dated November 23, 2015 from Dr. Patrick Casey, a Board-certified psychiatrist. Dr. Casey wrote that appellant had been fired from his job four years earlier, that he felt this was unfair, and he had intermittent depression and anxiety since that time.

By decision dated September 9, 2016, OWCP reviewed the merits of the claim and denied modification. It found that the medical evidence of record was insufficient to establish the claim for compensation.

On November 1, 2016 appellant again requested reconsideration. He argued that he felt the medical evidence was sufficient to establish his claim. Additional medical evidence was submitted including a May 5, 2016 report from Dr. Marc Montecillo, a Board-certified internist, indicating that appellant was seen for low back pain. He reported that appellant had lumbar degenerative disc disease, with an initial onset of back pain in 2009.

Appellant also submitted an August 3, 2010 report from Dr. Shimabukuro, reporting that appellant had early lumbar degenerative disc disease with recurrent muscular back injury from work. In an October 17, 2016 note, Dr. Val Valco, a Board-certified internist, wrote that appellant had a history of chronic back pain which was now controlled. He reported that appellant indicated that he was able to perform his job duties. Appellant also submitted a July 24, 2011 note from a physician assistant.

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<sup>5</sup> Docket No. 16-0683, *supra* note 2. While the Board had jurisdiction over the case, OWCP issued a February 24, 2016 decision denying reconsideration. Appellant appealed to the Board. By order dated July 22, 2016, the Board dismissed his appeal, finding that the February 24, 2016 nonmerit decision was null and void. *Order Dismissing Appeal*, Docket No. 16-0825, *supra* note 2.

By decision dated December 22, 2016, OWCP reviewed the merits of the claim, but denied modification. It again found that the medical evidence of record was insufficient to establish the claim for compensation.

### **LEGAL PRECEDENT**

A claimant seeking benefits under FECA<sup>6</sup> 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.<sup>7</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, 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.<sup>8</sup>

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.<sup>9</sup> A physician's opinion on the issue of whether there is 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.<sup>10</sup> 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.<sup>11</sup>

### **ANALYSIS**

Appellant has alleged a back injury casually related to lifting in his federal employment as a mail handler. The Board has reviewed the medical evidence submitted after November 2, 2015<sup>12</sup> and finds that the evidence is insufficient to establish the claim.

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<sup>6</sup> *Supra* note 1.

<sup>7</sup> 20 C.F.R. § 10.115(e), (f) (2005); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

<sup>8</sup> *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

<sup>9</sup> See *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>10</sup> *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>11</sup> *Id.*

<sup>12</sup> In the prior appeal, the Board reviewed the evidence of record as of November 2, 2015 and affirmed OWCP's decision. The Board finds that, with respect to the findings made in its prior decision dated June 9, 2015, those matters are *res judicata* absent any further review by OWCP under section 8128 of FECA. See *D.V.*, Docket No. 16-1168 (issued September 13, 2016).

The August 3, 2010 report from Dr. Shimabukuro, briefly notes a recurrent muscular back injury at work. This report provides an incomplete history and no medical rationale as to causal relationship between a diagnosed condition and federal employment.<sup>13</sup> Thus, it is of limited probative value and thus, insufficient to meet appellant's burden of proof.

Dr. Arulampalam and Dr. Casey are psychiatrists and did not treat appellant for a back condition. The April 30, 2016 report from Dr. Arulampalam provides only a brief reference to a history of chronic back pain due to lifting at work, but without providing additional detail or explanation. Dr. Casey did not discuss an employment-related back condition. The Board has held that 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.<sup>14</sup> Thus, the reports of Drs. Arulampalam and Dr. Casey are of limited probative value and insufficient to meet appellant's burden of proof.

Dr. Montecillo reported on May 5, 2016 that appellant had lumbar degenerative disc disease since 2009. He did not provide a complete history or a rationalized medical opinion establishing a diagnosed back condition causally related to federal employment.<sup>15</sup>

Dr. Valco briefly indicated in his October 17, 2016 note that appellant had a history of chronic back pain, but he felt he could return to work. He did not discuss the relevant issues presented regarding causal relationship between a back condition and federal employment. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.<sup>16</sup> An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there was a causal relationship between his condition and his employment.<sup>17</sup> Causal relationship must be based on rationalized medical opinion evidence.<sup>18</sup> A physician must accurately describe appellant's work duties and medically explain the pathophysiological process by which these duties would have caused or aggravated his condition.<sup>19</sup>

It is appellant's burden of proof to establish the claim for compensation. The record does not contain a medical opinion, based on a complete and accurate history, supported by sound

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<sup>13</sup> *M.G.*, Docket No. 16-0451 (issued March 17, 2017); *see also Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history have little probative value).

<sup>14</sup> *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

<sup>15</sup> *Supra* note 13.

<sup>16</sup> *L.D.*, Docket No. 09-1503 (issued April 15, 2010); *D.I.*, 59 ECAB 158 (2007); *Daniel O. Vasquez*, 57 ECAB 559 (2006).

<sup>17</sup> *Patricia J. Glenn*, 53 ECAB 159, 160 (2001).

<sup>18</sup> *Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

<sup>19</sup> *H.G.*, Docket No. 16-1191 (issued November 25, 2016).

medical rationale, on causal relationship between a diagnosed back condition and identified employment factors.<sup>20</sup> The Board therefore finds that appellant did not meet his burden of proof.

On appeal, appellant disputes OWCP's conclusion that he did not submit a rationalized medical opinion. For the reasons discussed above, the Board finds that appellant did not submit sufficient medical evidence to meet his burden of proof.

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 a back 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 December 22 and September 9, 2016 are affirmed.

Issued: June 8, 2017  
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

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<sup>20</sup> *Supra* note 10.