

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

V.P., Appellant	)	
	)	
and	)	<b>Docket No. 20-0415</b>
	)	<b>Issued: July 30, 2020</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Princeton, NJ, Employer	)	
	)	

*Appearances:*  
Thomas R. Uliase, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge

**JURISDICTION**

On December 12, 2019 appellant, through counsel, filed a timely appeal from an August 7, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (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 cervical and lumbar conditions causally related to the accepted factors of his federal employment.

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<sup>1</sup> 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.

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>2</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are set forth below.

On September 15, 2015 appellant, then a 50-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed cervical and lumbar radiculopathy due to "the constant -- repetitive movements" of his employment. He indicated that he first became aware of his condition sometime in April 2014 and realized that it resulted from his employment sometime in August 2014. Appellant did not stop work.

In a January 15, 2016 development letter, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of medical and factual evidence necessary to support his claim and provided a questionnaire for his completion. In a separate letter of even date, OWCP requested additional information from the employing establishment. It afforded both parties 30 days to submit the requested information.

Appellant submitted electromyography and nerve conduction velocity studies dated June 4 and 15, 2015, which revealed abnormal findings consistent with acute-on-chronic bilateral C7-T1 cervical radiculopathies, chronic left L2-4, L4-5, and L5-S1 radiculopathies, and chronic right L5-S1 lumbosacral radiculopathies.

By decision dated February 18, 2016, OWCP denied appellant's claim. It accepted his duties as a letter carrier as described, but denied his claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis causally related to the accepted employment factors.

On March 1, 2016 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review, which was held on May 26, 2016.

Counsel subsequently submitted an October 20, 2015 report from Dr. Nicholas P. Diamond, an osteopathic physician Board-certified in pain management, who described appellant's medical and employment history. Dr. Diamond recounted appellant's complaints of continued neck and low back pain and stiffness and provided physical examination findings. His reported diagnoses included repetitive and cumulative trauma disorder, chronic cervical and lumbar sprain/strain, occupational cervical spine syndrome, bilateral chronic C7-T1 active denervation, bilateral flexor digitorum indicis, and opens pollicis giant motor recruitment, occupational low back syndrome, left L2-4, L4-5, and L5-S1, and bilateral L5-S1 radiculopathies. Dr. Diamond opined that appellant's employment caused his cervical and lumbar spine conditions.

OWCP received additional reports from Dr. Diamond, including an "updated" October 20, 2015 report and a May 17, 2016 narrative report. Dr. Diamond reiterated his examination findings and diagnoses. He opined that appellant suffered cumulative and repetitive trauma disorder during

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<sup>2</sup> *Order Dismissing Appeal*, Docket No. 19-0969 (issued May 24, 2019); Docket No. 17-1925 (issued March 1, 2018).

the course of his employment. Dr. Diamond referenced a plethora of medical literature regarding the causes and symptoms of repetitive strain injuries noted in the Occupational Safety and Health Administration technical manual section in order to “explain the mechanism of injury leading to [appellant’s] cervical and lumbar injuries.”

In a May 31, 2016 report, Dr. Steven J. Valentino, a Board-certified orthopedic surgeon, related that appellant’s employment involved repetitive movement and provided examination findings. He diagnosed low back pain, facet syndrome, and lumbar and cervical radiculopathies due to spinal degenerative joint disease. Dr. Valentino opined that appellant’s repetitive letter carrier duties caused his diagnosed conditions.

In an August 4, 2016 decision, an OWCP hearing representative affirmed OWCP’s February 18, 2016 decision with modification. She determined that the electrodiagnostic studies had established the diagnoses of cervical spine syndrome including a bulging disc at C6 bilateral acute chronic C7-T1 denervation and bilateral flexor digitorum indicis and lumbar strain and sprain with radiculopathies at L2-3 and L4-5 and bilateral L5-S1 radiculopathy. The hearing representative found that the only diagnoses related to appellant’s job duties was repetitive trauma disorder. The claim remained denied as the medical evidence of record was insufficient to establish that his medical conditions were causally related to the accepted employment factors.

On October 21, 2016 appellant, through counsel, requested reconsideration. In a July 21, 2016 report, Dr. Valentino provided a detailed description of appellant’s employment duties and noted examination findings. He diagnosed cervical and lumbar degenerative disc disease aggravated with facet syndrome and cervical and lumbar radiculopathy. Dr. Valentino opined that appellant’s medical conditions resulted from his employment.

By decision dated January 6, 2017, OWCP denied modification of the August 4, 2016 decision.

On March 15, 2017 appellant, through counsel, requested reconsideration and submitted a February 16, 2017 report by Dr. Valentino. Dr. Valentino reiterated his physical examination findings and noted the mechanism of injury as constant bending and twisting. He reported his diagnoses of cervical and lumbar degenerative disc disease aggravated with facet syndrome and cervical and lumbar radiculopathy and attributed them to appellant’s employment.

By decision dated May 30, 2017, OWCP denied modification of its January 6, 2017 decision.

Appellant filed an appeal before the Board. In a March 1, 2018 decision, the Board affirmed the May 30, 2017 decision. The Board found that the medical evidence submitted did not contain a well-reasoned medical opinion explaining how the factors of appellant’s employment caused or contributed to his medical conditions.

On May 25, 2018 appellant, through counsel, requested reconsideration.<sup>3</sup> Counsel asserted that Dr. Valentino's May 4, 2018 addendum report explained biomechanically how the letter carrier position caused and aggravated appellant's neck and low back conditions.

In a May 4, 2018 report, Dr. Valentino related that appellant was seen in his office for severe neck and low back pain and reviewed appellant's diagnostic studies from 2014 and 2015. He explained that appellant's onset of symptoms occurred on April 1, 2015 as a result of constant bending and twisting to retrieve packages from the back of his truck, carrying mail, and bending and picking up mail from the floor. Dr. Valentino opined that this "resulted in a mechanism of injury of flexion, side bending, and rotation, which was a substantial contributing factor in the production of [appellant's] symptoms and aggravation of degenerative disc disease with radiculopathy." He explained that appellant's symptoms were a direct and natural response to the mechanisms of injuries impacted by his work activities, specifically flexion and torsional forces, which occurred with his work duties.

By decision dated October 16, 2018, OWCP denied modification of its May 30, 2017 decision.<sup>4</sup>

On May 8, 2019 appellant, through counsel, requested reconsideration.

In an April 24, 2019 report, Dr. Valentino related that "the bending, lifting, twisting, and picking up of mail resulted in torsion injuries, which created damage to the intervertebral discs." He explained that torsional damage manifested itself as separation of the discs, which was similar to annular changes observed during the early stages of disc degeneration, and may cause radial tears of the annulus communicating from the nucleus to the disc periphery. Dr. Valentino reported: "Torsion combined with flexion does have a marked effect on the integrity of the disc. Evidence suggests that amongst people who lift heavy objects on a daily basis, those who couple lifting with a twisting motion are over three times as likely to suffer a disc injury." Dr. Valentino opined that "[t]his is the biomechanical reason for the causal relationship noted between [appellant's] symptoms and [his] work."

By decision dated August 7, 2019, OWCP denied modification of the October 16, 2018 decision.

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<sup>3</sup> Although appellant claimed to be filing a request for reconsideration from the Board's March 1, 2018 decision, OWCP is not authorized to review Board decisions. The decisions and orders of the Board are final, as to the subject matter appealed, and such decisions and orders are not subject to review, except by the Board. 20 C.F.R. § 501.6(d). Although the March 1, 2018 Board decision was the last merit decision, OWCP's May 30, 2017 decision is the appropriate subject of possible modification by OWCP.

<sup>4</sup> On April 4, 2019 appellant, through counsel, filed an appeal before the Board. By letter dated and received by the Board on May 8, 2019, counsel requested to withdraw his appeal before the Board and request reconsideration from OWCP. By order dated May 24, 2019, the Board granted appellant's request for the dismissal of his appeal. *Supra* note 2.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>5</sup> 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,<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

In an occupational disease claim, appellant's burden requires submission of 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 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.<sup>9</sup>

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.<sup>10</sup> 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.<sup>11</sup>

## ANALYSIS

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

Following the Board's March 1, 2018 decision, appellant submitted additional reports dated May 4, 2018 and April 24, 2019 from Dr. Valentino. In his May 4, 2018 report, Dr. Valentino related that appellant's neck and low back symptoms began in April 2015 as a result

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<sup>5</sup> *Supra* note 2.

<sup>6</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

<sup>8</sup> *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).

<sup>9</sup> *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

<sup>10</sup> *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>11</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

of constant bending and twisting to retrieve packages from the back of his truck, carrying mail, and bending and picking up mail from the floor. He noted that appellant's symptoms resulted from the mechanisms of injuries impacted by his work activities, specifically flexion, and torsional forces. In his April 24, 2019 report, Dr. Valentino explained that torsional damage manifested itself as separation of the discs, which was similar to annular changes observed during the early stages of disc degeneration, and may cause radial tears of the annulus communicating from the nucleus to the disc periphery. He further noted that "Torsion combined with flexion does have a marked effect on the integrity of the disc. Evidence suggests that amongst people who lift heavy objects on a daily basis, those who couple lifting with a twisting motion are over three times as likely to suffer a disc injury. This is the biomechanical reason for the causal relationship noted between [appellant's] symptoms and [his] work."

The Board finds Dr. Valentino's affirmative opinion on causal relationship provided a complete factual history confirming the accepted employment factors and accurately noted appellant's medical history and course of treatment. The Board finds that his opinions, while insufficiently rationalized to meet appellant's burden of proof, are sufficient, given the absence of opposing medical evidence, to require further development of the record as to whether appellant's cervical and lumbar conditions are causally related to the accepted factors of his federal employment.<sup>12</sup>

It is well established that proceedings under FECA are not adversarial in nature, and that while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. OWCP has an obligation to see that justice is done.<sup>13</sup> The nonadversarial policy of proceedings under FECA is reflected in OWCP's regulations at section 10.121.<sup>14</sup>

The case will therefore be remanded to OWCP for further development of the medical evidence and a referral to an appropriate medical specialist for an examination and opinion on the issue of whether appellant sustained cervical and lumbar conditions causally related to the accepted factors of his federal employment. After such further development as OWCP deems necessary, it shall issue a *de novo* decision.

### **CONCLUSION**

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

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<sup>12</sup> *G.M.*, Docket No. 19-0657 (issued September 13, 2019); *see also John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

<sup>13</sup> *S.C.*, Docket No. 19-0920 (issued September 25, 2019).

<sup>14</sup> 20 C.F.R. § 10.121.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 7, 2019 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: July 30, 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