

ISSUE

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

FACTUAL HISTORY

On March 20, 2018 appellant, then a 56-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed herniated discs in his lumbar spine due to factors of his federal employment. He noted that he first became aware of his conditions on April 6, 2016 and realized that they were caused or aggravated by factors of his federal employment on March 31, 2016. On the reverse side of the claim form, the employing establishment indicated that appellant first reported his condition on May 1, 2016 and was last exposed to the conditions alleged to have caused his conditions on May 21, 2018. Appellant did not stop work.

In an accompanying narrative statement dated March 19, 2018, appellant noted that he had been working with restrictions since 2009, following his lumbar laminectomy spinal fusion surgery in 2008. He related that on March 31, 2016 he woke up with pain and a feeling of paralysis in his left leg and could not move the leg without difficulty and falling. On April 5, 2016 appellant sought treatment from his primary care physician, Dr. Ronald Barnett, Board-certified in internal medicine, who referred him to Dr. Vittorio M. Morreale, a Board-certified neurosurgeon. On June 21, 2016 Dr. Morreale performed multilevel lumbar decompressive laminectomy and transforaminal interbody fusion. Appellant indicated that he returned to work in April 2017. He noted that he was currently diagnosed with herniated lumbar discs at L2-3 and L4-5 and that he had filed previous claims for lumbar spine conditions and other work-related injuries with OWCP from 2001 through 2013. Appellant concluded that significant increases in the number of business pick-ups and packages over the years caused and aggravated his preexisting lumbar spine and leg conditions, particularly the requirements for stooping, bending, lifting, and twisting and caused him to miss work several times.

In a March 1, 2018 narrative report, Dr. William H. Kole, Board-certified in pain medicine, noted that he had treated appellant since June 17, 2004. He related that, when appellant returned to work in April 2017, appellant's route began to change dramatically with the addition of hundreds of parcel pick-ups every day. Dr. Kole opined that appellant's employment duties such as lifting and moving parcels and mail and bending and stooping while collecting mail had aggravated and contributed to his preexisting conditions of degenerative lumbar disc disease, osteoarthritis, and lumbar radiculopathy. He noted that appellant still suffered from chronic permanent pain because of the physical requirements of his employment duties. Dr. Kole requested that appellant be given a job that did not require any lifting or moving of parcels and mail and with limited bending and stooping.

In an April 5, 2018 development letter, OWCP advised appellant of the deficiencies in his claim and afforded him 30 days to submit the necessary medical evidence and factual information.

OWCP also received a duty status report (Form CA-17) dated August 4, 2009 from an unidentifiable healthcare provider.

An April 25, 2016 magnetic resonance imaging (MRI) scan of the lumbar spine revealed moderate underlying spondylosis with stenosis and right paracentral disc protrusion at L2-3 impinging on the right L3 nerve root. In a May 11, 2016 lumbar spine computerized tomography scan report, Dr. Antony Hamame, a Board-certified diagnostic radiologist, provided impressions of multilevel degenerative disc disease and spondylotic changes as described in the April 25, 2016 MRI scan, disc bulge resulting in moderate spinal canal narrowing at L2-3, and no evidence of acute fractures or subluxations.

In a July 3, 2017 narrative report, Dr. Barnett indicated that appellant was under his care since 2006 for work-related spine and knee injuries. He noted that appellant was previously diagnosed with an aggravation of degenerative lumbar disc disease, knee and leg sprains, a lumbar strain, and a lumbosacral strain. Dr. Barnett also noted that Dr. Asim Mahmood, a Board-certified neurosurgeon, performed a lumbar laminectomy spinal fusion surgery on February 8, 2008 and appellant returned to work in 2009 with work restrictions. He related that appellant no longer delivered mail walking house to house following the February 8, 2008 surgery. Dr. Barnett reported that when appellant woke up on March 31, 2016 he could not move his left leg, which was completely paralyzed. He further noted that appellant had not recently suffered an incident or accident to cause his left paralysis. Dr. Barnett opined that the chronic conditions of appellant's degenerative disc disease and the ongoing physical activities of lifting and moving parcels and mail, also the bending and stooping while collecting mail, had caused and permanently aggravated his lumbar spine conditions.

In a subsequently submitted June 21, 2016 operative note, Dr. Morreale noted that appellant experienced no postoperative complications.

In a July 6, 2017 narrative report, Dr. Morreale certified that appellant was under his care for work-related lumbar spine problems since May 5, 2016 including June 21, 2016 surgery. He note that appellant felt immediate relief following the surgery and returned for a series of postop appointments and gradually improved. Dr. Morreale indicated that x-rays of the lumbar spine showed fusion intact with no complicating factors. However, appellant returned on March 23, 2017 with a complaint of pain across the lower lumbarsacral area. On June 22, 2017 Dr. Morreale diagnosed arthrodesis status and other mechanical complications. He noted that appellant was previously diagnosed with degenerative disc disease. Dr. Morreale opined that many years of working as a mail carrier lifting and carrying heavy loads throughout the day contributed to progression of degenerative disc disease which continued to cause appellant severe pain and difficulty ambulating without falling.

In a response to OWCP's questionnaire dated April 24, 2018, appellant noted that, when he resumed work in 2009 with modified duty following the February 8, 2008 surgery, he initially drove a minivan, delivered express mails, and picked up mail boxes, one business store employing establishment pick-up, and four or five other business stops. However, over the years, his responsibility significantly increased. Appellant now drove a two-ton box truck. His parcels ranged in size and weighted between 21 and 50 pounds. The number of parcels and mail pick-ups also increased from 25 to 50 parcels a day to 2,000 to 4,000 parcels. Appellant noted that he has to off load his truck three to four times a day, sometimes going as many as five times a day. He struggled to work every day with the pain. Appellant asserted that the increased duties had aggravated his preexisting lumbar spine conditions.

By decision dated May 23, 2018, OWCP denied appellant's occupational disease claim finding that the medical evidence submitted was insufficient to establish a causal relationship between his conditions and the accepted factors of his federal employment.

On May 20, 2019 appellant, through counsel, requested reconsideration.

OWCP subsequently received photographs of appellant's workstation, showing his box truck and the volume of typical parcels and packages he delivered daily.

In a May 1, 2019 report, Dr. Barnett again related the history of appellant's medical treatments. He noted that appellant saw him monthly and reported that, although appellant felt better the first few months following his February 8, 2008 lumbar surgery, the pain was progressively getting worse. Dr. Barnett noted that appellant injured his knees and back several times while working due to "poor posture and not abiding by [his] restrictions."

Dr. Barnett explained that appellant started working for the employing establishment in 1994, performing regular duties until his injuries in 2003. He then again described the circumstances from March 31, 2016 leading up to the April 5, 2016 referral appointment with Dr. Morreale, who subsequently performed the June 21, 2016 surgery. Within a year after returning to work following the June 21, 2016 surgery, Dr. Morreale had observed that x-rays of the thoracic spine revealed two broken screws and two new herniations. He opined that whatever appellant was doing was ruining his spine. Similarly, Dr. Barnett also opined that appellant's "numerous work injuries over the years and the type of work [appellant] was doing was causing his degenerative disc disease to be accelerating at a much faster rate than the normal aging process."

In a May 20, 2019 statement, appellant alleged that the May 1, 2019 narrative medical report from Dr. Barnett demonstrated that appellant's employment factors, involving delivering and picking up packages, caused and aggravated his spine conditions. He reiterated that his job responsibilities require loading, unloading, and sorting several 100 parcels weighing up to thousands of pounds daily and exceeding his 20-pound weight restriction.

By decision dated July 29, 2019, OWCP denied modification of the May 23, 2018 decision, finding that the medical evidence of record was insufficient to establish that appellant's preexisting lumbar spine conditions were aggravated or accelerated by the accepted employment factors.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including 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 of FECA,⁴ that an injury was sustained in the performance of duty as alleged, and that

³ *Id.*

⁴ *J.W.*, Docket No. 18-0678 (issued March 3, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (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 for which compensation is claimed; 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 opinion evidence.⁸ 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 specific employment factors identified by the employee.⁹

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹⁰

ANALYSIS

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

In a July 3, 2017 narrative report, Dr. Barnett noted that appellant was previously diagnosed with an aggravation of degenerative lumbar disc. He opined that the ongoing physical activities of lifting and moving parcels and mail, as well as bending and stooping while collecting mail, caused and permanently aggravated appellant's lumbar spine conditions. Additionally, in his May 1, 2019 narrative report, Dr. Barnett again opined that "numerous work injuries over the years

⁵ *J.S.*, Docket No. 18-0657 (issued February 26, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *L.J.*, Docket No. 19-1343 (issued February 26, 2020); *R.R.*, Docket No. 18-0914 (issued February 24, 2020); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

⁸ *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *R.G.*, Docket No. 18-0792 (issued March 11, 2020); *D.J.*, Docket No. 19-1301 (issued January 29, 2020); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *N.C.*, Docket No. 19-1191 (issued December 19, 2019); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

and the type of work” appellant was performing had caused his degenerative disc disease to accelerate faster than the usual aging process.

The Board notes that Dr. Barnett provided a description of the employment factors believed to have either caused or contributed to appellant’s diagnosed condition, however, he failed to specifically differentiate between the effects of the preexisting conditions and the symptoms of the job-related factors.¹¹ A well-rationalized opinion is particularly important since appellant has a history of preexisting degenerative disc disease.¹² As Dr. Barnett did not provide a reasoned explanation of how appellant’s specific employment duties aggravated or contributed to his current lumbar spine conditions, his reports are insufficient to establish appellant’s claim.

In a July 6, 2017 narrative report, Dr. Morreale related appellant’s history of clinical encounters, including his June 21, 2016 lumbar surgery. On June 22, 2017 he diagnosed arthrodesis status and other mechanical complications while noting appellant’s preexisting degenerative disc disease. Dr. Morreale opined that the many years of working as a mail carrier lifting and carrying heavy loads throughout the day contributed to progression of appellant’s degenerative disc disease. He, however, did not provide medical rationale supporting his conclusory opinion. The Board has held that a medical opinion is of limited value if it is conclusory in nature.¹³ A medical opinion must explain how the implicated employment factors physiologically caused, contributed to, or aggravated the specific diagnosed conditions.¹⁴ Without this explanation, Dr. Morreale’s reports are insufficient to meet appellant’s burden of proof to establish his claim.¹⁵

In a March 1, 2018 narrative report, Dr. Kole similarly opined that lifting, moving, bending, and stooping while collecting parcels and mail have aggravated appellant’s preexisting degenerative lumbar disc disease. He also noted that appellant continued to suffer from chronic permanent pain because of the physical requirements of his employment duties. While Dr. Kole diagnosed medical conditions, his opinion also lacks the necessary medical rationale to explain how or why the accepted employment factors were sufficient to result in the diagnosed medical conditions.¹⁶ Accordingly, this report is also insufficient to establish appellant’s claim.

Finally, appellant submitted several diagnostic testing reports. The Board has held, however, that diagnostic studies lack probative value on the issue of causal relationship as they do

¹¹ *Id.*

¹² *See K.M.*, Docket No. 19-1247 (issued February 21, 2020); *B.R.*, Docket No. 16-0456 (issued April 25, 2016).

¹³ *C.M.*, Docket No. 19-0360 (issued February 25, 2020); *B.H.*, Docket No. 18-1219 (issued January 25, 2019).

¹⁴ *C.M., id.*; *K.G.*, Docket No. 18-1598 (issued January 7, 2020).

¹⁵ *Id.*

¹⁶ *L.S.*, Docket No. 18-0518 (issued February 19, 2020); *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

not address whether the employment factors caused the diagnosed conditions.¹⁷ The diagnostic testing reports are thus insufficient to establish the claim.

As appellant has not submitted sufficient rationalized medical evidence to establish causal relationship, the Board finds that he has not met his burden of proof to establish his occupational disease 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 lumbar spine conditions causally related to the accepted factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the July 29, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 3, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

¹⁷ *K.G.*, *supra* note 14; *J.P.*, Docket No. 19-0216 (issued December 13, 2019).