

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

A.P., Appellant	)	
	)	
and	)	<b>Docket No. 20-0084</b>
	)	<b>Issued: November 2, 2020</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Sterling, VA, Employer	)	
	)	

*Appearances:*  
Andrew Douglas, 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  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On October 9, 2019 appellant, through counsel, filed a timely appeal from a September 24, 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.

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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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish an abdominal condition while in the performance of duty, as alleged.

## FACTUAL HISTORY

On October 17, 2014 appellant, then a 38-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that he developed abdominal pain due to factors of his federal employment. He reported that he had worked for the employing establishment for over eight years. Appellant indicated that he first became aware of his condition on August 1, 2014 and realized its relationship to his federal employment on September 17, 2014. On the reverse side of the claim form, J.P., appellant's manager, contended that appellant had signed a statement explaining that this condition was not due to an on-the-job injury.

Appellant submitted medical evidence in support of his claim. In an August 1, 2014 letter, Dr. Scott B. Cypher, a chiropractor, related that appellant was seen in his office for acute abdominal and low back pain. He held appellant off work until August 11, 2014.

An August 7, 2014 magnetic resonance angiography (MRA) of the abdomen revealed median arcuate ligament syndrome (MALS).

Appellant also submitted various hospital records dated September 17 to 24, 2014, including an operative report, prescription notes, and a discharge instruction sheet. The records indicated that he underwent MALS release surgery on September 17, 2014 and was discharged from the hospital on September 24, 2014.

In an October 20, 2014 work status note, Dr. Nathan Tran, a Board-certified family practitioner, indicated that he treated appellant on that date and released appellant to return to work with restrictions in eight weeks.

In a letter dated November 6, 2014, M.S., a human resource specialist for the employing establishment, controverted appellant's claim based on fact of injury and causal relationship. She indicated that he wrote a statement on August 1, 2014 claiming that he needed medical treatment for an ongoing condition that did not occur on the job. M.S. also asserted that appellant's physician did not opine that appellant's condition was caused by his employment. OWCP received a copy of a handwritten August 1, 2014 statement, signed by appellant, in which he related: "due to an ongoing condition that, did not occur on the job, I need to go to the doctor immediately." Appellant further noted: "this is not an on the job injury."

In a November 24, 2014 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for completion. OWCP afforded appellant 30 days to provide the necessary information.

In a December 10, 2014 response, appellant indicated that he was providing medical reports from 2013 and 2014. In a completed questionnaire dated December 2, 2014, he recounted why he believed that he was injured on the job. Appellant explained that on August 1, 2014 he

was delivering a heavy parcel weighing over 50 pounds when he experienced severe abdominal pain. He indicated that he immediately informed management that he needed to see a physician. Appellant noted that the results of diagnostic testing the prior year showed that he had arcuate ligament syndrome. He responded that the employment-related duties that he believed contributed to his condition included carrying and lifting heavy loads weighing up to 70 pounds on a daily basis. Appellant related that he had experienced mild abdominal pain after lifting heavy loads at work over the prior year, and that the pain from lifting the heavy parcel on August 1, 2014 was so severe that he could not continue with his duties. He further asserted that, over eight years as a carrier, he had lifted thousands of trays and tubs ranging between 30 to 70 pounds and had lifted and delivered approximately 5 to 10 parcels each week between 50 to 70 pounds each. Appellant clarified that he did not have nonwork-related activities that required him to lift heavy objects.

Appellant submitted medical reports dated February 18 to September 18, 2013 by Dr. Jeremias C. Tan, a Board-certified gastroenterologist, and reports dated July 18 to October 9, 2014 by Dr. Fredrick Brody, a Board-certified general surgeon, regarding medical treatment for appellant's complaints of left flank discomfort and abdominal pain that occurred a few times each month. Additional medical reports dated from February 27 to April 11, 2013, also noted diagnoses of kidney stones and abdominal pain.

OWCP received a November 24, 2014 duty status report (Form CA-17) by Dr. Tran, who described a history of injury of "carrier never stated [on-the-job-injury]." Dr. Tran reported clinical findings of abdominal pain and recommended that appellant resume work on December 29, 2014.

In a December 9, 2014 report, Dr. Tran recounted that appellant first complained of abdominal pain in 2013. He indicated that a thorough year-long evaluation revealed that appellant had possible arcuate ligament syndrome. Dr. Tran explained that, with this syndrome, abdominal pain can be worsened with exertion. He related that on August 1, 2014 appellant experienced severe abdominal pain after lifting a heavy parcel while at work. Dr. Tran reported that appellant had arcuate ligament surgery on September 17, 2014, but continued to experience abdominal pain that worsened with exertion, such as lifting heavy things. He indicated that a December 1, 2014 MRA showed that appellant still had compression of his celiac axis and required further treatment.

In a December 12, 2014 report, Dr. Virgil A. Balint, a Board-certified physical medicine and rehabilitation and pain medicine physician, recounted appellant's complaints of abdominal pain, which was aggravated by lifting. He reviewed appellant's history, conducted an examination, and diagnosed abdominal pain and chronic pain syndrome.

OWCP also received several diagnostic testing reports and laboratory results dated from June 12, 2012 to December 1, 2014.

In a December 23, 2014 letter, M.S., a human resource specialist for the employing establishment, reiterated that the employing establishment was controverting appellant's claim. She asserted that his gastrointestinal condition did not happen on his tour of duty.

In a January 16, 2015 decision, OWCP denied appellant's claim. It found that the evidence of record was insufficient to establish the implicated employment factors. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On February 2, 2015 appellant, through his then-counsel,<sup>3</sup> requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. OWCP subsequently converted appellant's request to a review of the written record.

Appellant submitted medical reports dated January 23 to March 20, 2015 by Dr. Balint, who reported appellant's complaints of continued abdominal pain, aggravated by lifting. Dr. Balint conducted an examination and diagnosed abdominal pain, chronic pain syndrome, and scar and fibrosis skin.

In a March 11, 2015 report, Dr. Robert Podolsky, a Board-certified vascular surgeon, indicated that he had treated appellant for complaints of left-sided abdominal pain.

On June 23, 2015 OWCP received an undated statement by appellant who explained why he felt the January 26, 2015 denial decision should be reversed. Appellant related that on August 1, 2014 J.P., appellant's manager, forced him to sign a blank sheet of paper. He asserted that he did not know exactly what J.P. wrote and that he was not given a copy of the document letter.

By decision dated July 27, 2015, OWCP's hearing representative affirmed the January 16, 2015 decision.

Appellant subsequently submitted a September 29, 2015 letter by Dr. Cypher, who related that appellant had been under his care for a spinal and abdominal injury sustained on August 1, 2014. Dr. Cypher indicated that he had reviewed appellant's medical records and there was "no question this was caused from the work injury."

On July 25, 2016 appellant, through then-counsel, requested reconsideration.

In a letter dated April 25, 2016, Dr. Sandra Tirado, a Board-certified internist, related that appellant was being treated in her office for arcuate ligament syndrome, which was diagnosed in 2013. She reported: "this condition was likely a result of the responsibilities of [appellant's] position as a letter carrier." Dr. Tirado noted that appellant regularly experienced severe abdominal pain, especially when lifting heavy objects.

By decision dated September 29, 2016, OWCP denied modification of the July 27, 2015 decision.

On December 6, 2016 appellant requested reconsideration and noted his disagreement with OWCP's denial decisions. He alleged that he never signed an August 1, 2014 statement and that the signed statement was a forgery. Appellant related that he was enclosing relevant new evidence, which establishes that his abdominal injury was caused by his work duties such as heavy lifting.

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<sup>3</sup> At the time, appellant was being represented by Stephen Scavuzzo, Esq.

OWCP received an August 10, 2014 letter, from appellant to J.H., appellant's supervisor, requesting a form for limited duty. It also received a September 12, 2014 letter, from appellant to J.H., requesting a Form CA-2.

Appellant submitted a form report dated September 10, 2014, which indicated that his request for leave under the Family and Medical Leave Act was approved.

In an October 10, 2016 letter, Dr. Tirado related that appellant had worked for eight years as a letter carrier, which involved heavy lifting on a daily basis. She indicated that in 2013 he began to experience mild abdominal pain, which was exacerbated by heavy lifting at work. Dr. Tirado noted that in 2014 appellant lifted a particularly heavy parcel, which caused severe abdominal pain, and he was subsequently diagnosed with arcuate ligament syndrome and celiac artery compression. She reported: "based on the duties required for the position of a letter carrier and the timeline of [appellant's] symptoms, it can be [stated] with reasonable medical certainty that the arcuate ligament syndrome and celiac artery compression are both a result of [appellant's] duties as a letter carrier."

By decision dated March 2, 2017, OWCP denied modification of the September 29, 2016 decision.

On January 31, 2018 appellant again requested reconsideration, noting his disagreement with the March 2, 2017 decision. He also indicated that he had new evidence that demonstrated that the August 1, 2014 statement was a forgery.

Appellant submitted a January 8, 2018 report by Wendy Carlson, a court-qualified forensic document examiner, who opined that a different person wrote and signed appellant's name on the questioned August 1, 2014 statement. Ms. Carlson also indicated that she compared the handwriting from the questioned August 1, 2014 document, with the purported known handwriting and signature of J.P., appellant's manager and reported that the handwriting characteristics and signature in the questioned document conformed to the handwriting characteristics of J.P.

OWCP also received additional medical evidence. In a September 27, 2017 progress report, Dr. Shawn Sarin, a Board-certified diagnostic, vascular, and interventional radiologist, recounted that appellant had a lengthy history of chronic abdominal pain that began in early 2013 and was diagnosed with MALS in 2014. He noted that appellant wondered if the heavy lifting appellant performed for many years at work at the employing establishment had caused his MALS. Dr. Sarin reviewed appellant's history and conducted an examination. He reported that cross sectional imaging continued to show evidence of celiac artery compression.

Appellant also submitted a May 1, 2017 letter, by Dr. Tirado that was identical to her October 10, 2016 letter.

A city carrier position description was also received. The description noted that the physical requirements of the position included "prolonged standing, walking, bending and reaching, and may involve handling heavy containers of mail." It reported that city carriers were required to lift and carry continuously up to 10 pounds and intermittently up to 70 pounds for eight or more hours per day.

By decision dated April 4, 2018, OWCP denied modification of the March 2, 2017 decision.

On March 26, 2019 appellant, through then-counsel, requested reconsideration.<sup>4</sup> Counsel alleged that appellant had established fact of injury as heavy lifting was the only mechanism of injury that had been provided. He argued that there were no inconsistencies in the record as appellant has routinely maintained that it was heavy lifting that caused his MALS. Counsel also related that the medical evidence demonstrated that kidney stones and/or cysts were not the cause of appellant's MALS.

In a March 12, 2019 report, Dr. John W. Ellis, a Board-certified family practitioner, recounted that appellant had worked as a city carrier since June 2006. He indicated that he had reviewed the job description of a city carrier and was familiar with the duties and requirements of a letter carrier. Dr. Ellis related that, beginning in February 2013, appellant experienced achy pain in the left mid-quadrant of his abdomen. He noted that on August 1, 2014 appellant had pain after lifting a parcel, which forced him to stop working. Dr. Ellis indicated that appellant underwent several tests and was eventually diagnosed with MALS. He related that the September 17, 2014 surgery, was not successful as appellant still experienced pain in his left lateral mid-abdomen. Dr. Ellis provided a detailed list of the medical records, employment records, and statements that he had reviewed. He conducted an examination and diagnosed MALS. Dr. Ellis opined that appellant's employment factors contributed to, aggravated and/or caused appellant's injuries. He explained that appellant's strenuous work, especially lifting, caused the muscles inside appellant's abdomen to become enlarged, which caused the peritoneum fibers that overlay the celiac artery to stretch and put pressure on the artery. Dr. Ellis noted that the pressure decreased blood flow to appellant's intestines and resulted in abdominal pain. He concluded that appellant's work for the employing establishment contributed to and aggravated his MALS, which required surgery.

By decision dated September 24, 2019, OWCP denied modification of the April 4, 2018 decision.

### **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

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<sup>4</sup> At this point in time, appellant was represented by Andrew Douglas, Esq.

<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).

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>

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.<sup>9</sup>

An employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>10</sup> The employee's statements, however, must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. An employee has not met his or her burden of proof establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.<sup>11</sup> Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast serious doubt on an employee's statement in determining whether a *prima facie* case has been established.<sup>12</sup>

### ANALYSIS

The Board finds that appellant has met his burden of proof to establish that the alleged employment factors occurred as described.

Appellant alleged on his claim form that he developed severe abdominal pain due to factors of his federal employment. He indicated that he first became aware of his condition on August 1, 2014 and realized its relation to his federal employment on September 17, 2014. In a November 24, 2014 development letter, OWCP advised appellant of the type of factual and medical evidence needed to establish his claim and provided a questionnaire for completion. Appellant completed the questionnaire on December 2, 2014. He reported that the employment-related duties that he believed contributed to his condition included carrying and lifting heavy loads up to 70 pounds on a daily basis. A position description for a city carrier also indicated that

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<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.C.*, Docket No. 18-1567 (issued April 9, 2019); *D.B.*, 58 ECAB 529 (2007); *Gregory J. Reser*, 57 ECAB 277 (2005).

<sup>11</sup> *S.A.*, Docket No. 19-0613 (issued August 22, 2019); *Betty J. Smith*, 54 ECAB 174 (2002).

<sup>12</sup> *L.D.*, Docket No. 16-0199 (issued March 8, 2016); *Betty J. Smith, id.*

carriers were required to lift and carry continuously up to 10 pounds and intermittently up to 70 pounds for eight or more hours per day. The Board finds that appellant has consistently and sufficiently identified and established the work factors that he believed caused his diagnosed abdominal injury, namely lifting heavy trays of mail or parcels on a daily basis.<sup>13</sup> As noted above, a claimant's statement that an injury occurred at a given time, place, and in the manner alleged is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>14</sup> Accordingly, the Board finds that appellant has established the implicated employment factors.<sup>15</sup>

As appellant has established that his employment duties factually occurred as alleged, the question becomes whether these employment factors caused an injury.<sup>16</sup> The Board will, therefore, set aside OWCP's September 24, 2019 decision, and remand the case for consideration of the medical evidence. Following this and other such further development as is deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met his burden of proof to establish an injury or condition causally related to the accepted employment factors.

### **CONCLUSION**

The Board finds that appellant has met his burden of proof to establish that the alleged employment factors occurred as described.

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<sup>13</sup> *S.S.*, Docket No. 16-0758 (issued August 12, 2016).

<sup>14</sup> *A.C.*, *supra* note 10; *Gregory J. Reser*, *supra* note 10.

<sup>15</sup> *J.J.*, Docket No. 17-1248 (issued February 21, 2018); *M.W.*, Docket No. 17-0097 (issued April 11, 2017).

<sup>16</sup> *See C.M.*, Docket No. 19-0009 (issued May 24, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 24, 2019 decision of the Office of Workers' Compensation Programs is reversed, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 2, 2020  
Washington, DC

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

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

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