

ISSUE

The issue is whether appellant has met his burden of proof to establish a lumbar condition causally related to the accepted October 15, 2014 employment incident.

FACTUAL HISTORY

On October 17, 2014 appellant, then a 42-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, while at work on October 15, 2014, he sustained a back injury when lifting a caster and felt pain in his lower back and legs. He notified his supervisor, stopped work, and received initial medical care on the date of injury. In support of his claim, appellant submitted Brooklyn Hospital Center discharge instructions documenting treatment on October 15, 2014.

In an October 27, 2014 attending physician's report (Form CA-20), Dr. Alexandre De Moura, a Board-certified orthopedic surgeon, reported that appellant experienced low back and neck pain after lifting a heavy object on October 15, 2014. He diagnosed low back pain, lumbar radiculitis, and cervicgia. Dr. De Moura checked the box marked "yes" to indicate that the condition was caused or aggravated by the employment activity, noting that appellant's history, clinical examination, and symptoms were consistent with the employment incident described.

By development letter dated November 6, 2014, OWCP informed appellant that the evidence of record was insufficient to establish his traumatic injury claim. Appellant was advised of the type of medical and factual evidence needed to establish his claim and was provided a questionnaire for completion. OWCP afforded him 30 days to submit the necessary evidence.

In an October 23, 2014 medical report, Dr. De Moura reported that appellant sustained an employment injury on October 15, 2014 when he was lifting a heavy object which "jerked him," causing him to develop symptomology. He provided findings on physical examination, recommended physical therapy, and restricted appellant from returning to work.

In a November 6, 2014 medical report, Dr. Joseph Cardinale, Board-certified in pain medicine, reported that appellant's injury occurred on October 15, 2014 while at work as a letter carrier when he was lifting casters of mail. He reported no preexisting conditions or pertinent past medical history. Dr. Cardinale diagnosed lumbago, lumbar herniated nucleus pulposus, lumbar radiculopathy, and cervicgia, restricting appellant from returning to work. He explained that the incident described by appellant was the competent medical cause of the injury, his complaints were "consistent with the injury, and the history of injury was consistent with his objective findings."

In a December 3, 2014 medical report, Dr. Andrew Tarleton, a Board-certified orthopedic surgeon, reported that appellant was injured on October 15, 2014 while working as a letter carrier when he was lifting a caster and felt a pinch on his right side and felt pain and nausea. Appellant complained of pain in the neck, lower back, and legs. He reported that Dr. Cardinale had ordered magnetic resonance imaging (MRI) scans which were not yet completed. Dr. Tarleton noted that appellant had MRI scans of the lumbar and cervical spine from 2009. The 2009 cervical spine study showed diffuse hydration loss and posterior disc bulges impressing on the thecal sac from C2-3 through C6-7. Dr. Tarleton reported that the lumbar spine MRI scan revealed multilevel disc

issues as well. He stated that appellant was not working and this problem had been present for two months. Dr. Tarleton also noted that he had this problem before, having started in May 2009. He reviewed x-rays of the cervical and lumbar spine and provided findings on physical examination. Dr. Tarleton diagnosed lumbago, lumbar herniated nucleus pulposus, lumbar radiculopathy, and cervicalgia.

By decision dated December 9, 2014, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the October 15, 2014 employment incident occurred as alleged. It noted that he failed to respond to the questionnaire that was sent with the November 6, 2014 development letter.

On December 30, 2014 appellant requested an oral hearing before an OWCP hearing representative.

In a December 7, 2014 diagnostic report, Dr. Linda Harkavy, a Board-certified radiologist, reported that a lumbar spine MRI scan revealed L2-3 mild disc bulging and minimal osteophyte with encroachment upon the thecal sac and the right lateral recess, L4-5 disc degeneration with a shallow desiccated disc herniation with encroachment upon the thecal sac and mild recess narrowing, and L5-S1 disc degeneration with a small desiccated disc herniation favoring the left with narrowing of the left lateral recess and neural foramen with mild encroachment upon both foraminal nerve roots.

In medical reports dated December 10, 2014 to April 29, 2015, Dr. Tarleton noted appellant's complaints of back and leg pain and provided findings on physical examination. He reported that a lumbar MRI scan revealed L2-3 mild disc bulging and disc degeneration at L4-5 and L5-S1. Appellant was not yet approved for a cervical spine MRI scan. Dr. Tarleton diagnosed lumbago, lumbar herniated nucleus pulposus, lumbar radiculopathy, and cervicalgia. He opined that with regard to workers' compensation, lifting a caster could certainly hurt the lower back and lead to disc disease, muscle issues, or an exacerbation of any underlying condition in the lumbar spine that could result in persistent pain, especially if the caster is overweight. A December 10, 2014 Form CA-20 was also submitted.

A hearing was held on April 16, 2015, during which appellant testified in support of his claim. He reported that he was taken to the hospital *via* ambulance immediately following his injury. Appellant submitted a safety hazard report explaining that the canisters they were required to lift were past the required weight limits. He further reported that he had a lifting injury six years prior, but it was nothing like what had occurred after this work injury. Appellant also reported that he was in a car accident seven years prior which resulted in one week of missed work and temporary light duty. In support of his claim, appellant submitted witness statements from coworkers attesting to the circumstances surrounding the October 15, 2014 incident.

By decision dated July 6, 2015, an OWCP hearing representative affirmed the December 9, 2014 decision as modified, finding that appellant had established that the October 15, 2014 employment incident occurred as alleged, but that the evidence of record was insufficient to establish that his diagnosed condition was causally related to the accepted October 15, 2014 employment incident.

On October 9, 2015 appellant requested reconsideration of the July 6, 2015 decision. He argued that Dr. Tarleton's reports, diagnostic testing, and witness statements established his traumatic injury claim.

In a July 30, 2015 diagnostic report, Dr. Adam Landskowsky, a Board-certified diagnostic radiologist, reported that an x-ray of appellant's lumbar spine revealed L3-4 and L4-5 grade 1 degenerative anterolisthesis and L3 to S1 degenerative spondylosis with facet arthrosis. He reported that an x-ray of the cervical spine revealed straightening of the normal cervical lordosis, multilevel facet arthrosis, and C5-6 and C6-7 degenerative disc disease.

A partial medical report dated August 12, 2015 was also submitted from Dr. Tarleton. Dr. Tarleton diagnosed cervicalgia, lumbago, and lumbar radiculopathy. He opined that lifting a caster can certainly hurt the lower back and lead to disc disease, muscle issues, or an exacerbation of any underlying condition in the lumbar spine that could result in persistent pain, especially if the caster is overweight. Dr. Tarleton reported that in this case, lifting the caster coincided chronologically with the onset of symptoms and therefore, "it appeared" that the overweight caster was responsible.

By decision dated November 14, 2017, OWCP denied modification of the July 6, 2015 decision, finding that the evidence of record was insufficient to establish that appellant's diagnosed lumbar condition was causally related to the accepted October 15, 2014 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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, that the claim was filed within the applicable time limitation, that an injury was sustained while 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 These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁶ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

³ *Supra* note 2.

⁴ *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁵ *Michael E. Smith*, 50 ECAB 313 (1999).

⁶ *Elaine Pendleton*, *supra* note 4.

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.⁷ The opinion of the physician must be based on a complete factual and medical background of the claimant, 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. 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.⁸

ANALYSIS

The Board finds that appellant has not submitted sufficient medical evidence to establish that his lumbar condition is causally related to the accepted October 15, 2014 employment incident.

On the date of injury, appellant sought emergency medical treatment for complaints of low back pain at Brooklyn Hospital Center. However, these notes do not provide findings and an opinion regarding the cause of appellant's condition. As such, this report is insufficient to establish his traumatic injury claim.⁹

In an October 23, 2014 medical report and October 27, 2014 Form CA-20, Dr. De Moura described the October 15, 2014 employment incident and diagnosed low back pain, lumbar radiculitis, and cervicgia. On the Form CA-20, he checked the box marked "yes" when asked if the condition was caused or aggravated by the employment activity. The Board, however, has held that a report that addresses causal relationship with a checkmark, without medical rationale explaining how the work condition caused the alleged injury, is of diminished probative value and insufficient to establish causal relationship.¹⁰ Moreover, his statement that causation is supported by appellant's history, clinical examination, and symptoms fail to provide a sufficient explanation as to the mechanism of injury pertaining to this traumatic injury claim.¹¹ As such, his opinion is of diminished probative value.¹²

Dr. Cardinale's November 6, 2014 report is also insufficient to establish appellant's claim. While the physician provided a diagnosis, he failed to discuss appellant's medical history and only repeated his assertions pertaining to the employment incident. Such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are

⁷ See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁸ *James Mack*, 43 ECAB 321 (1991).

⁹ *J.P.*, Docket No. 14-0087 (issued March 14, 2014).

¹⁰ See *Calvin E. King, Jr.*, 51 ECAB 394 (2000); see also *Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

¹¹ *S.W.*, Docket No. 08-2538 (issued May 21, 2009).

¹² *Id.*

unsupported by adequate medical rationale explaining how this physical activity actually caused the diagnosed conditions.¹³

Dr. Tarleton noted that causation was established because appellant's complaints were "consistent with the injury and the history of injury was consistent with objective findings." His statement on causation is vague without discussion of the objective evidence that supported his conclusion. As Dr. Tarleton's failed to provide sufficient explanation as to the mechanism of injury explaining how lifting a heavy caster would cause his lumbar injuries, his opinion is of diminished probative value.¹⁴ In medical reports dated December 3, 2014 to August 12, 2015, Dr. Tarleton described the October 15, 2014 employment incident and diagnosed work-related lumbago, lumbar herniated nucleus pulposus, lumbar radiculopathy, and cervicgia. The Board finds that the opinion of Dr. Tarleton is insufficiently rationalized.

Dr. Tarleton discussed previous diagnostic testing and noted that appellant's conditions began in May 2009. He reported that a 2009 cervical spine MRI scan revealed diffuse hydration loss and posterior disc bulges impressing on the thecal sac from C2-3 through C6-7. Dr. Tarleton further noted that a 2009 lumbar spine MRI scan also revealed multilevel disc issues. The Board notes that the previous diagnostic studies revealed a preexisting injury given that appellant's current lumbar MRI scan showed L2-3 mild disc bulging and disc degeneration at L4-5 and L5-S1. Dr. Tarleton failed to discuss whether appellant's preexisting injury had progressed beyond what might be expected from the natural progression of that condition.¹⁵ It is unclear whether appellant's multilevel degenerative disc issues and radiculopathy were caused or aggravated by the October 15, 2014 employment incident, a result of a preexisting condition, or due to degenerative changes. Moreover, appellant reported prior nonoccupational lumbar-related injuries. However, Dr. Tarleton failed to adequately discuss his medical history when assessing the cause of his condition. A well-rationalized opinion is particularly warranted when there is a history of a preexisting condition.¹⁶

Dr. Tarleton further failed to provide a sufficient explanation as to the mechanism of injury pertaining to this traumatic injury claim. While he had some understanding of the October 14, 2015 employment incident, noting that appellant was lifting a heavy caster, he failed to provide sufficient detail regarding the circumstances surrounding the incident pertaining to the weight and size of the caster and the specific movements involved which would result in appellant's injury. Dr. Tarleton reported that lifting a caster can certainly hurt the lower back and lead to disc disease, muscle issues, or an exacerbation of any underlying condition in the lumbar spine that could result in persistent pain, especially if the caster is overweight. His statement that lifting a caster could cause injury is vague and couched in speculative terms without a definitive statement that the incident in this claim caused appellant's injury. Dr. Tarleton further noted that lifting the caster coincided chronologically with the onset of symptoms and therefore, it appeared that the overweight caster was responsible. The Board has held that an opinion that a condition is causally

¹³ *K.W.*, Docket No. 10-0098 (issued September 10, 2010).

¹⁴ *John W. Montoya*, 54 ECAB 306 (2003).

¹⁵ *R.E.*, Docket No. 14-0868 (issued September 24, 2014).

¹⁶ *T.M.*, Docket No. 08-0975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

related because the employee was asymptomatic before the injury, without adequate rationale, is insufficient to establish causal relationship.¹⁷ Dr. Tarleton's statement is vague and generalized without sufficient detail explaining how the October 15, 2014 incident caused appellant's injury. Without explaining how, physiologically, the movements involved in the employment incident caused or contributed to appellant's lumbar injuries, Dr. Tarleton's opinion on causal relationship is of limited probative value.¹⁸

The remaining medical evidence of record is also insufficient to establish causal relationship between appellant's lumbar injury and the October 15, 2014 employment incident. Dr. Harkavy's and Dr. Landskowsky's reports simply interpret diagnostic studies with no firm medical diagnosis or opinion on the cause of appellant's injury.¹⁹ The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of limited probative value.²⁰ Any medical opinion evidence appellant may submit to support his claim should reflect a correct history and offer a medically sound explanation by the physician of how the specific employment incident, in particular physiologically, caused or aggravated his lumbar injury.²¹

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relationship.²² Appellant's honest belief that his accepted employment incident caused his lumbar injury, however sincerely held, does not constitute medical evidence necessary to establish causal relationship.²³ In the instant case, the record lacks rationalized medical evidence establishing causal relationship between the October 14, 2015 employment incident and his diagnosed lumbar injuries. Thus, appellant has not met his burden of proof.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's 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 lumbar condition causally related to the accepted October 15, 2014 employment incident.

¹⁷ *M.R.*, Docket No. 14-0011 (issued August 27, 2014).

¹⁸ See *L.M.*, Docket No. 14-0973 (issued August 25, 2014); *R.G.*, Docket No. 14-0113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-0548 (issued November 16, 2012).

¹⁹ It is not possible to establish the cause of a medical condition if the physician has not stated a firm medical diagnosis. *T.G.*, Docket No. 13-0076 (issued March 22, 2013).

²⁰ *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

²¹ *Id.*

²² *D.D.*, 57 ECAB 734 (2006).

²³ See *J.S.*, Docket No. 17-0967 (issued August 23, 2017).

ORDER

IT IS HEREBY ORDERED THAT the November 14, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 3, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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