

ISSUE

The issue is whether appellant has established diagnosed medical conditions causally related to the accepted December 19, 2017 employment incident.

FACTUAL HISTORY

On December 21, 2017 appellant, then a 78-year-old mail handler equipment operator, filed a traumatic injury claim (Form CA-1) alleging that on December 19, 2017 he experienced neck muscle spasms and low back, right shoulder, and arm pain with tingling when performing routine lifting, pushing, walking, and bending duties while in the performance of duty. He stopped work on December 20, 2017.

In a development letter dated February 9, 2018, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim and provided a questionnaire for completion. Appellant was afforded 30 days to submit the necessary evidence.

On March 10, 2018 OWCP received a statement from appellant in which he noted that he developed muscle spasms in his neck, lower back, right shoulder, and arm, with tingling into his right hand while he was at work on December 19, 2017. Appellant explained that on that day he was lifting flat trays of mail weighing 70 pounds or more from a conveyor, walking 10 paces or more, placing them in empty postal containers, and pushing and pulling the filled containers to their staging areas. He noted seeking treatment on December 21, 2017. In a January 18, 2018 report, Dr. Danielle Stember, a Board-certified neurologist, noted that appellant was seen on that date for neck pain. She indicated that he could return to work with restrictions.

In a March 6, 2018 report, Dr. Stember noted that appellant had repetitively lifted trays of mail and complained of neck pain with numbness and tingling in his right arm. She indicated that he reported an exacerbation of neck pain at his follow-up appointment on December 21, 2017. Dr. Stember also noted that appellant had evidence of preexisting multi-level degenerative disease on the x-ray of the cervical spine obtained on June 28, 2017. She found degenerative changes at the T1 and T2 level of the spine which resulted in mild canal and severe bilateral foraminal stenosis. Dr. Stember opined that it was possible that the reported neck pain was exacerbated by activities at appellant's job based on his report of events.

In a March 6, 2018 attending physician's report (Form CA-20), Dr. Stember noted the date of injury as December 19, 2017, and diagnosed exacerbation of cervical radiculopathy, with known chronic cervical degenerative disease. She checked a box marked "yes" in response to whether she believed the diagnosed condition was employment related. Dr. Stember also noted that appellant had severe degenerative disease of the cervical spine, as found on the January 11,

2018 cervical spine magnetic resonance imaging (MRI) scan. She indicated that he was at risk of recurrent exacerbation of neck pain and/or cervical radiculopathy.

By decision dated March 16, 2018, OWCP denied appellant's claim finding that the medical evidence of record was insufficient to establish a medical condition causally related to the accepted employment incident.

In a March 14, 2018 Form CA-20 report, Dr. Stember diagnosed exacerbation of cervical radiculopathy in setting of known chronic cervical degenerative disease. She again checked the box "yes" in response to whether she believed the diagnosed condition was employment related. Dr. Stember indicated that appellant was partially disabled from December 21, 2017 to January 22, 2018.

On March 29, 2018 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative.

In a March 2, 2018 report, Dr. Theresa Pereguda, a Board-certified internist, noted that appellant was seen on August 3 and December 21, 2017, for complaints of neck and lower back pain and numbness and tingling in the right arm. She noted appellant's history of lifting trays of mail. Dr. Pereguda advised that a neurology note revealed chronic cervicgia, but worsening radicular symptoms of paresthesia over the right upper extremity, and lateral aspect (C5-6 distribution) with no accompanying weakness or sensory loss. She noted that a cervical spine MRI scan disclosed multi-level degenerative changes resulting in mild canal stenosis at C4-5 and multilevel bilateral foraminal stenosis. Dr. Pereguda diagnosed cervical spondylosis with radiculopathy and opined that it was "possible" that the condition was aggravated by appellant's activity at work.

In a report dated July 27, 2018, Dr. Paul Ort, a Board-certified orthopedic surgeon, noted that appellant was under his care since June 28, 2017. He indicated that appellant had complaints of bilateral knee pain for over three years and bilateral arthroscopic knee surgery. Dr. Ort opined that, within a reasonable degree of medical certainty, appellant's work had aggravated his bilateral knee osteoarthritis.

Following a July 30, 2018 telephonic hearing, by decision dated September 20, 2018, OWCP's hearing representative affirmed the March 16, 2018 decision. The hearing representative explained that the treating physicians had not provided a rationalized opinion as to causal relationship, nor did the medical record include objective diagnostic findings in support of the claim.

On December 28, 2018 appellant, through counsel, requested reconsideration and submitted new evidence.

In a November 6, 2018 report, Dr. Steven S. Moalemi, Board-certified in physical medicine and rehabilitation, noted that appellant had a history of an injury on May 4, 2017, and an exacerbation on December 19, 2017, while performing his regular duties as a mail handler. He noted that appellant's duties included working 40 hours a week, repetitively lifting flat trays of mail weighing up to 70 pounds, and walking 10 or more paces to place the mail in postal containers. Dr. Moalemi diagnosed neck ascending aortic aneurysm, right shoulder sprain/osteoarthritis, exacerbation of cervical spine radiculopathy/osteoarthritis, exacerbation of lumbar spine

radiculopathy/osteoarthritis, exacerbation of thoracic spine sprain/osteoarthritis, exacerbation of right knee osteoarthritis with possible meniscus tear, exacerbation of left knee osteoarthritis with possible meniscus tear, exacerbation of bilateral foot hypertrophied bone and resolved bursitis, exacerbation of bilateral foot osteoarthritis, and peroneus brevis tendon tears of the feet. He opined that, within a reasonable degree of medical certainty, the exacerbation of appellant's conditions resulted from his work activities.

OWCP also received additional diagnostic reports dated from June 7, 2017 to October 2, 2018.

By decision dated March 26, 2019, OWCP denied modification of its September 20, 2018 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 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 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 determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.⁸ Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁹ The second component is whether the employment incident caused a personal injury.¹⁰

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.¹¹ A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment incident must be

⁴ *Id.*

⁵ *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *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 *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁹ *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹⁰ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

¹¹ *E.M.*, *supra* note 8; *Robert G. Morris*, 48 ECAB 238 (1996).

based on a complete factual and medical background.¹² Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment incident.¹³

In a 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.¹⁴

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish diagnosed medical conditions causally related to the accepted December 19, 2017 employment incident.

Appellant submitted several reports from Dr. Stember, including a January 18, 2018 report which indicated that appellant was seen for pain and recommended work restrictions. However, this report is insufficient to establish the claim as the physician did not provide a diagnosis or history of injury,¹⁵ or provide an opinion on the issue of causation.¹⁶

In a March 6, 2018 report, Dr. Stember noted the history of injury and found evidence of preexisting, multi-level degenerative disease of the spine. She opined that it was "possible" that the reported neck pain was exacerbated by activities at appellant's job, as based on his report of injury. However, this report is speculative and therefore of limited probative value.¹⁷

Appellant also submitted March 6 and 14, 2018 CA-20 forms from Dr. Stember in which she diagnosed exacerbation of cervical radiculopathy in setting of known chronic cervical degenerative disease. Dr. Stember checked a box marked "yes" in response to whether she believed the diagnosed condition was employment related. The Board has held that when a physician's opinion on causal relationship consists of checking "yes" to a form question, without adequate explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.¹⁶ Therefore, Dr. Stember's reports are insufficient to establish appellant's claim.

In a March 2, 2018 report, Dr. Pereguda diagnosed spondylosis with radiculopathy, cervical region, and opined that it was "possible" that the condition was aggravated by appellant's

¹² *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹³ *Id.*

¹⁴ *J.F.*, Docket No. 19-0456 (issued July 12, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

¹⁵ *See R.P.*, Docket No. 19-0743 (issued September 20, 2019); *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

¹⁶ *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *A.D.*, 58 ECAB 149 (2006).

¹⁷ *See Frank Luis Rembisz*, *supra* note 15.

activity at work. As previously noted, speculative opinions are of diminished probative value and insufficient to establish appellant's claim.¹⁸

In a report dated July 27, 2018, Dr. Ort indicated that appellant had complaints of bilateral knee pain for over three years and bilateral arthroscopic surgery to both knees. He opined that, within a reasonable degree of medical certainty, appellant's work aggravated his bilateral knee osteoarthritis. However, the Board finds that Dr. Ort did not provide medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant's knee conditions and the December 19, 2017 employment incident. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.¹⁹ Dr. Ort did not explain the physiologic process by which the lifting, pushing, walking, and bending at work would have caused or aggravated the diagnosed conditions, and why the diagnoses would not have been the result of preexisting conditions and thus his opinion is insufficient to establish the claim.²⁰

In a November 6, 2018 report, Dr. Moalemi noted the history of injury and appellant's duties at work and provided physical examination findings. He diagnosed multiple conditions and opined that, within a reasonable degree of medical certainty, the exacerbation of appellant's conditions resulted from his work activities. However, Dr. Moalemi did not provide rationale to support his opinion that the multiple diagnosed conditions were caused by appellant's work activities. As his opinion regarding causal relationship was conclusory and unexplained, it was insufficient to establish appellant's claim.²¹

OWCP also received diagnostic reports. However, diagnostic testing reports lack probative value on the issue of causal relationship as they do not provide an opinion regarding the cause of the diagnosed conditions.²²

The Board finds that the evidence of record lacks rationalized medical evidence establishing causal relationship between appellant's diagnosed medical conditions and the accepted December 19, 2017 employment incident. Thus, appellant has not met his burden of proof.

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.

¹⁸ *Id.*

¹⁹ *See T.M.*, Docket No. 08-0975 (issued February 6, 2009).

²⁰ *See A.M.*, Docket No. 18-1538 (issued April 25, 2019); *K.K.*, Docket No. 17-1061 (issued July 25, 2018).

²¹ *See M.O.*, Docket No. 18-0229 (issued September 23, 2019); *see T.M.*, *supra* note 19 (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

²² *Z.G.*, Docket No. 19-0967 (issued October 21, 2019); *see L.M.*, Docket No. 14-0973 (issued August 25, 2014).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish diagnosed medical conditions causally related to the accepted December 19, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the March 26, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 7, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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