

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

| | | |
|-----------------------------------|---|------------------------|
| R.S., Appellant |) | |
| |) | |
| and |) | Docket No. 19-1577 |
| |) | Issued: March 11, 2020 |
| U.S. POSTAL SERVICE, POST OFFICE, |) | |
| Chesterton, IN, Employer |) | |
| |) | |

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 18, 2019 appellant, through counsel, filed a timely appeal from an April 30, 2019 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 condition causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On July 11, 2018 appellant, then a 36-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he suffered a herniated disc due to factors of his federal employment. He indicated that he first became aware of his condition on April 9, 2018 and first realized it was caused or aggravated by his federal employment on June 18, 2018. In an attached statement, appellant explained that in the beginning of the year he started to experience numbness and pain in his left hand and thought he had a pinched nerve that eventually would lessen on its own. He noted that his job as a letter carrier required him to walk two to three miles a day while carrying a satchel with packages. As his pain and numbness worsened, appellant eventually saw a specialist and underwent cervical fusion surgery. He stopped work on April 5, 2018.

In a March 20, 2018 neurology report, Dr. Steven Bayer, a Board-certified neurologist, noted appellant's history of weakness, numbness, tingling and pain in his left forearm and hand. Based on a nerve conduction velocity (NCV) study, he found an abnormal study consistent with an ulnar neuropathy localizing in the elbow and early mild concurrent median neuropathy at the wrist.

By development letter dated July 18, 2018, OWCP informed appellant that the evidence submitted was insufficient to establish his claim. It advised him of the type of medical evidence needed and provided a questionnaire for his completion to provide further details concerning the employment factors surrounding his occupational disease claim. OWCP also requested that appellant submit a comprehensive narrative medical report from his treating physician that included a diagnosis and a reasoned explanation as to how specific work factors caused or contributed to the diagnosed condition(s). It afforded him 30 days to submit the necessary evidence.

In a July 13, 2018 letter, the employing establishment controverted appellant's occupational disease claim. J.G., appellant's postmaster, indicated that it was his opinion that appellant had past medical issues prior to being hired at his current position and explained that during his interview process, appellant disclosed that he had a torn rotator cuff that was surgically repaired and some other back issues from his prior employment at a construction company. It also submitted appellant's July 1, 2014 applicant medical questionnaire in which he checked boxes marked "no" to indicate that he had no physical or medical conditions or restrictions in the two years prior that prevented him from performing his full job duties.

OWCP subsequently received additional evidence. In a February 26, 2018 x-ray of appellant's cervical spine, Dr. John Gustaitis, a Board-certified diagnostic radiologist, noted narrowing of the C5-6 and C6-7 disc spaces with mild spurring.

In a March 20, 2018 Family and Medical Leave Act (FMLA) form report, Dr. Leonard Ostrowski, Board-certified in family medicine, noted that appellant's primary job functions

involved carrying mail, papers, and packages and that his symptoms began a couple of months prior to his initial visit. He explained that appellant was experiencing numbness and pain from his shoulders to his fingertips and determined that he would be unable to carry his mailbag for long periods of time or deliver mail from his truck as a result.

In a March 22, 2018 diagnostic report, Dr. Vikram Sobti, a Board-certified radiologist, noted that appellant presented with neck pain with numbness and tingling down the arms. In a magnetic resonance imaging (MRI) scan, she provided findings of multiple herniated discs at C6-7, C5-6, C3-4, and C4-5 and multiple cases of stenosis.

In an April 9, 2018 medical report, Dr. Anton Thompkins, a Board-certified orthopedic surgeon, noted that: appellant presented with pain, numbness, tingling and stiffness throughout her wrists, hands, and fingers; left arm; neck and back. He related that appellant had experienced these symptoms for some time, but since October the pain had gotten to a point where it affected appellant's activities of daily living. Based on a review of appellant's MRI scan, Dr. Thompkins diagnosed spinal stenosis and cervical disc disorder at C6-7 and C5-6 with radiculopathy. In a medical note of even date, he provided that appellant would need to remain out of work until further notice.

In a May 9, 2018 discharge summary and operative report, Dr. Thompkins, detailed appellant's May 1, 2018 anterior cervical discectomy fusion (ACDF) procedure to treat his cervical spinal stenosis, degenerative disc disease, neural foraminal narrowing and radiculopathy. In a May 17, 2018 follow-up medical note, he provided that appellant no longer experienced radiating pain down his arms, but continued to experience some numbness and tingling.

In a May 18, 2018 medical note, Dr. Thompkins indicated that appellant had significant neck and arm symptomology that ultimately required surgical intervention in the form of a 2-level ACDF procedure. He concluded that, based on a full description of the nature of appellant's job, appellant's job does pose an occupational risk for increased neck and disc injuries. Dr. Thompkins further explained that appellant's job "could have" been a contributing factor.

In a May 30, 2018 medical note, Dr. Thompkins opined that appellant's job of carrying a mailbag across his shoulders "could have contributed to his neck injury."

In a June 14, 2018 medical note, Dr. Thompkins noted that six weeks after appellant's surgery he continued to experience some numbness and tingling, but that overall, he had improved from his presurgical status.

In a June 18, 2018 medical note, Dr. Thompkins opined that the repetitive nature of appellant's duties as a mail carrier is the contributing factor for the cause of his present injury and subsequent treatment and surgery. He explained that appellant's job required him to carry a satchel for periods of time, which required some lifting, bending, and twisting. Dr. Thompkins also noted that his satchel could weigh greater than 30 pounds on a consistent basis. He further explained that the repetitive nature and activities he performed with the satchel over his shoulder and across his neck can increase the risk for cervical disc disorders, including stenosis and radiculopathy.

In a July 23, 2018 response to OWCP's development questionnaire, appellant indicated that he had been employed as a letter carrier since July 2014. He described his history of medical

treatment relating to his conditions, including a July 2012 emergency room visit for his left elbow and a 2015 regular office visit in which he learned he had a pinched nerve in his left elbow. Appellant asserted that he had no other treatment possibly related to his condition until February 2018. He also noted that the only hobby related to his left upper extremity was golfing, which he participated in approximately two to five times a year.

In an August 16, 2018 medical report, Dr. Thompkins observed that appellant experienced greater mobility and was starting to get some strength back in his biceps and triceps. He also noted appellant's history of work duties related to carrying a satchel over his shoulders and across his neck and opined that, with a degree of medical certainty, his job did pose a risk for increased neck pathology. Dr. Thompkins explained that it was a possibility that appellant's work duties could have caused his problems and was most likely the reason based on the facts of his history. In a medical note of even date, he updated appellant's work restrictions.

By decision dated August 22, 2018, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish that his condition was causally related to the accepted factors of his federal employment.

On September 21, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. Appellant also submitted copies of evidence previously of record.

During the hearing, held on February 14, 2019, appellant recounted his history of treatment dating back to the beginning of 2018. He further provided a description of his work responsibilities and insisted there were no other activities or previous work duties from his past employment that would have reasonably contributed to his condition. The hearing representative held the case record open for 30 days for the submission of additional evidence. OWCP did not receive any additional evidence.

By decision dated April 30, 2019, the hearing representative affirmed the August 22, 2018 decision.

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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

³ *Id.*

⁴ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit 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;⁶ (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;⁷ and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁸

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

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.¹⁰

ANALYSIS

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

In medical reports dated April 9 to August 16, 2018, Dr. Thompkins included diagnoses of spinal stenosis and cervical disc disorder at C6-7 and C5-6 with radiculopathy. He noted that appellant had experienced his symptomology of pain, numbness and tingling throughout his back and upper extremities for some time, but since October 2017, the pain had gotten to a point where it affected his activities of daily living. Dr. Thompkins explained that appellant's job required him to carry a satchel, sometimes weighing over 30 pounds, for periods of time while performing lifting, twisting and bending motions as a part of his employment responsibilities. In his June 18, 2018 medical note, Dr. Thompkins explained that the repetitive nature of the work activities appellant performed with the satchel over his shoulder and across his neck "could" increase the risk for cervical disc disorders, including stenosis and radiculopathy. Further, he opined multiple times that these activities were "most likely" the reason for appellant's problems based on a review of his history. Dr. Thompkins concluded, based on his review of appellant's medical records diagnostic reports and physical examination, it was his medical opinion that the repetitive nature

⁶ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

⁷ *B.K.*, Docket No. 19-0829 (issued September 25, 2019); *Michael R. Shaffer*, 55 ECAB 386 (2004).

⁸ *C.M.*, Docket No. 18-1516 (issued May 8, 2019); *Beverly A. Spencer*, 55 ECAB 501 (2004).

⁹ *See J.R.*, Docket No. 17-1781 (issued January 16, 2018); *I.J.*, 59 ECAB 408 (2008).

¹⁰ *M.S.*, Docket No. 19-0913 (issued November 25, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

of appellant's duties as a mail carrier were "the contributing factor" for the cause of his spinal stenosis and cervical disc disorder at C6-7 and C5-6 and subsequent treatment and surgery.

However, while Dr. Thompkins' medical reports provided an affirmative opinion on causal relationship, his opinions are insufficient to establish appellant's claim because they are not based on a complete factual history and he did not provide adequate medical rationale in support of his opinion on causal relationship.¹¹ In response to OWCP's questionnaire, appellant indicated that he had initially injured his left elbow in 2012, prior to his federal employment, and in 2015 discovered a pinched nerve in the same elbow. While Dr. Thompkins noted that appellant had experienced his symptomology "for some time," and provided a description of the employment factors believed to have either caused or contributed to his diagnosed conditions, he failed to specifically differentiate between the effects of the preexisting conditions and the symptoms of the job-related factors.¹² A well-rationalized opinion is particularly warranted when there is a history of preexisting condition, as in this case.¹³ Further, Dr. Thompkins' reports were couched in speculative terms and were thus insufficient to establish appellant's claim.¹⁴ For these reasons, his medical reports are insufficient to meet appellant's burden of proof.

In Dr. Ostrowski's March 20, 2018 certification of health care provider for employee's serious health condition FMLA, he noted that appellant's primary job functions involved carrying mail, papers and packages and that his symptoms started a couple of months prior to his initial visit. He further noted appellant's symptomology and opined that he would be unable to carry his mailbag for long periods or deliver mail from his truck as a result. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁵ Dr. Ostrowski's medical evidence, therefore, is insufficient to establish appellant's burden of proof.

The remaining medical evidence consists of diagnostic reports. The Board has consistently held that diagnostic studies lack probative value as they do not provide an opinion on causal relationship between the accepted employment factors and a diagnosed condition.¹⁶ Therefore, these reports are insufficient to meet appellant's burden of proof.

¹¹ *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

¹² *Supra* note 10.

¹³ *M.E.*, Docket No. 18-1135 (issued January 4, 2019); *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

¹⁴ The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value. *R.C.*, Docket No. 18-1695 (issued March 12, 2019); *see Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

¹⁵ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁶ *See G.M.*, Docket No. 19-0539 (issued August 6, 2019); *T.S.*, Docket No. 18-0150 (issued April 12, 2019); *L.T.*, Docket No. 18-1603 (issued February 21, 2019).

As appellant has not submitted rationalized medical evidence establishing that his cervical spine condition is causally related to factors of his federal employment, the Board finds that he has not met his burden of proof to establish his 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 a condition causally related to the accepted factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the April 30, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 11, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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