

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

I.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Baltimore, MD, Employer**

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**Docket No. 19-1217
Issued: December 16, 2019**

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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 6, 2019 appellant filed a timely appeal from January 8 and April 29, 2019 merit decisions 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 neck and back conditions causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On October 16, 2018 appellant, then a 62-year-old motor vehicle operator, filed an occupational disease claim (Form CA-2) alleging that he aggravated his preexisting cervical degenerative disease and cervical and lumbar radiculopathy due to repetitive factors of his federal

¹ 5 U.S.C. § 8101 *et seq.*

employment including climbing into and out of his vehicle, loading and unloading, and pushing heavy equipment. He indicated that he first became aware of his condition, and of its relationship to factors of his federal employment, on May 29, 2018.

In a series of work excuse notes dated April 4, 12, and May 1, 2018, Dr. Kevin P. Carter, a Board-certified family practitioner, noted that appellant was unable to return to work from April 2 to May 12, 2018.

In a report dated May 25, 2018, Dr. Carter indicated that appellant had complained of left shoulder pain and occasional left arm and leg weakness in February and March 2018. He noted that he referred appellant for a magnetic resonance imaging (MRI) scan of his cervical and lumbar spine. Prior to the MRI scan, on March 19, 2018, appellant reported the aforementioned symptoms and was taken from work by emergency vehicle to the hospital for further testing. Dr. Carter indicated that appellant received an MRI scan on March 21, 2018, which revealed multilevel degenerative changes that have caused moderate central canal stenosis and severe bilateral foraminal stenosis at the C4-5, C5-6, and C6-7 levels, and significant bilateral foraminal stenosis at the L3-4, L4-5, and L5-S1 levels. He opined that the foraminal stenosis seen in appellant's cervical and lumbar spine likely was there prior to the March 19, 2018 employment incident. Dr. Carter further opined that physical activity as well as other ambulatory activity could cause radicular symptoms based on the findings in his cervical and lumbar spine. He indicated that activities of appellant's normal work routine could also aggravate his cervical and lumbar spinal disease.

In a report dated May 29, 2018, Dr. William W. Ashley Jr., a Board-certified neurosurgeon, reviewed appellant's history of injury and diagnostic examinations and performed a physical examination. He diagnosed an incidental small aneurysm and he further diagnosed cervical degenerative disease. Dr. Ashley opined that repetitive lifting, bending, and twisting may have contributed to appellant's cervical condition.

In a letter dated October 18, 2018, the employing establishment challenged appellant's claim contending that he had failed to establish that his injury occurred as alleged. It also argued that appellant failed to provide medical documentation to establish *prima facie* causal relationship between his claimed conditions and specific factors of his federal employment. In an addendum to the letter on the same date, the employing establishment noted that appellant submitted evidence that was previously submitted for a previous traumatic injury claim under OWCP File No. xxxxxx026. It related that the prior claim was denied on June 29, 2018.

In a development letter dated October 25, 2018, OWCP informed appellant of the deficiencies of his claim, and advised him of the type of factual and medical evidence needed to establish his claim. It provided a questionnaire for his completion, and afforded him 30 days to submit the necessary evidence.

In a report dated November 13, 2018, Dr. Ashley reiterated appellant's cervical degenerative disease diagnosis. He opined that the employment activities that may have caused, contributed to, or aggravated appellant's medical conditions were repetitive lifting, bending, and twisting. Dr. Ashley related that he could not account for any previous circumstances that may have contributed to appellant's current conditions.

On November 21, 2018 appellant responded to OWCP's questionnaire. He indicated that he initially filed a traumatic injury claim (Form CA-1) based on his supervisor's instructions, and that once he spoke to his union representative he was given the correct information regarding his alleged condition and filed a Form CA-2. Appellant related that he had designated May 29, 2018 as the date he first became aware of his alleged conditions because prior to that date he had not been given an actual diagnosis.

By decision dated January 8, 2019, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish that the events occurred as he described. In addition, it also found that he had not submitted any medical evidence to establish that his diagnosed medical conditions were causally related to the alleged employment injury or event. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On January 29, 2019 appellant requested reconsideration of OWCP's January 8, 2019 decision. He submitted a personal statement along with his request in which he emphasized that he first became aware of his diagnosed condition on May 29, 2018, and that he was last exposed to factors of his federal employment on March 19, 2018.

By decision dated April 29, 2019, OWCP affirmed, as modified, its January 8, 2019 decision finding that appellant established the factual component of his claim, but failed to establish that his diagnosed conditions were causally related to the factors of his federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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 timely filed within the applicable time limitation period of FECA,³ that an injury was sustained in the performance of duty as alleged, and that any disability or medical 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 upon a traumatic injury or an occupational disease.⁵

In an occupational disease claim, appellant's burden of proof 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

² *Id.*

³ *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *L.W.*, Docket No. 19-0698 (issued September 3, 2019); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *L.W., id.*; *A.M., supra* note 3; *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

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.⁶

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.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 employee.⁸ Neither 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 causal relationship.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish neck and back conditions causally related to the accepted factors of his federal employment.

In support of his claim, appellant submitted a series of work excuses dated from April 4 to May 1, 2018, as well as a May 25, 2018 narrative report from Dr. Carter. As Dr. Carter did not provide an opinion regarding causal relationship between appellant's claimed conditions and the accepted factors of his federal employment, these reports are of no probative value and are insufficient to establish the claim.¹⁰ In his May 25, 2018 report, Dr. Carter first diagnosed cervical degenerative disease and aneurysm. He opined that the foraminal stenosis seen in appellant's cervical and lumbar spine likely was there prior to the March 19, 2018 employment incident, and that physical activity as well as other ambulatory activity could cause radicular symptoms based on the findings in his cervical and lumbar spine. While Dr. Carter's May 25, 2018 report offers an opinion on causal relationship, the report is of limited probative value because it does not explain, with rationale, how, physiologically, appellant's specific job duties caused his diagnosed conditions.¹¹

In his May 29, 2018 report, Dr. Ashley opined that repetitive lifting, bending, and twisting may have contributed to appellant's cervical condition. In his November 13, 2018 report, he opined that the employment activities that may have caused, contributed to, or aggravated appellant's medical conditions were repetitive lifting, bending, and twisting. Dr. Ashley also related that he could not account for any previous circumstances that may have contributed to appellant's current conditions. While these reports describe appellant's job duties and state that

⁶ *T.B.*, Docket No. 19-0780 (issued September 17, 2019); *E.M.*, Docket No. 18-0275 (issued June 8, 2018).

⁷ *T.B.*, *id.*; *A.M.*, Docket No. 18-0685 (issued October 26, 2018).

⁸ *L.W.*, *supra* note 4; *E.V.*, Docket No. 18-0106 (issued April 5, 2018).

⁹ *T.B.*, *supra* note 6; *E.M.*, *supra* note 6; *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁰ *Supra* note 8.

¹¹ *S.H.*, Docket No. 19-0631 (issued September 5, 2019); *see Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

his duties may have caused, contributed to, or aggravated his conditions, they are not unequivocal, but rather are speculative in nature. The Board has held that medical opinions which are equivocal or speculative are of diminished probative value.¹² These reports also lack medical rationale as to how these activities would have caused, contributed to, or aggravated appellant's conditions. They are therefore are of limited probative value.¹³

As appellant has not submitted rationalized medical evidence establishing that his diagnosed conditions are causally related to the accepted factors of his federal employment, the Board finds that 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 neck and back conditions causally related to the accepted factors of his federal employment.

¹² *T.S.*, Docket No. 18-1702 (issued October 4, 2019); *see P.H.*, Docket No. 16-0654 (issued July 21, 2016).

¹³ *Supra* note 11; *J.P.*, Docket No. 19-0129 (issued April 26, 2019).

ORDER

IT IS HEREBY ORDERED THAT the April 29 and January 8, 2019 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 16, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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