

FACTUAL HISTORY

This case has previously been before the Board.² 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 August 21, 2011 appellant, then a 42-year-old markup clerk, filed an occupational disease claim (Form CA-2) alleging that he developed various medical conditions as a result of his daily, repetitive employment duties.³ He noted that he first became aware of his claimed conditions and realized their relationship to his federal employment on November 30, 2009. Appellant stopped work on March 2, 2011. He separated from federal employment effective March 4, 2011.

In a letter dated February 8, 2012, a health and resource manager for the employing establishment controverted appellant's claim. He contended that appellant did not provide a detailed statement explaining the nature or relationship between the medical conditions and his employment and did not submit any medical documentation to establish that he sustained a diagnosed condition causally related to factors of his employment. The health and resource manager also noted that appellant had been separated from the employing establishment since March 4, 2011 and had only worked a total of five days over the past five years.

By development letter dated March 14, 2012, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested that he respond to an attached questionnaire in order to substantiate the factual elements of his claim and provide a detailed medical report, which explained how he sustained the diagnosed medical conditions as a result of his federal employment. Appellant was afforded 30 days to submit the additional information.

Appellant responded to OWCP's development letter in a statement dated March 21, 2012. He explained that he no longer participated in any recreational activities due to his injuries. Appellant related that he watched television in a recliner and socialized on the phone through hands-free or speaker methods because holding his phone irritated his wrist and fingers.

By decision dated May 2, 2012, OWCP denied appellant's claim. It accepted his federal employment duties as a markup clerk, but found that the medical evidence of record was insufficient to establish that he sustained a diagnosed condition as a result of his accepted employment duties.

By letter dated May 31, 2012, received by OWCP on June 6, 2012, appellant requested a review of the written record by an OWCP hearing representative.

Appellant submitted medical reports dated November 30, 2009 and May 21, 2012 from Dr. John W. Ellis, Board-certified in environmental and family medicine. Dr. Ellis recounted that appellant began employment as a markup clerk in October 1999 and noted that the employment

² *Order Remanding Case*, Docket No. 13-1111 (issued July 15, 2013).

³ The present claim was assigned OWCP File No. xxxxxx723. Appellant also has a claim under OWCP File No. xxxxxx293, in which OWCP accepted that on June 19, 2004 appellant sustained a lumbar sprain as a result of cleaning up and shutting down of operational duties.

duties required repetitive work activities, including reaching out, bending, twisting, rotating, squatting, and walking. He noted appellant's history regarding his accepted back injury and provided a description of his medical records. Appellant had related that he began to seek medical treatment for his back symptoms in 2001 after he noticed pain in his back, particularly at the end of each day and the end of each week. He had also related a June 19, 2004 work event when he closed the postcon by himself and experienced significant back pain the next morning, which continued for several weeks. Dr. Ellis noted appellant's current complaints of low back pain at the iliolumbar and sacroiliac levels and shooting pain down the left leg into the lateral aspect of the foot. He diagnosed muscle tendon unit strain of the back, deranged discs in the back at L4 and S1, traumatic arthritis in the back, bilateral L5 spinal nerve root impairment, bilateral S1 spinal nerve root impairment due to his previously accepted employment injury. Dr. Ellis explained that appellant's work, which required lifting, bending, and twisting, caused multiple strains of the muscles and tendons in his back and iliolumbar and sacroiliac ligaments. These were subclinical microstrains that caused acute injuries and straining of his iliolumbar and sacroiliac ligaments and injuries to the discs in his back. Once the discs and the annular rings and fibers around the discs were injured, they continued to tear and fibers would spread, causing herniation of the discs with subsequent impingement of the L5 and S1 spinal nerve root, subsequently now down both legs. Dr. Ellis reported that "but for" the work at the employing establishment on June 19, 2004 and subsequent work at the employing establishment, appellant would not have had the deranged discs and the L5 and S1 spinal nerve root impingement down both legs. He further noted that appellant's sedentary work also caused aggravation of appellant's back symptoms. Dr. Ellis explained that sitting at a 90 degree angle put greater pressure on the discs anteriorly, which put more pressure on the posterior parts of the already injured discs that occurred on June 19, 2004, causing more impairment of the spinal nerves down his legs.

Regarding appellant's upper extremity conditions, Dr. Ellis reported his physical examination findings. He also explained that repetitive work of gripping, twisting, and moving his hands and elbows frequently caused multiple microstrains and tears of the tendons in his elbows and wrists. These tendons then became hypertrophied and began to impinge upon the ulnar nerve, which is cubital tunnel syndrome, the median nerve at the wrists, which is carpal tunnel syndrome, and the ulnar nerve at the wrists, which is Guyon's canal syndrome.

Dr. Ellis opined that appellant's injuries, impairments, and disabilities were caused by factors of his employment. He concluded that appellant had been temporarily totally disabled as a result of the injury from July 9, 2004 until January 29, 2006 and was disabled again beginning February 5, 2007.⁴

By decision dated September 24, 2012, an OWCP hearing representative affirmed OWCP's May 2, 2012 denial decision. She found that Dr. Ellis' opinion, as stated in his May 21, 2012 report, was speculative because Dr. Ellis' diagnoses and opinion on causal relationship was provided years after appellant had stopped work in 2007. The hearing representative determined

⁴ Appellant also submitted various documents relating to his claim under OWCP File No. xxxxxx293, which included various diagnostic examination reports dated July 16 and December 7, 2004 and a statement dated August 23, 2011.

that Dr. Ellis' medical reports were of insufficient probative value to establish that appellant sustained a medical condition in connection with his federal employment.

Appellant subsequently appealed to the Board. By order dated July 15, 2013, the Board remanded the case for OWCP to administratively combine File Nos. xxxxxx723 and xxxxxx293 followed by an appropriate decision based on the entire case record.⁵

OWCP subsequently combined File Nos. xxxxxx293 and xxxxxx723, with the latter serving as the master file.

By *de novo* decision dated November 21, 2013, OWCP again denied appellant's claim, finding that the medical evidence of record was insufficient to establish that his diagnosed medical conditions were causally related to his federal employment.

On November 5, 2014 appellant requested reconsideration. In a statement dated October 27, 2014, he indicated that he was attaching new medical evidence from Dr. Ellis. Appellant asserted that his previous recurrence of disability claim under OWCP File No. xxxxxx293 should not be considered a factor in the determination of his current case. He explained that, after that decision, he immediately sought out a new treating physician with the credentials and expertise to clearly explain the cause of his injuries. Appellant noted that after consulting with his treating physician he filed this present occupational disease claim. He contended that OWCP's hearing representative did not base her decision on any deficiency within the medical reports, but on the dates of the medical documentation to bolster her opinion that the medical reports were speculative.

Appellant submitted an August 27, 2014 report from Dr. Ellis, which reviewed appellant's medical records and provided a history of injury. Dr. Ellis related that in 2003 appellant began to experience numbness, tingling, and decreased strength in his hands. He noted that although appellant's symptoms improved when he was off work from July 9, 2004 to January 29, 2006 and beginning February 14, 2007, his symptoms had not gone away. Dr. Ellis related that appellant continued to experience a lot of tightness between his shoulders, especially his low back iliolumbar and sacroiliac ligaments, pain in his buttocks that radiated to the back of his thighs, weakness in both legs, and pain, numbness, and tingling in his wrists, hands, and elbows.

Dr. Ellis reported examination findings similar to his previous examinations. He diagnosed muscle tendon unit strain of the back, deranged discs in the back at L4 and S1, bilateral L5 spinal nerve root impairment, and bilateral S1 spinal nerve root impairment due to OWCP File No. xxxxxx293. Dr. Ellis also diagnosed bilateral tendinitis of the wrists, bilateral carpal tunnel syndrome with median nerve impingement, bilateral Guyon's canal syndrome with ulnar nerve impingement, bilateral medial epicondylitis, bilateral cubital tunnel syndrome, and resolved bilateral radial tunnel syndrome. He reiterated that appellant's injuries, impairments, and disabilities arose out of and in the course of his employment and that employment factors and work duties contributed to appellant's said injuries, disabilities, and impairments as set forth in this report. Dr. Ellis repeated his detailed explanation from his previous May 21, 2012 report. He

⁵ *Supra* note 2.

indicated that appellant had been temporarily totally disabled as a result of the injury from July 9, 2004 until January 29, 2006 and was disabled again beginning February 5, 2007.

By decision dated January 12, 2015, OWCP denied modification of its November 21, 2013 decision. It noted that there was no objective evidence which confirmed the numerous medical conditions that Dr. Ellis had diagnosed. OWCP explained that, without such objective evidence, Dr. Ellis' medical reports were speculative and insufficient to establish appellant's claim.

On January 11, 2016 appellant requested reconsideration. He provided a January 4, 2016 statement and that diagnostic studies had now been completed which confirmed the upper extremity diagnoses made by Dr. Ellis.

Appellant submitted various examination records dated July 1 to December 2, 2015 from Dr. Ignatius D. Roger, a Board-certified plastic and hand surgeon. Dr. Roger indicated that appellant was a retired postal worker with paresthesias of both hands onset in 2004. He noted that, although appellant stopped work in 2007, his hand and wrist symptoms persisted. Dr. Roger related that a March 14, 2015 electromyography (EMG) study showed right carpal tunnel syndrome. He conducted an examination and observed positive Tinel's and Phalen's tests in the bilateral wrists. Dr. Roger noted minimal crepitus at the right thumb flexor and tenderness over the right thumb. He reported that sensation was diminished in the median distribution of the right hand. In a December 2, 2015 record, Dr. Roger related that an October 1, 2015 EMG study showed left medial and ulnar axonal motor neuropathy and provided a copy of the EMG study. He diagnosed carpal tunnel syndrome and trigger finger.

In a January 4, 2016 report, Dr. Ellis noted his reexamination of appellant and reiterated appellant's history. He indicated that, although appellant's symptoms had improved when he was off work, the tingling in his hands had not gone away. Dr. Ellis indicated that appellant continued to complain of pain in his back, between his shoulders, low back, and buttocks and weakness of both feet. He related that since his last examination on August 27, 2014 appellant began to experience pain in the metacarpophalangeal joint. Dr. Ellis provided physical and sensory examination findings of appellant's back and bilateral elbows, wrists, hips, and knees similar to his previous reports. He diagnosed muscle tendon unit strain of the back, deranged discs in the back at L4 and S1, bilateral L5 spinal nerve root impairment, and bilateral S1 spinal nerve root impairment due to OWCP File No. xxxxxx293.

Regarding causal relationship, Dr. Ellis again repeated that appellant's work as markup clerk required lifting, bending, and twisting, caused multiple subclinical microstrains of the muscles and tendons in his back and iliolumbar and sacroiliac ligaments. The work appellant performed on June 19, 2004 caused acute straining of his low back muscles and ligaments. The straining of his low back, muscles, and ligaments have caused intermittent muscle spasms and tightness in his back. The tightness in his back caused increased pressure on the discs in the lower back.

Dr. Ellis further opined that "but for" the subsequent work at the employing establishment, appellant would not have had the deranged discs and the bilateral L5 and S1 spinal nerve root impingement down both legs. He reiterated that appellant's modified-duty sedentary work also caused aggravation of appellant's back by putting more pressure on his already injured discs.

Dr. Ellis indicated that, although a March 14, 2015 EMG study was negative for radiculopathic or myopathic process in the lower extremities, it did not mean that appellant did not have myelopathy and radiculopathy down his lower legs. He explained that it meant that appellant's radiculopathy was not severe enough to appear on the EMG/nerve conduction velocity (NCV) study. Dr. Ellis pointed out that appellant's physical findings were certainly and definitely positive for bilateral L5 and S1 spinal nerve impairment. He included a copy of the March 14, 2015 EMG/NCV study. Dr. Ellis concluded that appellant's repetitive work at the employing establishment would have caused the muscles, tendons, and joints in his upper extremities to be overused.

By decision dated April 8, 2016, OWCP modified its prior decision to find that appellant had established various diagnosed upper extremity conditions based on Dr. Ellis' January 4, 2016 medical report. However, the claim remained denied because the medical evidence of record was insufficient to establish that appellant's medical conditions were causally related to factors of his federal employment. It noted that there was a huge gap in time from when appellant stopped work and his current diagnosed conditions.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence⁷ including that he or she sustained an injury in the performance of duty and that any specific condition or disability from work for which he or she claims compensation is causally related to that employment injury.⁸

In an occupational disease claim, appellant's burden requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁹

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹⁰ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the

⁶ *Supra* note 1.

⁷ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁸ *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁹ *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

¹⁰ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.¹¹

ANALYSIS

The Board finds that the appellant has not met his burden of proof to establish lumbar or upper extremity conditions causally related to factors of his federal employment.

Appellant filed his claim on August 23, 2011, noting that he first became aware of his claimed conditions and of their relation to his federal employment approximately two years prior on November 30, 2009. He stopped work on March 2, 2011 and separated from federal employment several days later on March 4, 2011.

Appellant initially explained that, due to his injuries, he no longer participated in any recreational activities and related that he watched television in a recliner and socialized on the phone through hands-free or speaker methods because holding his phone irritated his wrist and fingers.

In his initial treatment note of November 30, 2011, Dr. Ellis recounted appellant's general work history since his employment as a markup clerk in 1998. He provided a history of injury and related that appellant's employment duties included reaching out, bending, twisting, rotating, squatting, and walking. Dr. Ellis referenced a specific instance seven years prior when appellant was closing a postcon on June 19, 2004. He recounted that appellant finished his shift without report of pain. The next morning appellant awoke with back pain radiating down his buttocks and legs. The pain subsided and he continued to work until 2009 when he felt similar symptoms down his right leg. Dr. Ellis indicated that the work as a markup clerk, caused multiple subclinical microstrains in the muscles and tendons. He repeated his findings in a substantially similar report of May 21, 2012 diagnosing low back and bilateral upper extremity maladies. In an April 27, 2014 report, Dr. Ellis again recounted the June 19, 2004 incident and attributed it as the cause of appellant's back complaints. He also further opined that the sedentary nature of the job aggravated his back. As well, Dr. Ellis indicated that the repetitive nature of the job caused appellant's upper extremity issues of which appellant was unaware when Dr. Ellis initially examined him in 2009. In his January 4, 2016 report, he again repeated the findings of his earlier reports.

The Board finds that Dr. Ellis did not explain how appellant's work duties years prior would have caused or aggravated the diagnosed conditions, or why such conditions would have worsened after he stopped work.¹² Dr. Ellis made no reference to the time periods between when the appellant separated from his employment in March 2011 and his findings in May 2012, August, 2014 and later in January 2016. Moreover, he failed to address the fact that appellant only worked a total of five days over a five-year period and how such little exposure to the employment factors could have caused or aggravated his claimed conditions.

¹¹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

¹² *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

Dr. Ellis further failed to reference with a degree and level of specificity appellant's employment activities, specific duties, and length of duration over the extended time period. He described various activities that appellant allegedly performed over prolonged periods of time and associated those general duties with work-related diagnoses. Such general findings superimposed on a generic history are insufficient to meet appellant's burden of proof. An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment, nor the belief that his condition was caused, precipitated or aggravated by her employment, is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence.¹³

Dr. Ellis opined that appellant's injuries arose out of and in the course of employment. He concluded that, "but for" the accepted June 19, 2004 employment injury and appellant's subsequent work, appellant would not have suffered these injuries. However, the fact that a condition manifests itself during a period of employment is not sufficient to establish causal relationship.¹⁴ Temporal relationship alone will not suffice.¹⁵

Dr. Ellis based his conclusions on an incomplete and unsubstantiated factual history on how the incident on June 19, 2004 and subsequent work duties caused or aggravated appellant's lower back and upper extremity conditions. For these reasons, the Board finds that Dr. Ellis' reports are insufficient to establish that appellant sustained an employment-related injury.

Dr. Roger related that a March 14, 2015 EMG study showed right carpal tunnel syndrome. He diagnosed carpal tunnel syndrome and trigger finger. Dr. Roger did not offer a rationalized opinion as to the causal nature of the claimed conditions. The Board has held that where causal relationship is not addressed, the reports are of no probative value.¹⁶ Therefore, Dr. Roger's reports are also insufficient to establish the claim.

Thus, the Board finds that appellant 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.

¹³ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁴ 20 C.F.R. § 10.115(e).

¹⁵ See *D.I.*, 59 ECAB 158, 162 (2007).

¹⁶ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish lumbar or upper extremity conditions causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the April 8, 2016 decision of the Office of Workers' Compensation Programs is affirmed.¹⁷

Issued: October 29, 2018
Washington, DC

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

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

¹⁷ Colleen Duffy Kiko, Judge, participated in the original decision, but was no longer a member of the Board effective December 11, 2017.