United States Department of Labor
Employees' Compensation Appeals Board

E.S., Appellant	)	
and	)	**Docket No. 17-1598**
	)	**Issued: November 8, 2018**
U.S. POSTAL SERVICE, POST OFFICE, San Diego, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On July 10, 2017[1] appellant filed a timely appeal from a January 11, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from January 11, 2017, the date of OWCP's last decision, was July 10, 2017. Since using July 17, 2017, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is July 10, 2017, rendering the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a cervical condition causally related to factors of his federal employment.

FACTUAL HISTORY

On November 12, 2015 appellant, then a 62-year-old letter carrier, filed an occupational disease claim (Form CA-2), alleging that he sustained a neck injury due to factors of his federal employment. He indicated that he first became aware of his claimed condition and first realized it was caused or aggravated by his federal employment on August 21, 2013. Appellant did not stop work.

In a November 12, 2015 narrative statement, appellant stated that he had an accepted back injury under OWCP File No. xxxxxx139 for which he underwent a second opinion examination on May 7, 2015 by Dr. David Easley, a Board-certified orthopedic surgeon. He indicated that Dr. Easley had provided work restrictions of standing for one hour per day and lifting, pushing, and pulling a maximum of 15 pounds for five hours per day. Appellant received a job offer in the passport office and began working on October 26, 2015. He stated that by the end of the day on October 27, 2015 he had excruciating neck pain from bending his neck while taking telephone calls and writing messages. Appellant indicated that he believed his prior back injury and surgeries had put extra strain on his neck.

On February 24, 2014 Dr. R. Carter Jones, III, a Board-certified anesthesiologist, diagnosed sciatica, other and unspecified disc disorder of the lumbar region, postlaminectomy syndrome, and cervical spondylosis. He ordered pain nerve blocks.

In an October 8, 2015 report, Dr. Timothy Peppers, a Board-certified orthopedic surgeon, diagnosed low back pain, postlaminectomy syndrome, and lumbar radiculopathy. He asserted that appellant had been routinely lifting more than his work restrictions allowed. Dr. Peppers advised that in order for appellant to be able to continue to work, his work restrictions would have to be observed. He stated that appellant was set to return to work on October 14, 2015 and he agreed with Dr. Easley's restrictions, which included no lifting greater than 15 pounds.

On October 26, 2015 appellant accepted a modified clerk position with the employing establishment. The duties included: answering telephones, making appointments, and using a computer. The physical requirements included standing and simple grasping. The work restrictions listed on the second page of the job offer included a 15-pound lifting limitation.

In a November 20, 2015 letter, appellant's supervisor indicated that appellant advised that, while doing so much computer work during passport training, his neck began to hurt and ache. Appellant also advised that he never claimed a previous neck injury he had because his back was more severe than his neck. The supervisor called for assistance and a coworker brought a tool so that appellant did not have to bend his neck so far down and also suggested that they adjust the computer screen to eye level. Appellant listened to these options and decided that he did not wish to continue with the job offer and filed the claim.

An industrial work status report dated November 20, 2015 from Dr. Arnold Gary Markman, a Board-certified occupational medicine specialist, diagnosed neck muscle strain and asserted that appellant was injured on October 30, 2015. Dr. Markman placed appellant on modified activity at work and at home from November 20 to December 18, 2015 with the following restrictions: no keyboard or mouse use; lifting, carrying, pushing, and pulling no more than 10 pounds; and no repetitive or prolonged cervical flexion.

By development letter December 7, 2015, OWCP advised appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence and respond to its inquiries.

In response, appellant submitted an October 30, 2015 x-ray of the cervical spine, which showed that the cervical vertebral bodies were normal in height, the alignment was normal, and no fracture was identified. There was degenerative disc space narrowing at C4-7, no significant soft tissue abnormality, and no significant neural foraminal narrowing bilaterally.

In an October 30, 2015 attending physician report (Form CA-20), Dr. Dayang Kim Mariena Jaya, a Board-certified internist and occupational medicine specialist, diagnosed neck muscle strain. She asserted that appellant had to bend his neck to look at a keyboard at work and stated that he had a headset for telephone use. Appellant started noticing pain in the first week and stated that his symptoms started gradually after the injury. Dr. Jaya reported that appellant had a previous neck injury and stated that he had been having problems with his neck since approximately 2009. She also reported that appellant had permanent restrictions for his back injury and his last surgery was in 2011. Appellant complained that his neck pain was 8 out of 10 and his pain was tight. He did not have full movement on his neck. Dr. Jaya found no radiculopathy, numbness, tingling, or weakness. She noted that she did not have records of appellant's previous neck injury and needed them to address the causation of his current complaints.

In a separate report dated November 20, 2015, Dr. Markman continued to diagnose neck strain and found that appellant's symptoms were unchanged from his previous visit. He found that appellant had diffuse pain spasm. There was no ecchymosis, crepitance, instability, or deformity. Appellant had full range of motion in flexion, extension, side-bending, and rotation. Spurling's maneuver was negative and nerve roots were nontender.

On December 22, 2015 Dr. Peppers diagnosed cervicalgia and advised appellant that his office was no longer taking new workers' compensation cases and recommended physical therapy. He asserted that appellant started a new job as a passport clerk that exacerbated his neck pain and appellant told him that he was let go from this position due to the pain it caused him.

In a January 22, 2016 report, Dr. Jaya diagnosed left plantar fasciitis due to an August 18, 1999 injury.

By decision dated February 24, 2016, OWCP denied appellant's claim, finding that fact of injury had not been established.

Subsequently, appellant submitted a December 28, 2015 x-ray of the lumbar spine that showed five nonrib-bearing lumbar-type vertebral bodies.

Appellant requested an oral hearing before OWCP's Branch of Hearings and Review and submitted a March 23, 2016 report from Aaron Willcott, a physician assistant, who reiterated that both appellant and Dr. Peppers agreed that his injuries were either caused or exacerbated by his work with the employing establishment.

Appellant also submitted a second opinion report dated June 24, 2013 from Dr. Frederick W. Close, a Board-certified orthopedic surgeon, from his back claim under OWCP File No. xxxxxx139, who diagnosed lumbar degenerative disc disease, lumbar spinal stenosis, and status post anterior posterior lumbar interbody fusions at L3-5 and S1.

On April 25, 2016 Mr. Willcott resubmitted his March 23, 2016 report, which had been cosigned by Dr. Daniel Lee, a Board-certified orthopedic surgeon.

A telephonic hearing was held before an OWCP hearing representative on November 2, 2016. Appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence.

Appellant subsequently submitted an October 21, 2016 hospital report from Dr. Jones indicating that appellant had undergone a right C3-5 medial branch block and pulsed radio frequency ablation.

By decision dated January 11, 2017, the hearing representative modified the prior decision to find appellant had established fact of injury. However, the claim remained denied because the medical evidence of record was insufficient to establish causal relationship between his cervical conditions and factors of his federal employment.

LEGAL PRECEDENT

A claimant seeking benefits under FECA[3] 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.[4]

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 identified employment factors.[5]

[3] *See id.*

[4] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[5] *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue.[6] A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background.[7] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.[8]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a claim that factors of his federal employment caused or aggravated one of his diagnosed medical conditions. Appellant identified the factors of his federal employment that he believed caused his claimed conditions, including bending his neck while taking telephone calls and writing messages at work, which OWCP accepted as factual. However, in order to establish a claim that he sustained an employment-related injury, he must also submit rationalized medical evidence which explains how his medical conditions were caused or aggravated by the implicated employment factors.[9]

The October 30, 2015 x-ray of the cervical spine confirmed degenerative disc space narrowing at C4-7. However, the diagnostic study does not address the etiology of appellant's cervical condition and is therefore of no probative value.[10] Regarding the second opinion report from Dr. Close, the Board finds that it failed to provide an opinion adequately addressing how appellant's employment factors contributed to his cervical conditions. With respect to the reports from Drs. Markman and Jones, they provide cervical diagnoses, but offer no opinion regarding the cause of appellant's diagnosed conditions. The report from Mr. Willcott, a physician assistant, was cosigned by Dr. Lee. The Board finds that this document constitutes competent medical evidence because it was cosigned by Dr. Lee who is a "physician" as defined under FECA.[11] Nevertheless, 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.[12] Mr. Willcott merely reiterated the opinion of Dr. Peppers. Consequently, the above-noted evidence is insufficient to satisfy appellant's burden of proof with respect to causal relationship.[13]

[6] *See Robert G. Morris*, 48 ECAB 238 (1996).

[7] *Supra* note 5.

[8] *Id.*

[9] *See A.C.*, Docket No. 08-1453 (issued November 18, 2008).

[10] *C.L.*, Docket No. 17-0354 (issued July 10, 2018); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

[11] 5 U.S.C. § 8101(2).

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

[13] *See supra* note 5.

In her reports, Dr. Jaya diagnosed neck strain and asserted that appellant had to bend his neck to look at a keyboard at work. She reported that appellant had a previous neck injury and stated that he had been having problems with his neck since approximately 2009. Dr. Jaya noted that she did not have records of appellant's previous neck injury and needed them to address the causation of his current complaints. The Board finds that Dr. Jaya did not provide any medical rationale explaining how appellant's new or preexisting cervical condition was caused or aggravated by bending his neck while taking telephone calls and writing messages at work. Therefore, the Board finds that the reports from Dr. Jaya are insufficient to establish causal relationship.[14]

Dr. Peppers diagnosed cervicalgia and recommended physical therapy. He asserted that appellant started a new job as a passport clerk that exacerbated his neck pain. Dr. Peppers also asserted that he had been routinely lifting more than his work restrictions allowed. He noted that appellant's cervical condition was aggravated while he was at work, but such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how his physical activity at work actually caused or aggravated the diagnosed condition.[15] Dr. Peppers failed to provide sufficient medical rationale explaining how his cervical condition was caused or aggravated by bending his neck while taking telephone calls and writing messages at work. His opinion was based, in part, on temporal relationship. However, the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[16] Dr. Peppers did not otherwise sufficiently explain the reasons why diagnostic testing and examination findings led him to conclude that appellant's employment factors caused or contributed to the diagnosed condition. Thus, the Board finds that the reports of Dr. Peppers are insufficient to establish that appellant sustained an employment-related injury.

As appellant has not submitted rationalized medical evidence sufficient to establish an injury causally related to the accepted employment factors, 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 a cervical condition causally related to factors of his federal employment.

[14] A physician's opinion on causal relationship must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Supra* note 5.

[15] *See K.W.*, Docket No. 10-98 (issued September 10, 2010).

[16] *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

ORDER

IT IS HEREBY ORDERED THAT the January 11, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 8, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

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