

ISSUE

The issue is whether appellant has met his burden of proof to establish a lumbar condition causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On April 11, 2016 appellant, then a 29-year-old carrier technician, filed an occupational disease claim (Form CA-2) alleging that he developed “a curve in [his] lower back spine that [was] putting pressure on [his] nerves effect[ing his] hamstrings” due to factors of his federal employment. He stated that he had a mild irritation for a few days and that the pain became overbearing over time. Appellant indicated that he first became aware of his condition and first realized it was caused or aggravated by his employment on November 15, 2015. He did not stop work.

Appellant submitted an April 14, 2016 report from Dr. Ramachandra Meera Krishnashastry, a Board-certified family medicine specialist, who indicated that he had been suffering with low back pain with sciatica for which he was undergoing physical therapy. Upon noting the symptoms and appellant’s work requirements, Dr. Krishnashastry opined that carrying the satchel along the right shoulder could be adding to a lot of strain to the back and be precipitating the symptoms of back pain.

In a development letter dated April 28, 2016, OWCP notified appellant of the deficiencies of his claim. It instructed him to respond to a questionnaire and to provide a narrative medical report from his physician which contained a detailed description of findings and diagnoses, explaining how his employment activities caused or aggravated his medical condition. OWCP afforded appellant 30 days to submit the requested information. In response, appellant submitted a position description, a statement from his immediate supervisor dated May 13, 2016, and a May 5, 2016 narrative statement indicating that his sciatica had effected his sleep and personal life as he felt pain walking up and down stairs as well as walking for long periods of time. He stated that he worked 10 to 12 hours per day while carrying a satchel for five-to-six days a week. Appellant argued that he wore his satchel on his right side day in and day out with the level of weight that had caused sciatica on his lower back.

Appellant also submitted a February 20, 2016 report from Dr. Marlis Pacifico, Board-certified in internal medicine, who advised that appellant was currently under her medical care and was excused from work. Dr. Pacifico opined that appellant was capable of returning to work with restrictions beginning February 22, 2016, including walking up to four hours per day for the next two weeks due to sciatica.

In a May 27, 2016 report, Dr. Krishnashastry diagnosed low back pain with right-sided sciatica and indicated that a magnetic resonance imaging scan also showed some bulging of the lumbar intervertebral disc.

By decision dated June 21, 2016, OWCP denied appellant’s claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed conditions and accepted factors of his federal employment.

On July 11, 2016 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In reports dated March 31, April 28, May 25, June 21, July 8, August 19, September 5, 9, and 20, 2016, Dr. Krishnashastry reiterated her initial diagnosis of right-sided low back pain with right-sided sciatica and later diagnosed "acute bilateral low back pain with bilateral sciatica, and lumbago with sciatica, left side and right side." She related that appellant presented with complaints of back pain, symptoms aggravated after he was at work, when he tried to get out of the truck. Appellant was in a lot of pain with pain radiating down his legs. It was also noted that he reported that, after he informed his supervisor of the injury, he was told that he should have stopped driving and reported the injury at the time of the incident.

On February 20, 2016 Dr. Pacifico diagnosed sciatica associated with disorder of lumbar spine on the right, acute pain of both knees, and low back pain.

In a March 3, 2016 report, Dr. Michael Bruderly, a Board-certified family practitioner, diagnosed right-sided low back pain without sciatica.

On August 23, 2016 a certified nurse practitioner diagnosed chronic bilateral low back pain with bilateral sciatica; lumbago with sciatica, right side; and other chronic pain and indicated that appellant sustained an injury to his back while at work in early December.

In an August 31, 2016 report, Dr. Michael Szymanski, a Board-certified family practitioner, diagnosed acute bilateral low back pain with bilateral sciatica and noted that appellant had sharp lower back pain for a few months.

On November 29, 2016 a physician assistant diagnosed sacroiliitis, myofascial pain, and lumbar radiculitis.

In reports dated June 28, September 14, 26, and 29, and November 14, 2016 and January 30, 2017, Dr. Luke Y. Kim, Board-certified in physical medicine and rehabilitation, noted that appellant was a mail carrier who started to have significant back pain around December 1, 2015 which he felt was related to carrying heavy mailbags and packages. He noted that initially appellant felt a pulled muscle and then his pain got worse. Dr. Kim diagnosed L4-5 disc herniation with lateral recess stenosis and opined that appellant's lifting, carrying, pushing, and pulling and repetitive bending, stooping, and twisting at work had created this condition.

During the telephonic hearing held on January 25, 2017, appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence.

Appellant subsequently submitted an August 24, 2016 report from Dr. Arthur Tai, Board-certified in internal medicine, who diagnosed acute bilateral low back pain with bilateral sciatica and lumbago with sciatica, right side. Dr. Tai reported that appellant described exacerbation of his chronic low back pain "with the increased workload at the workplace of lifting, more packages."

By decision dated March 3, 2017, the hearing representative affirmed the June 21, 2016 decision, finding that the medical evidence of record was insufficient to establish that the diagnosed low back condition was causally related to the accepted factors of his federal employment.

On February 21, 2018 counsel requested reconsideration and submitted a February 19, 2018 report from Dr. Neil Allen, a Board-certified internist and neurologist. Dr. Allen indicated that he had reviewed appellant's medical record in order to establish whether causal relationship exists between his lumbar spine condition(s) and occupational exposure on and prior to November 15, 2015. He opined that appellant's case should be updated to include aggravation of intervertebral disc disorders with radiculopathy, lumbar region, and other spondylosis with radiculopathy, lumbar region. Dr. Allen explained that appellant's "underlying degenerative conditions combined with the repetitive occupation related microtrauma on and before November 15, 2015 contributed to the manifestation of a symptomatic lumbar facet syndrome." He indicated that appellant's regular duties required him to repetitively lift from the ground and/or about the shoulder, both activities requiring forceful lumbar extension, over time stressing the joints of the spine, more so than what would be expected to perform daily activities. Dr. Allen concluded that appellant's lumbar spine conditions were aggregated by and became symptomatic as a direct result of repetitive occupation-related trauma.

By decision dated May 1, 2018, OWCP denied modification of its prior 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 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 To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit 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

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

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).

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 opinion evidence.⁷ 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 nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁸

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a lumbar condition causally related to the accepted factors of his federal employment.

Appellant identified the factors of employment that he believed caused his conditions, including carrying a satchel and lifting mail and packages at work, which OWCP accepted as factual. However, in order to establish an employment-related injury he must also submit rationalized medical evidence which explains how his medical conditions were caused or aggravated by the implicated employment factors.⁹

Appellant submitted medical reports from his treating physicians. In their reports, Dr. Pacifico, Dr. Bruderly, Dr. Tai, and Dr. Szymanski provided medical diagnoses, but failed to provide an opinion on the issue of causal relationship. The Board has held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁰ Thus, this evidence is also insufficient to establish appellant's burden of proof.

Upon noting the symptoms and appellant's work requirements, Dr. Krishnashastry opined that carrying the satchel along the right shoulder could be adding to a lot of strain to the back and be precipitating the symptoms of back pain. She also related his low back pain to an incident when appellant tried to get out of a truck at work. OWCP has not accepted a truck incident in this case. The Board finds that Dr. Krishnashastry's opinion regarding the cause of appellant's lumbar spine

⁶ See *D.R.*, Docket No. 09-1723 (issued May 20, 2010). See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *D.L.*, Docket No. 18-1007 (issued November 28, 2018); *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁸ *D.L.*, *id.*; *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 6.

⁹ *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

¹⁰ *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

condition and exacerbation is speculative and equivocal in nature.¹¹ To be of probative value, a physician's opinion on causal relationship must be one of reasonable medical certainty.¹²

In his reports, Dr. Kim indicated that appellant was a mail carrier who started to have significant back pain around December 1, 2015 which he felt was related to carrying heavy mail bags and packages. However, he failed to provide sufficient medical rationale to support his opinion that appellant's lifting, carrying, pushing, pulling, bending, stooping, and twisting at work caused or aggravated his L4-5 disc herniation with lateral recess stenosis condition. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to employment factors.¹³ Dr. Kim did not otherwise sufficiently explain why he had concluded that carrying a satchel and lifting mail and packages at work was sufficient to have caused or contributed to the diagnosed condition. Thus, the Board finds that the report from Dr. Kim is insufficient to establish that causal relationship.

In his February 19, 2018 report, Dr. Allen indicated that he had reviewed appellant's medical record in order to establish whether a causal relationship exists between his lumbar spine condition(s) and occupational exposure on and prior to November 15, 2015. He opined that appellant's case should be updated to include aggravation of intervertebral disc disorders with radiculopathy, lumbar region, and other spondylosis with radiculopathy, lumbar region. Dr. Allen explained that appellant's underlying degenerative conditions combined with the repetitive occupation related microtrauma on and before November 15, 2015 contributed to the manifestation of a symptomatic lumbar facet syndrome. He noted that appellant's regular duties required him to repetitively lift from the ground and/or about the shoulder, both activities requiring forceful lumbar extension, over time stressing the joints of the spine, more so than what would be expected to perform daily activities. Dr. Allen concluded that appellant's lumbar spine conditions were aggravated by and became symptomatic as a direct result of repetitive occupational-related trauma. The Board finds that Dr. Allen has not provided sufficient medical rationale explaining how carrying a satchel and lifting mail and packages at work either caused or contributed to appellant's diagnosed conditions. Dr. Allen's opinion was based, in part, on temporal correlation. However, the Board has held that 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 is sufficient to establish causal relationship.¹⁴ Dr. Allen did not otherwise sufficiently explain why he had concluded that appellant's employment factors caused or contributed to the diagnosed conditions. Thus, the Board finds that the report from Dr. Allen is also insufficient to establish that appellant sustained an employment-related injury.

Appellant submitted evidence from a nurse practitioner and a physician assistant. The Board has held, however, that medical reports signed solely by a nurse practitioner or physician

¹¹ Medical opinions that are speculative or equivocal in character are of little probative value. *See Kathy A. Kelley*, 55 ECAB 206 (2004).

¹² *See Beverly R. Jones*, 55 ECAB 411 (2004).

¹³ *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹⁴ *Id.*

assistant are of no probative value as such health care providers are not considered physicians as defined under FECA and are therefore not competent to provide medical opinions.¹⁵ Consequently, this evidence is also insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence sufficient to establish that he sustained a lumbar spine injury causally related to the accepted employment factors, he has not met his burden of proof to establish the claim.

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 a lumbar spine condition causally related to the accepted factors of his federal employment.

¹⁵ See *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law). *E.T.*, Docket No. 17-0265 (issued May 25, 2018) (physician assistants are not considered physicians under FECA); *S.J.*, Docket No. 17-0783, n2. (issued April 9, 2018) (nurse practitioners are not considered physicians under FECA).

ORDER

IT IS HEREBY ORDERED THAT the May 1, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 15, 2019
Washington, DC

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

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

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