

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

R.R., Appellant

and

**U.S. POSTAL SERVICE, BUSTLETON POST
OFFICE, Philadelphia, PA, Employer**

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**Docket No. 18-0914
Issued: February 24, 2020**

Appearances:

Thomas R. Uliase, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 26, 2018 appellant, through counsel, filed a timely appeal from an October 23, 2017 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 that he sustained an injury causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On October 12, 2016 appellant, then a 40-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he had initially injured his back injury on February 23, 2015 and had returned to full duty on June 10, 2015.³ He alleged that after he returned to work he continued performing his federal employment duties and experienced lumbar, thoracic and cervical pain. Appellant indicated that he first became aware of his condition on October 1, 2016 and realized that it was caused or aggravated by factors of his federal employment on October 3, 2016. He stopped work on October 1, 2016.

An employing establishment representative controverted appellant's occupational disease claim noting that appellant was actually claiming a recurrence of his February 23, 2015 employment injury. The employing establishment representative contended that appellant had not established a new injury and that his entire claim should be denied.

OWCP received a March 1, 2016 report from Dr. Jeffrey Thomas Truitt, a Board-certified anesthesiologist, who noted that he administered appellant an epidural injection and diagnosed lumbar radiculopathy and degenerative disc disease.

In a development letter dated December 6, 2016, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the factual and medical evidence necessary to support his claim and also provided a questionnaire for completion. OWCP afforded appellant 30 days to respond.

In a separate development letter of even date, OWCP requested additional information from the employing establishment regarding appellant's employment duties and whether it concurred with his allegations.

In a May 19, 2016 report, Dr. Thomas A. Corcoran, a Board-certified orthopedic surgeon, noted that appellant's pain symptoms were worsening. He examined appellant and diagnosed lumbar spondylosis, cervical spondylosis with cervicgia, and lumbar radiculopathy. Dr. Corcoran indicated that he felt these conditions were occupational injuries and that the direct cause of these diagnoses was stress and strain that appellant experienced from carrying objects at work.

³ The record reflects appellant has an accepted traumatic injury claim (Form CA-1) for injury on February 23, 2015 under OWCP File No. xxxxxx351, which was accepted for neck, thoracic and lumbar sprain. Additionally, the record also reflects that OWCP assigned OWCP File No. xxxxxx698 to appellant's February 14, 2006 traumatic injury to his left ankle. OWCP has not issued a final decision with regard to this claim. Additionally, OWCP has not administratively combined these claims with File No. xxxxxx417.

OWCP received a September 7, 2016 report of a magnetic resonance imaging (MRI) scan of the thoracic spine interpreted by Dr. Kavin Mistry, a diagnostic radiologist, which revealed minimal degenerative disc disease at the T10, T11 level and no evidence of focal thoracic and impingement or compression. A September 7, 2016 MRI scan of the lumbar spine read by Dr. Sean Reiter, a Board-certified diagnostic radiologist, revealed mild multilevel degenerative changes.

In a September 30, 2016 report, Dr. Barry Schnall, Board-certified in physical medicine and rehabilitation, reviewed diagnostic studies and diagnosed bilateral L5 and S1 level radiculopathy.

In a report dated October 3, 2016, Dr. Corcoran noted that appellant's MRI scan of the thoracic spine revealed thoracic spondylosis, thoracic discogenic pain, lumbar radiculopathy, and lumbar spondylosis. He also completed a disability certificate advising that appellant was temporarily totally disabled.

On December 28, 2016 OWCP received appellant's response to its development letter. Appellant noted that he had worked as a letter carrier for 22 years. He advised that his typical day while casing, loading and delivering mail required standing, twisting, and bending. Appellant indicated that his route was comprised of 527 houses. Additionally, he carried approximately 35 pounds on his person on a daily basis, five days a week, 8.5 hours a day.

In a separate letter, appellant explained that in January 2014 he woke up with back pain and sought treatment in the emergency room. He noted that, afterwards, he missed some work, underwent physical therapy, and was returned to full duty with no further symptoms until February 23, 2015. Appellant also explained that on February 23, 2015 he slipped on ice while delivering mail. He noted that he was off work for four months and he returned to work, full duty. However, after a few months, appellant had pain that progressively worsened and he was placed off work as he was unable to perform his duties.

Appellant provided a December 22, 2016 statement describing the work activities he believed contributed to his condition. They included: the fall in February 2015; the constant bending twisting and turning required to case and deliver mail; ascending and descending stairs while carrying mail; and walking with a weighted bag on his shoulder.

In a letter dated January 4, 2017, counsel advised that Dr. Corcoran's July 14, 2016 report addressed appellant's work injury of March 23, 2015 under claim, OWCP File No. xxxxxx351. He argued that appellant's claim should be accepted for the end plate changes at L4-5 and L5-S1, aggravation of right-sided lumbar radiculopathy at L5, and new onset of left L5 radiculopathy per the December 1, 2016 report.

In a July 14, 2016 report, Dr. Corcoran noted appellant's history of injury and treatment. He explained that appellant was initially seen on March 23, 2015 for a fall on February 23, 2015. Dr. Corcoran then noted that appellant slipped and fell on ice at work, fell backwards on his right side and had symptoms from his neck down to this right arm. He indicated that appellant was seen in the emergency room. Dr. Corcoran explained that appellant was examined and an MRI scan revealed: a disc bulge at L4-5 with a right foraminal disc herniation; a disc herniation at L5-S1

with mass effect on the S1 nerve; a disc bulge and spurring at C3-4 and at C5 through C7. He explained that his impression at that time was that appellant had a lumbar acceleration/deceleration injury, lumbar radiculopathy, and lumbar disc herniation. Dr. Corcoran placed appellant off work and continued treatment. He opined that these conditions were the direct result of the trauma that appellant sustained on February 23, 2015 and were of a progressive nature. Dr. Corcoran also indicated that he did not believe appellant would be able to return to an occupation that required long periods of walking, bending, stooping or twisting.

In a December 1, 2016 report, Dr. Corcoran explained that on January 31, 2014 appellant was diagnosed with lumbar spondylosis and lumbar disc herniation. He advised that on February 23, 2015 appellant fell on black ice at work and injured his lower back and neck. Dr. Corcoran opined that as a result of the direct trauma on February 23, 2015, appellant had right L4-5 foraminal disc herniation, L5-S1 disc herniation, aggravation of underlying lumbar disc and cervical disease, and right lumbar radiculopathy. He also related that the strenuous activities appellant performed at work, progressed and directly caused endplate changes at L4-5, L5-S1, progression of a right-sided lumbar radiculopathy at L5 and new onset left L5 radiculopathy. Dr. Corcoran explained that the job duties of the letter carrier involving carrying, walking and standing placed stresses on the pathology of his spinal column.

By decision dated February 15, 2017, OWCP denied the claim finding that the requirements had not been met to establish an injury or condition causally related to the accepted factors of federal employment. It explained that Dr. Corcoran did not provide a rationalized explanation regarding causal relationship. Furthermore, Dr. Corcoran did not identify the relationship of appellant's preexisting conditions to his current condition.

By letter dated February 23, 2017, counsel requested a hearing before an OWCP hearing representative. During the hearing, held on May 9, 2017, appellant related that he had a previous claim for a February 23, 2015 fall on ice while delivering mail which was accepted for sprains and strains. He indicated that he returned to work full time on June 18, 2015 without limitations, and was then assigned an increased route with extensive walking.

In a March 2, 2017 report, Dr. Corcoran related appellant's diagnoses of lumbar radiculopathy and lumbar spondylosis. He continued to place appellant off work. Dr. Corcoran also provided a brief review of appellant's medical history. He noted that appellant had a traumatic injury at work on January 23, 2015 and returned to full duty on June 18, 2015 as a letter carrier. Dr. Corcoran advised that appellant's spondylosis and disc disease progressed and became associated with a lumbar radiculopathy. He opined that these diagnoses were related to the bending, lifting, and twisting activities associated with being a letter carrier. Dr. Corcoran concluded that appellant had a work-related condition.

By decision dated June 13, 2017, OWCP's hearing representative affirmed the February 15, 2017 decision.

On July 31, 2017 counsel requested reconsideration and submitted new evidence.

In a June 29, 2017 report, Dr. Corcoran diagnosed lumbar radiculopathy, lumbar spondylosis and cervicalgia. He opined that appellant's diagnoses were directly related and

aggravated by his occupation as a postal worker. Dr. Corcoran related that his medical reasoning regarding causal relationship was that appellant's work included a mechanical and weight bearing mechanism, which caused his discs to become desiccated. He further explained that there were chemical mediators that were released from the cell bodies and stimulated sensory neurons. This was a feedback loop into further inflammatory response and irritated nerve roots and radicular pain.

By decision dated October 23, 2017, OWCP denied modification of the February 15, 2017 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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,⁵ 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.⁶ 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.⁷

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.⁸

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.⁹ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical

⁴ *Supra* note 2.

⁵ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *D.H.*, Docket No. 19-0633 (issued January 8, 2020); *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).

⁸ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

⁹ *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

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.¹⁰

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.¹¹

ANALYSIS

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

In support of his claim, appellant provided reports from Dr. Corcoran in which he attempted to explain the causal relationship between appellant's diagnosed conditions and his accepted employment factors. In his July 14, 2016 report, Dr. Corcoran indicated that appellant initially received treatment on March 23, 2015 for a February 23, 2015 slip and fall on ice at work. He noted findings on an MRI scan and explained that his impression at that time was that appellant had a lumbar acceleration/deceleration injury, lumbar radiculopathy, and lumbar disc herniation. In his December 1, 2016 report, Dr. Corcoran explained that appellant had preexisting conditions of lumbar spondylosis and lumbar disc herniation caused by his work duties. He noted that he had placed appellant out of work as of October 2, 2016 as appellant's continued work would cause a progression of his condition. Dr. Corcoran explained that appellant's employment duties as a letter carrier involving carrying, walking and standing placed stresses on the pathology of his spinal column.

Dr. Corcoran provided additional explanation on March 2, 2017. He explained that appellant had a traumatic injury on January 23, 2015 at work, with a return to full duty on June 18, 2015. Appellant's spondylosis and disc disease progressed and became associated with a lumbar radiculopathy. He related that these conditions were related to the bending, lifting, and twisting activities associated with being a letter carrier, therefore appellant had a work-related condition. Finally, in a June 29, 2017 report, Dr. Corcoran further explained that appellant's diagnoses were directly related and aggravated by appellant's work duties which caused a mechanical and weight-bearing mechanism, and caused appellant's discs to be desiccated. He related that there were chemical mediators that were released from cell bodies, which stimulated sensory neurons and created a feedback loop into further inflammatory response and irritated nerve roots.

The Board finds that, although Dr. Corcoran's reports are insufficient to fully discharge appellant's burden of proof that his diagnosed conditions were caused or aggravated by the accepted factors of his federal employment, his reports constitute substantial, uncontradicted evidence in support of his claim, and provide sufficient rationale to require further development

¹⁰ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹¹ 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).

of the case record by OWCP. Dr. Corcoran provided a detailed history of injury, referenced physical examination findings, expressed his opinion on causal relationship within a reasonable degree of medical certainty, and provided a pathophysiologic explanation as to the mechanism by which appellant's employment factors caused his diagnosed conditions.¹²

Proceedings under FECA are not adversary in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.¹³

The Board also notes that OWCP's procedures provide that cases should be doubled when a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body.¹⁴ On remand OWCP should combine OWCP File No. xxxxxx351 with the present claim.

The case will therefore be remanded to OWCP for further development of the medical evidence on the issue of causal relationship, including the preparation of a statement of accepted facts which shall set forth all of appellant's accepted employment duties and then make a referral to an appropriate medical specialist for consideration of the entire medical record. After this and other such further development as deemed necessary, it shall issue a *de novo* decision.

CONCLUSION

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

¹² *J.D.*, Docket No. 18-0270 (issued January 6, 2020).

¹³ *J.J.*, Docket No. 19-0789 (issued November 22, 2019); *M.B.*, Docket No. 17-1999 (issued November 13, 2018).

¹⁴ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c)(1) (February 2000).

ORDER

IT IS HEREBY ORDERED THAT the October 23, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: February 24, 2020
Washington, DC

Judge

Alec J. Koromilas, Chief

Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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