

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

_____)	
T.B., Appellant)	
)	
and)	Docket No. 19-0780
)	Issued: September 17, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Levittown, NY, Employer)	
_____)	

Appearances:
*Thomas S. Harkins, Esq., for the appellant*¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 25, 2019 appellant, through counsel, filed a timely appeal from a November 27, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

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 July 11, 2017 appellant, then a 57-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he injured his back when completing daily repetitive employment tasks while in the performance of duty. He indicated that he first became aware of his injury and its relationship to factors of his federal employment on July 11, 2017. On the reverse side of the claim form, the employing establishment noted that appellant was last exposed to conditions alleged to have caused his injury on July 11, 2017, and that he stopped work on July 13, 2017.

By development letter dated August 3, 2017, OWCP advised appellant of the factual and medical deficiencies of his claim. It provided a questionnaire for his completion to establish the employment factors alleged to have caused or contributed to his medical condition and requested that he provide a medical report from his attending physician explaining how his federal employment activities caused, contributed to, or aggravated a diagnosed medical condition. OWCP afforded appellant 30 days to submit the necessary evidence. No further evidence was received.

In a letter dated August 16, 2017, the employing establishment's postmaster controverted appellant's claim noting that his statement on his Form CA-2 was illegible, and he did not mention his need for surgery until the day he provided the Form CA-2. He noted that appellant's duties included carrying up to 35 pounds in his satchel and walking for up to 6 hours per day five days per week.

By decision dated October 11, 2017, OWCP denied appellant's claim finding that the evidence of record did not support that the injury occurred as alleged. It specifically noted that he did not provide the requested information to explain in detail the work factors or duties that he felt were responsible for his condition. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

In a letter dated October 2, 2017, received by OWCP on April 4, 2018 Dr. Justin Michael Thomas, a specialist in neurosurgery, indicated that he began treating appellant on May 31, 2017 for back and lower right extremity radicular pain. Based on diagnostic imaging, he diagnosed L5-S1 spondylolisthesis with associated bilateral spondylosis and foraminal stenosis. Dr. Thomas related that appellant provided him with a list of his employment duties which included lifting 35 pounds continuously, lifting 70 pounds intermittently over the course of 8 hours, sitting, standing, walking, climbing, kneeling, bending, stooping, twisting, simple grasping, fine manipulation, reaching above his shoulder, and driving a vehicle. He opined that appellant's diagnosed condition and symptoms were exacerbated by the lifting associated with appellant's federal employment. Dr. Thomas performed L5-S1 decompression and fusion on August 1, 2017. He indicated that appellant was not able to return to work due to his continuous postoperative symptoms.

In a supplemental statement dated April 24, 2018, appellant indicated that he was claiming an occupational disease due to 28 years of working for the employing establishment, lifting and carrying 35 to 75 pounds for 8 hours per day, five days per week, as well as racking, sorting mail, driving his postal vehicle, waling, sitting, standing, climbing, kneeling, bending, stooping, twisting, pulling, pushing, grasping, and reaching.

By decision dated November 27, 2018, OWCP affirmed, as modified, its October 11, 2017 decision finding that the evidence established that appellant met the factual component of fact of injury. However, it found that the evidence remained insufficient to establish that his diagnosed lumbar condition was causally related to the accepted factors of his federal employment.

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 timely filed within the applicable time limitation period of FECA,⁴ 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.⁵ 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.⁶

In an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence 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 employment factors identified by the claimant.⁷

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.⁸ 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.⁹

³ *Id.*

⁴ *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).

⁵ *P.H.*, Docket No. 19-0119 (issued July 5, 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).

⁶ *A.M.*, *supra* note 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).

⁷ *P.H.*, *supra* note 5; *E.M.*, Docket No. 18-0275 (issued June 8, 2018).

⁸ *P.H.*, *id.*; *A.M.*, Docket No. 18-0685 (issued October 26, 2018).

⁹ *R.H.*, Docket No. 19-0311 (issued July 2, 2019); *E.V.*, Docket No. 18-0106 (issued April 5, 2018).

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.¹⁰

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.

In support of his claim, appellant submitted a report from Dr. Thomas dated October 2, 2017, diagnosing L5-S1 spondylolisthesis with associated bilateral spondylosis and foraminal stenosis. Dr. Thomas related that appellant provided him with a list of his employment duties which included lifting 35 pounds continuously, lifting 70 pounds intermittently over the course of 8 hours, sitting, standing, walking, climbing, kneeling, bending, stooping, twisting, simple grasping, fine manipulation, reaching above his shoulder, and driving a vehicle. He opined that appellant's diagnosed condition and symptoms were exacerbated by the lifting associated with his federal employment. While Dr. Thomas opined that appellant's job duties caused or contributed to appellant's diagnosed back condition, he did not offer medical rationale explaining how the accepted employment exposure caused the diagnosed condition.¹¹ He did not explain how the mechanism of injury would have physiologically caused the diagnosed condition.¹² The Board has held that a mere conclusion without necessary rationale explaining how and why the physician believed that appellant's work activities could result in the diagnosed condition is insufficient to meet appellant's burden of proof.¹³ Thus, Dr. Thomas' report is insufficient to establish appellant's burden of proof.¹⁴

The fact that a condition manifests itself during a period of employment is insufficient to establish causal relationship. Temporal relationship alone will not suffice. Entitlement to FECA benefits may not be based on surmise, conjecture, speculation, or on the employee's own belief of a causal relationship.¹⁵ The Board finds that the record lacks rationalized medical evidence establishing causal relationship between the implicated employment factors and appellant's diagnosed back condition.¹⁶ Thus, appellant has not met his burden of proof.

¹⁰ *R.H., id.; A.M., supra* note 8; *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹¹ *E.V.*, Docket No. 18-1617 (issued February 26, 2019).

¹² *Id.*

¹³ *J.K.*, Docket No. 19-0095 (issued June 18, 2019); *R.P.*, Docket No. 18-0860 (issued December 4, 2018).

¹⁴ *L.E.*, Docket No. 18-1138 (issued February 1, 2019).

¹⁵ *Id.; D.D.*, 57 ECAB 734 (2006).

¹⁶ *Supra* note 14; *J.S.*, Docket No. 17-0507 (issued August 11, 2017).

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

ORDER

IT IS HEREBY ORDERED THAT the November 27, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 17, 2019
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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