

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

S.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Affton, MO, Employer**

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**Docket No. 18-0242
Issued: June 11, 2018**

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 November 13, 2017 appellant filed a timely appeal from an October 13, 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 this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish an occupational disease in the performance of duty, as alleged.

FACTUAL HISTORY

On June 28, 2017 appellant, then a 45-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that his federal employment duties caused bulging and degenerated discs, as well as subluxation of the pelvis. He indicated that he first became aware of the conditions

¹ 5 U.S.C. § 8101 *et seq.*

on December 1, 2011 and their relationship to factors of his federal employment later on May 29, 2015. In an accompanying statement, appellant related that he delayed filing his claim because he did not become a career employee until November 2, 2013, and his health insurance did not become effective until January 2, 2014. He did not indicate whether he had stopped work.²

On August 24, 2017 P.H., an employing establishment human resources specialist, controverted the claim. She noted that appellant's two previous claims were denied, and that since March 2014 appellant had only cased his route and was not carrying any mail.

Medical evidence submitted included a September 5, 2014 duty status report (Form CA-17) in which Dr. Kyle A. Roesler, a chiropractor, noted appellant's report that he slipped in snow and fell to his knees. He described clinical findings of leg pain consistent with lumbosacral radiculitis and advised that appellant could return to restricted duty with standing, walking, and climbing limited to one-hour daily. On February 6, 2015 Dr. Roesler noted treating appellant since March 5, 2014 for low back and leg pain and provided restrictions to appellant's physical activity. On May 29, 2015 he diagnosed lumbar segmental dysfunction, lumbosacral radiculitis, sacral subluxation, subluxation pelvis, cervical segmental dysfunction, thoracic segmental dysfunction, and paravertebral myositis. Dr. Roesler advised that the stress and strain associated with appellant's letter carrier duties caused injury to and exacerbations of his low back conditions.

In correspondence dated March 7, 2017, Peggy Reed, a registered nurse and occupational health administrator, noted that appellant had a fitness-for-duty examination on January 26, 2017 including a magnetic resonance imaging (MRI) scan of the lumbar spine. She related that there was no objective evidence to show that appellant could not work without limitation and his only limiting factors were subjective complaints of pain.³

A report dated April 4, 2017 with an illegible signature indicated that appellant should be limited to light duty due to chronic pain. In May 4 and August 8, 2017 reports, Dr. Dawn Davis, a Board-certified family physician, related appellant's work restrictions.

By development letter dated September 7, 2017, OWCP informed appellant that the evidence received was insufficient to establish his claim. It notified him of the evidence needed to substantiate the factual and medical elements of his claim. OWCP noted that he did not identify specific work factors on his claim form that he believed caused his condition. It requested that he complete an attached questionnaire regarding his employment-related activities and provide a medical report from his physician which contained an opinion, supported by a medical explanation,

² The present claim was assigned OWCP File No. xxxxxx573. The record indicates that appellant previously filed a traumatic injury claim (Form CA-1) on June 20, 2014 alleging that on December 1, 2011 he slipped on the snow while in the performance of duty and this caused a bulging disc, sciatica, nerve damage, and back spasms. That claim was adjudicated by OWCP under File No. xxxxxx483 and was denied on August 4, 2014. Appellant filed an occupational disease claim on June 12, 2015, alleging that employment duties caused a bulging disc and pelvic subluxation. OWCP adjudicated the 2015 claim under OWCP File No. xxxxxx062 and denied the claim on August 20, 2015.

³ A copy of the fitness-for-duty examination is not found in the case record before the Board.

as to how specific work activities caused or contributed to, or aggravated his medical condition. Appellant was afforded 30 days to submit the requested evidence.

In a separate September 7, 2017 letter, OWCP requested that the employing establishment provide a statement regarding appellant's work activities, including the physical requirement of his job.

In a statement dated October 4, 2017, W.S., an employing establishment manager, controverted the claim. He maintained that none of the medical evidence, which provided work restrictions, indicated that appellant's medical condition was caused by employment duties. W.S. noted that since March 2014 appellant had only cased his route for two hours daily and would then go home without delivering his route. He also referenced the two prior claims that had been denied by OWCP⁴ and attached a position description for a letter carrier. W.S. also attached a duplicate of Dr. Roesler's February 6, 2015 report, and a February 4, 2015 report in which Dr. Roesler provided the same diagnoses as in his May 29, 2015 report previously submitted. In the May 29, 2015 report, Dr. Roesler also indicated that appellant should not perform work which required lifting, bending, twisting, or turning over 15 pounds for extended periods or greater than two hours at a time.

By decision dated October 13, 2017, OWCP denied appellant's occupational disease claim, finding that he failed to establish the factual component of fact or injury. Appellant did not respond to the September 7, 2017 letter. OWCP further found that the medical evidence of record did not contain a comprehensive report from a treating physician explaining causal relationship between appellant's job duties and the claimed conditions.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish 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, and that the claim was timely filed within the applicable time limitation period of FECA.⁶ When an employee claims that he or she sustained an injury in the performance of duty,⁷ he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident, or exposure occurring at the time and place, and in the manner alleged.⁸ The employee must also establish that such event, incident, or exposure

⁴ *Supra* note 2.

⁵ *Supra* note 1.

⁶ 5 U.S.C. § 8101(1); *L.M.*, Docket No. 16-0143 (issued February 19, 2016); *B.B.*, 59 ECAB 234 (2007).

⁷ 5 U.S.C. § 8102(a).

⁸ *J.C.*, Docket No. 16-0057 (issued February 10, 2016); *E.A.*, 58 ECAB 677 (2007).

caused an injury.⁹ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.¹⁰

OWCP regulations define the term “occupational disease or illness” as a condition produced by the work environment over a period longer than a single workday or shift.”¹¹ 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 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. The medical opinion 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.¹²

Appellant’s burden of proof includes the submission of a detailed description of the employment factors or conditions which he or she believes caused or adversely affected a condition for which compensation is claimed.¹³

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an occupational disease in the performance of his federal employment.

On his claim form appellant alleged that his federal employment duties caused bulging and degenerated discs and subluxation of the pelvis. He, however, did not present a clear factual statement identifying specific employment factors or conditions alleged to have caused or contributed to the presence or occurrence of the claimed medical conditions nor explained how any work factor caused or aggravated the claimed conditions. By letter dated September 7, 2017, OWCP informed appellant that the evidence it had received was insufficient to establish that he experienced any employment factors that were alleged to have caused an injury. He was asked to complete an attached questionnaire describing his employment-related activities and explain how these activities contributed to the claimed conditions. Appellant did not respond to OWCP’s September 7, 2017 letter. Since he has not provided a factual statement describing in detail the employment duties that caused the claimed conditions, he has not met his burden of proof.¹⁴

⁹ *Id.*

¹⁰ *R.H.*, 59 ECAB 382 (2008).

¹¹ 20 C.F.R. § 10.5(ee).

¹² *Roy L. Humphrey*, 57 ECAB 238 (2005).

¹³ *T.B.*, Docket No. 17-0444 (issued May 5, 2017).

¹⁴ *S.J.*, Docket No. 17-1798 (issued February 23, 2018); *see also P.G.*, Docket No. 15-1345 (issued August 23, 2016).

As appellant did not establish the factual component of his claim, the Board will not address the medical evidence with respect to causal relationship.¹⁵

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 occupational disease in the performance of duty, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the October 13, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 11, 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

¹⁵ *Id.*