

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

_____)	
W.S., Appellant)	
)	
and)	Docket No. 17-1769
)	Issued: July 26, 2018
DEPARTMENT OF LABOR, MINE SAFETY & HEALTH ADMINISTRATION, Pikesville, KY,)	
Employer)	
_____)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 14, 2017 appellant filed a timely appeal from a July 21, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.²

ISSUE

The issue is whether appellant has met his burden of proof to establish an injury causally related to the accepted factors of his federal employment.

¹ 5 U.S.C. § 8101 *et seq.*

² On appeal appellant submitted additional evidence. The Board's jurisdiction is limited to the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On September 1, 2016 appellant, then a 54-year-old assistant district manager, filed an occupational disease claim (Form CA-2) alleging that his lumbosacral disc disease and polyneuropathy conditions were caused and or aggravated by walking and crawling activities he performed in confined spaces in the performance of his federal employment duties. He indicated that he first became aware of his claimed condition and its relation to his federal employment on January 18, 2008. Appellant retired on January 29, 2016.

In an undated statement, appellant stated that he worked for the employing establishment from April 2000 until January 2016 in various positions. For the first five years, he performed daily mine inspection work. For the next 11 years, appellant performed mine inspections and accident investigations. This was initially done in the capacity as a supervisor and then as an assistant district manager. For the last three years, appellant worked as the lead accident investigator. He asserted that his work entailed sustained physical exertion, carrying heavy equipment, and working in close confinement underground. Appellant also walked long distances and frequently walked in a stopped/squatting position or crawled on his hands and knees while visiting mines. He indicated that his numbness in his right leg and foot and some numbness in his left foot first occurred in 2008 while conducting mine inspections. Appellant stated that the diagnostic testing revealed degenerative joint disease, disc herniation, and radiculopathy. He alleged that he retired because he could no longer do his job. Appellant attributed his low back condition and numbness in his feet and legs to carrying equipment weighing in excess of 40 pounds during inspections and walking long distances while in stooped/squatting and crawling positions.

In a September 1, 2016 letter, F.B., OWCP Coordinator for the employing establishment, indicated that appellant's description of his working conditions and job duties was accurate. He noted that, on average, appellant would have been exposed to those conditions four to eight hours a day, four to five days a week with less exposure in his role as a supervisor and assistant district manager.

In a July 28, 2016 report, Dr. Warren Chumley, a Board-certified neurologist, noted that appellant was an underground mine inspector who walked long distances in steel-toed boots as part of his job. Appellant had an unsteady gait due to a moderately-severe neuropathy and was now falling. Dr. Chumley indicated that appellant had been followed through 2012 for a mild-to-moderate mixed polyneuropathy, mild right L5 radiculopathy, moderate right S1 radiculopathy (as seen on electromyogram/nerve conduction velocity (EMG/NCV) study of December 18, 2012), migraine headaches, degenerative disc disease of the cervical spine (as seen on a magnetic resonance imaging (MRI) scan of the cervical spine dated October 21, 2011), stroke (as documented on August 5, 2011 MRI scan), and a low vitamin D. He indicated that a January 16, 2016 EMG/NCV study showed a moderate worsening of the polyneuropathy, improvement of the right S1 radiculopathy, a right L5 radiculopathy, and moderate left L5 and S1 radiculopathies. Dr. Chumley provided an assessment of idiopathic peripheral neuropathy, radiculopathy, migraine, and neck pain. He opined that appellant was totally disabled from work due to the severe neuropathy and lumbosacral radiculopathies and explained how appellant was physically incapable of performing his underground mine inspector work.

An August 4, 2016 MRI scan lumbar spine indicated disc herniation at L4-5 and L2-3.

In an August 23, 2016 report, Dr. Van S. Breeding, a Board-certified family practitioner, noted that appellant worked as a mine inspector for the last 16 years and crawled extensive distances carrying a 50-pound pack around mining equipment and worked in environments that were difficult to ambulate and move in. Dr. Breeding indicated that, since his employment, appellant developed severe back pain. He noted that an August 4, 2016 MRI scan indicated herniated discs at L4-5 and L2-3, EMG/NCV testing revealed right L5 radiculopathy and S1 radiculopathy, and an October 21, 2011 cervical spine MRI scan showed degenerative disc disease of the cervical spine. Dr. Breeding reported that appellant had failed physical therapy and conservative treatment and was not a neurosurgeon candidate for correction for his persistent polyneuropathy with the right S1 and right L5 radiculopathy. He opined that appellant's neuropathy, lumbosacral disc disease, and bilateral knee replacement were related to the type and duration of his work and the severity of his working conditions.

In an October 28, 2016 development letter, OWCP requested additional factual and medical evidence in support of appellant's occupational disease claim. This included a rationalized medical report from a physician explaining how his employment activities caused, contributed to, or aggravated any diagnosed medical condition. OWCP afforded appellant 30 days for a response.

By letter also dated October 28, 2016, the employing establishment was requested to provide a copy of appellant's job description and physical requirements of the job. OWCP received a November 14, 2016 letter from C.S., District Manager, which agreed that appellant's actual duties were consistent with the position descriptions.

In a November 20, 2016 letter, appellant asserted that Dr. Breeding's August 23, 2016 report contained a comprehensive medical opinion that established causal relation with his diagnosed conditions. Copies of an August 23, 2016 letter from Dr. Breeding, patient information and referral information forms, and a November 18, 2016 patient plan was submitted.

In a January 6, 2016 report, Dr. Chumley provided an assessment of idiopathic peripheral neuropathy, radiculopathy, common migraine, and neck pain. He noted that appellant reported that his work had become difficult due to his lumbar conditions, and his symptoms had worsened.

By decision dated February 3, 2017, OWCP denied appellant's claim, finding that the medical evidence of record did not contain a well-reasoned medical opinion explaining how appellant's work factors either directly caused or aggravated the diagnosed conditions. It further noted that there was no medical discussion of appellant's underlying degenerative condition.

Appellant requested reconsideration on April 24, 2017 and submitted diagnostic testing dated September 21 and December 18, 2012 and January 6, 2016.

The discussion/summary portion of Dr. Chumley's March 30, 2017 report was provided with several paragraphs redacted. He indicated that appellant's main symptoms were low back pain and numbness of the lateral aspect of the right lower leg and the ulnar aspect of the right arm. Dr. Chumley noted that appellant was seen in Dr. Ebbs' clinic in 2016 and surgery was not recommended. He reported that an August 14, 2016 MRI scan of lumbar spine showed disc herniations at L2-3 (left-sided) and L4-5 (right-sided). Dr. Chumley opined that the severe

neuropathy and lumbosacral radiculopathies disabled appellant and explained that he could not perform his federal employment duties. He further opined that given appellant's prior duties as an underground mine inspector, the degenerative changes and disc herniations in his lumbar spine led to multiple bilateral radiculopathies and were almost definitely work related.

In an April 5, 2017 report, Dr. Breeding opined that appellant's conditions were directly related to his 16 years of mine inspector work in an underground mining environment. He noted that Dr. Chumley diagnosed appellant with bilateral lumbosacral disc disease, cervical disc disease, peripheral neuropathy, and bilateral radiculopathy. Dr. Breeding noted that those conditions provided by Dr. Chumley arose from appellant's work environment of crawling and walking stooped over for up to four miles a day on a daily basis, as well as his work in confined spaces while working as an inspector. He explained that appellant had persistent repetitive trauma to his lumbar spine, cervical spine, and to the nerves related to those areas due to repetitive actions of lifting heavy lids off of equipment for proper inspection. Dr. Breeding indicated that the 16 years appellant spent as a mine inspector doing heavy type of work activity and the environment of work and injuries over a repetitive amount of time damaged his body and left him with persistent permanent pain, muscle, and nerve-related injuries to the lumbar and cervical areas of his spine. He concluded that diagnostic testing confirmed this and there were no other sources of injury to appellant's spine or nerves other than his work relationship.

By decision dated July 21, 2017, OWCP denied modification of its prior decision. It found that the evidence submitted failed to contain a rationalized opinion based on an accurate employment and medical history explaining how appellant's diagnosed conditions were attributable to his accepted employment factors. OWCP further noted that it did not have all of appellant's medical records from 2000 to the present.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁴

OWCP's regulations define an occupational disease as a condition produced by the work environment over a period longer than a single workday or shift.⁵ To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (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

³ *Supra* note 1.

⁴ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

⁵ 20 C.F.R. § 10.5(q).

to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁶

A medical report is of limited probative value if it is unsupported by medical rationale.⁷ Medical rationale includes a physician's detailed opinion on the issue of whether there is causal relationship between the claimant's diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, 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 specific employment activity or factors identified by the claimant.⁸ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁹ The belief of a claimant that a condition was caused or aggravated by the employment is insufficient to establish causal relation.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that his diagnosed conditions were causally related to the accepted employment factors.

In support of his claim, appellant provided reports from Dr. Chumley. In his July 28, 2016 report, Dr. Chumley noted appellant's medical history and that he was an underground mine inspector who walked long distances in steel-toed boots as part of his job. He diagnosed idiopathic peripheral neuropathy, radiculopathy, migraine, and neck pain and opined that appellant was disabled due to the severe neuropathy and lumbosacral radiculopathies. However, Dr. Chumley failed to offer an opinion regarding the cause of appellant's diagnosed conditions. Similarly, in his January 6, 2016 report, he offered no opinion regarding the cause of appellant's diagnosed conditions. 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.¹¹ Furthermore, while Dr. Chumley reported that a January 16, 2016 EMG/NCV study showed a moderate worsening of the polyneuropathy, improvement of the right S1 radiculopathy, a right L5 radiculopathy, and moderate left L5 and S1 radiculopathies, he failed to provide a medically sound explanation of

⁶ *Victor J. Woodhams*, 41 ECAB 345 (1989); *see also J.H.*, Docket No. 17-1643 (issued June 23, 2017).

⁷ *T.F.*, 58 ECAB 128 (2006).

⁸ *A.D.*, 58 ECAB 149 (2006).

⁹ *James Mack*, 43 ECAB 321 (1991).

¹⁰ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

¹¹ *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *see also C.B.*, Docket No. 09-2027 (issued May 12, 2010).

how the specific employment factors, physiologically, caused or aggravated appellant's conditions.¹² As such his reports are insufficient to establish appellant's claim.

In his March 30, 2017 report, Dr. Chumley opined that given appellant's prior duties as an underground mine inspector, the degenerative changes and disc herniations in his lumbar spine led to multiple bilateral radiculopathies and were almost definitely work related. However, Dr. Chumley's opinion in this report is also insufficiently rationalized. His opinion on causation is speculative as he generally noted that the conditions were "almost definitely work related" without a firm conclusion that the employment factors did in fact cause or aggravate his conditions.¹³ The opinion of a physician supporting causal relationship must not be speculative or equivocal.¹⁴ Dr. Chumley's statement on causation also failed to provide a sufficient explanation as to the mechanism of injury pertaining to this occupational disease claim as alleged by appellant, namely, how the duties of a mine inspector in the first 5 years and the lesser duties in the remaining 11 years would cause and or aggravate the degenerative changes and disc herniations in appellant's lumbar spine as opposed to the natural progression of the preexisting conditions.¹⁵ As he failed to provide a medically-sound explanation of how the specific employment factors, in particular physiologically, caused or aggravated appellant's back conditions, this report is also insufficient to establish his claim.¹⁶

In an August 23, 2016 report, Dr. Breeding opined that appellant's neuropathy, lumbosacral disc disease, and bilateral knee replacement were related to the type of work he performed, the duration of his work, and the severity of the conditions under which he was required to work. While he noted that appellant had worked as a mine inspector for the last 16 years and noted his work duties, the Board finds that this report is conclusory in nature. Dr. Breeding offered no supporting medical rationale to explain how those diagnosed conditions were caused or aggravated by his work duties. Furthermore, he failed to provide any discussion of the underlying degenerative condition and how such condition worsened as a result of appellant's work activities. As Dr. Breeding's opinion was conclusory and without sufficient rationale, his report is insufficient to establish causal relationship.¹⁷

In his April 5, 2017 report, Dr. Breeding opined that appellant's medical conditions of bilateral lumbosacral disc disease, cervical disc disease, peripheral neuropathy, and bilateral radiculopathy, as provided by Dr. Chumley, were directly related to 16 years of work he did as a mine inspector, which included crawling, walking stooped over for up to four miles a day on a daily basis, and his work in confined spaces. He noted that appellant had persistent repetitive trauma to his lumbar spine, cervical spine, and to the nerves related to those areas due to repetitive

¹² *T.G.*, Docket No. 14-0751 (issued October 20, 2014).

¹³ See *Michael R. Shaffer*, 55 ECAB 339 (2004).

¹⁴ *D.D.*, 57 ECAB 734 (2006).

¹⁵ *S.W.*, Docket 08-2538 (issued May 21, 2009).

¹⁶ See *T.G.*, *supra* note 12.

¹⁷ *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

actions of lifting heavy lids off of equipment for proper inspection and the above work environment. Dr. Breeding explained that the injuries over a repetitive amount of time damaged appellant's body and left him with persistent permanent pain, muscle and nerve-related injuries to his lumbar and cervical areas. He noted that this has been confirmed by diagnostic testing and there were no other sources of injury to appellant's spine or nerves other than his work relationship. While Dr. Breeding also noted that appellant performed repetitive work crawling and stooping in confined spaces, he offered no medical explanation as to how these repetitive work duties would have physiologically caused the diagnosed conditions.¹⁸ Furthermore, he again failed to provide any discussion of the underlying degenerative condition and how such conditions worsened as a result of appellant's work activities. As such, Dr. Breeding's opinion is conclusory and his report is insufficient to establish causal relationship.¹⁹

Appellant also provided copies of multiple diagnostic tests, which confirmed his conditions. However the diagnostic reports are insufficient to establish appellant's claim as they fail to offer any opinion regarding causal relationship.²⁰

As appellant has not submitted medical opinion evidence sufficient to establish his claim,²¹ he has not met 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 met his burden of proof to establish an injury causally related to the accepted factors of his federal employment.

¹⁸ *B.A.*, Docket No. 15-1277 (issued September 7, 2016).

¹⁹ *Id.*

²⁰ *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

²¹ *See P.M.*, Docket No. 17-1320 (issued October 16, 2017).

ORDER

IT IS HEREBY ORDERED THAT the July 21, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 26, 2018
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