United States Department of Labor
Employees' Compensation Appeals Board

E.V., Appellant	)	
and	)	**Docket No. 18-1617**
	)	**Issued: February 26, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Ponce, PR, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On August 21, 2018 appellant filed a timely appeal from an August 3, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 that his diagnosed back conditions are causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On January 18, 2018 appellant, then a 62-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he injured his back when working a mounted route and enduring bad road conditions while in the performance of duty. He noted that he had previously injured his back on March 8, 2016 while on his route and that he underwent lumbar surgery on

[1] 5 U.S.C. § 8101 *et seq.*

April 11, 2016. Appellant noted that he first became aware of his claimed condition on February 14, 2016 and realized its relation to his federal employment on March 15, 2016. On the reverse side of the claim form, a supervisor noted that appellant had not worked since June 2017.

By development letter dated February 5, 2018, OWCP informed appellant that additional evidence was needed to establish his occupational disease claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit additional evidence.

In support of his claim, appellant submitted largely-illegible progress notes from Dr. Gilberto Alvarado, an orthopedic surgeon, dated June 14, July 1, and August 28, 2013. He also submitted numerous diagnostic testing reports. A September 4, 2013 magnetic resonance imaging (MRI) scan of appellant's cervical spine demonstrated multilevel degenerative changes with a disc osteophyte complex more prominent at the C3-C4 and C5-C6 levels, causing mild-to-moderate and moderate-to-severe spinal canal and foramina stenosis. A January 23, 2014 report of a computerized tomography (CT) scan of appellant's cervical spine demonstrated that appellant was status post fusion at C3-C4 and C4-C5 and that the fusion device was intact. A January 25, 2014 report of x-rays of appellant's cervical spine demonstrated internal fixation with an orthopedic plate and screws entering the C3 through C6 vertebral bodies anteriorly.

Appellant subsequently submitted additional largely-illegible progress notes dated September 19, October 31, and November 17, 2014 from Dr. Alvarado. He also submitted an illegible operative report dated February 4, 2015, along with an undated and illegible prescription note.

In a preoperative clearance report dated January 16, 2015, Dr. Marta Benitez, specializing in critical care medicine, noted that appellant had no contraindications to cervical disc disease surgery and surgery of the left arm at that time, noting trauma to the left elbow.

On November 19, 2015 Dr. Yamil C. Rivera, a Board-certified orthopedic surgeon, examined appellant for complaints of low back pain, radiating into the left leg. He noted that appellant had undergone two previous epidural steroid injections with some relief. On examination Dr. Rivera noted full strength of the lower and upper extremities. He reviewed the MRI scan of appellant's lumbar spine, which demonstrated lumbar disc degeneration, a left L5-S1 small disc herniation, and mild stenosis at L4-L5. Dr. Rivera diagnosed appellant with lumbar spondylosis with radiculopathy and lumbar disc prolapse with radiculopathy. He recommended that appellant consider an additional epidural steroid injection.

On January 28, 2016 Dr. Rivera evaluated appellant and noted left leg pain. He noted that appellant had an epidural steroid injection with some relief, but was once again experiencing pain. On examination Dr. Rivera noted reduced strength of the lower left extremity and a positive straight leg raise on the left. He noted that a lumbar spine MRI scan demonstrated L5-S1 degenerative disc disease and disc herniation. Dr. Rivera diagnosed lumbosacral spondylosis with radiculopathy and lumbar disc prolapse with radiculopathy. He recommended that appellant undergo a left L5-S1.

In an operative report dated April 11, 2016, Dr. Rivera noted the diagnosis of lumbar stenosis and the surgical procedure of a lumbar laminotomy at L5-S1.

In a follow-up report dated April 28, 2016, Dr. Rivera noted full strength of appellant's lower and upper extremities. Appellant informed Dr. Rivera that he had improved left leg pain with mild numbness at the L5 nerve root.

Appellant submitted an additional illegible progress note from Dr. Alvarado dated October 31, 2016.

In a medical summary dated February 15, 2018, Dr. Alberto Rivera-Sanchez, an internist, noted that appellant underwent an anterior cervical discectomy on January 8, 2014, after which his shoulder pain and numbness in his hand persisted.

On July 31, 2014 appellant had an extensor digitorum communis injection. On January 21, 2015 he underwent a left extensor carpi radialis brevis surgery.

An August 19, 2015 MRI scan demonstrated left lateral bulging discs at the L3-L4 and L4-L5 levels, encroaching the neural foramen with left foraminal stenosis, left foraminal stenosis at L5-S1, and loss of normal lumbar lordosis, likely secondary to muscle spasm. Dr. Rivera-Sanchez diagnosed spinal stenosis of the lumbar region with neurogenic claudication, thoracic or lumbosacral neuritis or radiculitis, displacement of the cervical intervertebral disc without myelopathy, postlaminectomy syndrome of the cervical region, and chronic pain syndrome. Appellant had epidural steroid injections on January 24 and October 1, 2015.

Subsequent to these injections, appellant was reexamined by Dr. Rivera, who updated his list of diagnoses to include lumbosacral spinal stenosis, lumbar intervertebral disc displacement, lumbosacral intervertebral disc displacement, and postlaminectomy syndrome. He had a transforaminal epidural injection on December 10, 2015, and later underwent lumbar spine surgery on April 11, 2016 with Dr. Rivera. Appellant continued to have neck pain and lower back pain at subsequent visits, which were treated with medication. On March 7, 2017 he reported a recent fall for which he had to seek treatment at the emergency room. Dr. Rivera-Sanchez noted that appellant would be out of work until September 2017. On August 1, 2017 appellant complained of neck pain and lower back pain, which impaired some of his activities of daily living. Dr. Rivera-Sanchez noted that his pain was partially relieved with medication. He noted that appellant's postlaminectomy syndrome and lumbar spinal stenosis would pose a lifelong problem. Dr. Rivera-Sanchez noted that his pain impacted activities of daily living and that at some point in the near future he may require surgical decompression. He noted that appellant should be enrolled in a sedentary job with a flexible schedule or to remain out of work.

By decision dated April 25, 2018, OWCP denied appellant's claim, finding that he had not provided a description of the claimed work activities he believed caused his condition.

On May 7, 2018 appellant requested reconsideration of OWCP's April 25, 2018 decision. With his request, he submitted an April 20, 2018 report from Dr. Andres Delanoy, a family medicine specialist, who noted that he had a spinal condition and was unable to perform duties of his employment. Appellant also submitted an April 20, 2018 duty status report from Dr. Delanoy, noting that he had been advised not to resume work. Dr. Delanoy diagnosed thoracic,

thoracolumbar, and lumbosacral intervertebral disc displacement and cervical disc disorder with radiculopathy, and noting low back pain. He checked a box noting that the diagnosed conditions were due to an employment injury. Appellant also resubmitted the February 15, 2018 medical summary of Dr. Rivera-Sanchez.

In a statement dated May 2, 2018, appellant explained that his back conditions occurred due to his mounted route and bad conditions on the road. He alleged that, in August 2013, his truck fell into a pit and he injured his cervical spine, requiring surgery. Subsequently, appellant injured his left forearm. On September 12, 2015 he lost control of his truck and hit a gate. On May 5, 2017 appellant injured his back while on his route.

By letter dated May 17, 2018, OWCP requested that appellant clarify whether he was claiming a traumatic injury or occupational disease. It afforded him 20 days to respond.

Appellant responded by letter dated May 22, 2018. He clarified that his claim was for an occupational disease, as he had worked at the employing establishment for 32 years, and that he had been suffering from back pain for the last 5 years. Appellant attributed his back pain to the bad conditions on his route and making deliveries outside his vehicle, noting that he performed these duties six days per week for the last eight years. He stated that he had not returned to work.

By decision dated August 3, 2018, OWCP affirmed as modified its prior decision and found that appellant had established the factual components of his claim. However, it further found that he had not submitted sufficient medical evidence to establish causal relationship between the accepted factors of his federal employment and his diagnosed conditions.

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 timely filed within the applicable time limitation period of FECA,[2] and 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.[3] 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.[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

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

[3] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[4] *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).

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]

Causal relationship is a medical question, which requires rationalized medical opinion evidence to resolve the issue.[6] A physician's opinion on whether there is 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 that his diagnosed back conditions are causally related to the accepted factors of his federal employment.

Appellant submitted a medical summary dated February 15, 2018 from Dr. Rivera-Sanchez, which outlined appellant's history of medical diagnoses and treatment for cervical, lumbar, and elbow conditions. Dr. Rivera-Sanchez noted that appellant was either disabled from work or could only work in a sedentary position, but failed to offer an opinion on the cause of appellant's diagnosed conditions. Medical reports from Dr. Rivera dated November 19, 2015 through April 28, 2016, and the January 16, 2015 report of Dr. Benitez also fail to provide an opinion as to the cause of appellant's diagnosed conditions. Dr. Alvarado's notes are largely illegible, but none provide an opinion on causation. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[9] These reports, therefore, are insufficient to establish appellant's claim.

In an April 20, 2018 duty status report, Dr. Delanoy diagnosed appellant with thoracic, thoracolumbar, and lumbosacral intervertebral disc displacement and cervical disc disorder with radiculopathy, and noting low back pain. He checked a box noting that the diagnosed conditions were due to an employment injury. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking a response to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.[10] As

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

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

[7] *Supra* note 5.

[8] *Id.*

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

[10] *See M.O.*, Docket No. 18-1056 (issued November 6, 2018); *Deborah L. Beatty*, 54 ECAB 3234 (2003).

such, the April 20, 2018 duty status report of Dr. Delanoy is insufficient to establish appellant's claim.

Appellant also submitted a plethora of diagnostic test results in support of his claim. The Board has held, however, that diagnostic studies are of limited probative value as they do not address whether the employment incident caused any of the diagnosed conditions.[11] Such diagnostic reports are therefore insufficient to establish appellant's claim.

Finally, appellant submitted numerous illegible medical records in support of his claim. However, a note which contains an illegible signature has no probative value, as it is not established that the author is a physician.[12] Such illegible records therefore lack probative value.

As noted above, appellant bears the burden of proof to establish the essential elements of his claim. The Board finds that he has not met his burden of proof to provide sufficient medical evidence to establish that his diagnosed conditions were causally related to the accepted factors of his federal employment, he has thus not met his burden of proof to establish his claim.

Appellant may submit new evidence or argument as part of 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 that his diagnosed back conditions are causally related to the accepted factors of his federal employment.

[11] *See J.S.*, Docket No. 17-1039 (issued October 6, 2017).

[12] *See D.D.*, 57 ECAB 734 (2006); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

ORDER

IT IS HEREBY ORDERED THAT the August 3, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 26, 2019
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