

FACTUAL HISTORY

On February 26, 2018 appellant, then a 57-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that he developed a back injury while in the performance of duty. He noted that on February 4, 2017 he started a new mail route which was more physically taxing (a larger route with lifting, twisting, and bending). Shortly, thereafter, appellant started to experience low back pain. He maintained that his pain was caused by an annular tear, bulging discs, and disc desiccation. Appellant related that he first became aware of his back condition and its relationship to his federal employment on February 13, 2017. He did not stop work.

In an accompanying statement dated February 26, 2018, appellant indicated that he had worked at the employing establishment since March 2007 as a substitute mail carrier (rural carrier associate) for a little more than nine years and as a career employee (rural carrier) for almost two years. He described the employment duties he alleged caused his back symptoms and physical limitations. Appellant noted that he performed a large amount of bending, twisting, and lifting on a daily basis. He related that he lifted trays and tubs of mail off the floor and sorted and arranged the mail inside them. Appellant then put the mail into a case (a series of shelves with vertical dividers). This process involved frequent turning from one side of the case to the other side. After sorting and arranging the mail, appellant lifted the trays and tubs into a wheeled hamper. He also lifted parcels weighing up to 70 pounds from one wheeled hamper to another wheeled hamper and then to his delivery vehicle. On the road, appellant reported that he also performed significant amounts of bending, twisting, and lifting. He constantly twisted while retrieving mail from trays on a shelf on the left side of his vehicle and placing mail into mailboxes that were on the right side of his vehicle. Appellant also twisted backwards to retrieve small- to medium-sized parcels arranged in the back of his vehicle. He lifted larger and heavier parcels from the rear cargo door of his vehicle and carried and placed them onto a customer's front door/porch.

In a March 7, 2018 letter, the postmaster controverted the claim, contending that appellant experienced back issues long before he became a regular rural route carrier on April 30, 2016. He noted that, in late January or early February 2018, appellant inquired about a light-duty assignment. The postmaster reported that appellant explained to him that he was going to undergo back surgery and he was concerned about earning money. He related that appellant had a leave balance of 16 hours of sick leave and 88 hours of annual leave. The postmaster indicated that he had used a majority of his leave for his Family and Medical Leave Act back condition. He concluded that appellant's back condition was not caused by his new route.

OWCP, by development letter dated March 13, 2018, advised appellant of the factual and medical deficiencies of his claim and requested that he submit a response to a form questionnaire in order to establish that he actually experienced the employment factor(s) alleged to have caused an injury and a medical report from his physician including a detailed description of findings, diagnoses, and employment duties/activities, explaining how the claimed work activities caused, contributed to, or aggravated his medical condition. The questionnaire requested that appellant respond to whether he had a preexisting back condition and to describe the medical treatment he received for his diagnosed condition. OWCP afforded him 30 days to submit the requested evidence. It also requested that the employing establishment provide medical evidence, if appellant had been treated at its medical facility. No further evidence was received.

By decision dated April 17, 2018, OWCP denied appellant's occupational disease claim. It found that the evidence of record was insufficient to establish fact of injury. OWCP noted that there was no medical evidence of record which contained a diagnosis in connection with the work injury or event(s). It also noted that appellant had not responded to its March 13, 2018 development letter. OWCP concluded that the claim was denied because he had not established fact of injury, as the evidence of record failed to support that the injury and/or events occurred, as alleged.

Appellant requested reconsideration on May 14, 2018.

In support of his request for reconsideration, appellant submitted a February 19, 2018 medical report from Dr. Bruce Kammerman, an examining physician specializing in emergency and family medicine. Dr. Kammerman noted that appellant reported a chief complaint of lower back pain, which he attributed to his rural letter carrier work duties, including the more physically demanding and stressful duties performed on his new route commencing in February 2017. Appellant again reported that his job duties involved repetitive twisting, bending, kneeling, and lifting while casing mail, transferring the mail and packages weighing up to 70 pounds to his delivery vehicle, and delivering mail on his route. He related that he sometimes repeated this procedure twice a day. Appellant further related that he received approximately 67 full trays of mail weighing 20 to 50 pounds and 30 to 50 large parcels weighing up to 70 pounds on his route. Also, he fastened and unbuckled his seatbelt 25 to 35 times over a 4- to 5-hour period along with shifting into park and pulling on a handbrake on his route. Under past medical history, Dr. Kammerman noted that appellant denied any motor vehicle accidents or previous back injuries. He described a review of systems and reported findings on physical, neurological, and diagnostic examination. Dr. Kammerman diagnosed sprain of the ligaments of the lumbar spine, initial encounter. He also diagnosed other intervertebral disc displacement and intervertebral disc disorder with radiculopathy, lumbar region. Dr. Kammerman opined that the diagnosed conditions were a direct result of appellant's work duties.

By decision dated July 10, 2018, OWCP reviewed the merits of appellant's claim, but denied modification of its April 17, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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,³ 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

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

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 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.

ANALYSIS

The Board finds that this case is not in posture for decision.

The Board finds that the evidence of record supports that appellant was exposed to the employment factors as alleged. An employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁷ Appellant submitted an extensive statement in which he described with detail his repetitive employment duties which included lifting, twisting, bending, reaching, and kneeling while casing, delivering, and picking up mail and heavy parcels. His statement with regard to his duties is not contradicted by any other evidence in the record. The Board notes that, while the postmaster controverted the claim arguing that appellant's injury was the result of a preexisting condition, he did not dispute the employment factors which appellant alleged had caused the claimed injury. The employing establishment's controversion is based upon a medical issue of whether the employment duties were sufficient to have aggravated a preexisting medical condition. That is an issue separate and distinct from an initial fact of injury determination.⁸ Consequently, the Board finds that appellant has established the existence of the alleged employment factors.⁹

As appellant has established the first component of fact of injury, the Board finds that the issues remaining are whether he has established a diagnosed condition and whether that condition is causally related to the accepted factors of his federal employment.¹⁰ The Board shall therefore

⁴ *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 *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).

⁶ *T.B.*, Docket No. 18-1214 (issued January 29, 2019); *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁷ *See J.J.*, Docket No. 17-1248 (issued February 21, 2018).

⁸ *Id.*

⁹ *Id.*; *M.W.*, Docket No. 17-0097 (issued April 11, 2017).

¹⁰ *S.S.*, Docket No. 16-0758 (issued August 12, 2016).

set aside OWCP's decision and remand this case for consideration of the medical evidence.¹¹ After any further development that, is deemed necessary, OWCP shall issue a *de novo* decision as to whether appellant has met his burden of proof to establish a diagnosed medical condition causally related to the accepted factors of his federal employment.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the July 10 and April 17, 2018 decisions of the Office of Workers' Compensation Programs are set aside and the case remanded for further proceedings consistent with this decision.

Issued: February 21, 2019
Washington, DC

Christopher J. Godfrey, 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

¹¹ See *Louise F. Garnett*, 47 ECAB 639 (1996); *Loise G. Moore*, 20 ECAB 165 (1968).