

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

K.M., Appellant)	
)	
and)	Docket No. 20-1373
)	Issued: July 27, 2021
DEPARTMENT OF HOMELAND SECURITY,)	
IMMIGRATION & CUSTOMS)	
ENFORCEMENT, Charleston, SC, Employer)	
)	

Appearances:
Appellant, pro se
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 July 8, 2020 appellant filed a timely appeal from an April 20, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 a medical condition causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On May 2, 2017 appellant, then a 45-year-old deportation officer, filed a traumatic injury claim (Form CA-1) alleging that on April 28, 2017 he developed neck, back and extremity pain while in the performance of duty as a result of the positioning of his keyboard, monitor, and chair,

¹ 5 U.S.C. § 8101 *et seq.*

performing data entry, and the sedentary nature of his work. He did not immediately stop work. On the reverse of the claim form, the employing establishment controverted continuation of pay (COP) and noted that based on appellant's statement he was claiming an occupational disease and not a traumatic injury. OWCP assigned this claim File No. xxxxxx516.

Previously, OWCP accepted an August 15, 2005 traumatic injury claim for sprain/strain of the lumbar region under OWCP File No. xxxxxx835. Appellant indicated that he was performing lower body exercises and sustained a herniated disc in the low back while in the performance of duty. OWCP later expanded the acceptance of appellant's claim to include displacement of lumbar intervertebral disc without myelopathy at L4-S1.

Appellant subsequently filed an occupational disease claim (Form CA-2) on October 22, 2018 alleging that he developed an aggravation of his back injury and nerve damage as a result of repeatedly bending under a cubicle, kneeling, crawling on the floor connecting cables, lifting, and moving equipment, assigned OWCP File No. xxxxxx210. He became aware of his condition and its relationship to his federal employment on April 28, 2017. Appellant reported initially filing a Form CA-1 because he was unsure as to the correct form to file. He indicated that his manager recommended that he file a Form CA-2. By decision dated December 28, 2018, OWCP denied appellant's claim and on June 10, 2019 this decision was affirmed by an OWCP hearing representative.

On June 11, 2019 OWCP administratively combined the claims, File No. xxxxxx210, xxxxxx835, xxxxxx516, with OWCP File No. xxxxxx835, serving as the master file.

Under OWCP File No. xxxxxx516 appellant submitted an undated statement and indicated that he was recently assigned sedentary administrative duties, which aggravated his existing job injuries. He reported moving office equipment and crawling under a cubicle to connect cables and when he stood up he experienced shooting pain in his back, right arm, right leg, radiating to his toes. When appellant returned to work he experienced severe pain in his extremities and had difficulty standing and walking.

In a May 18, 2017 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. OWCP afforded appellant 30 days to submit the requested information.

A return to work note dated May 4, 2017, prepared by a healthcare provider whose signature was illegible, excused appellant from work that day.

OWCP received an x-ray of the right hip dated May 19, 2017, which revealed findings suspicious for femoral acetabular impingement. An x-ray of the lumbar spine of even date revealed degenerative disc disease (DDD) of the lower lumbar spine.²

² In support of his claim for disability retirement appellant submitted a May 11, 2017 report from Dr. Mathew D. Scarlett, a Board-certified otolaryngologist. Dr. Scarlett noted a diagnosis of squamous cell carcinoma of the tonsil in 2014 and that appellant underwent chemotherapy and radiation. As a result of the radiation he developed right neck muscle spasms and tightness, which limited his range of motion in the upper extremity and his ability to turn his head.

On May 26, 2017 appellant was treated by Dr. Joseph Marino, a Board-certified anesthesiologist, for right-sided body pain. He reported that on April 28, 2017 he was under his desk at work connecting computer cords and when he stood up he felt a sharp pain down the right side of his body. Appellant's diagnoses included back and neck pain, radiculopathy, nerve injury, and oropharyngeal cancer. In a work status report dated May 26, 2017, Dr. Marino diagnosed back and neck pain, radiculopathy of the right leg, and DDD. He noted that appellant was off work until seen by a neurologist.

On May 30, 2017 the employing establishment challenged appellant's claim and controverted COP because appellant alleged an occupational disease claim and not a traumatic injury. On the Form CA-1 appellant alleged his current conditions were caused by data entry, the positioning of the keyboard, monitor, and chair, and the sedentary nature of his work. He subsequently submitted a statement and alleged his condition was due to moving furniture and connecting cables under a desk. Similarly, on May 30, 2017, P.S., an employing establishment supervisory detention and deportation officer, indicated that he personally moved the monitor, computer processing unit, printer, and scanner to appellant's new cubicle and attached all the cables.

By decision dated June 22, 2017, OWCP denied appellant's traumatic injury claim finding that the medical evidence submitted was insufficient to establish causal relationship between a medical condition and the accepted work events.

In a November 21, 2017 report, Dr. Barton Sachs, a Board-certified orthopedist, treated appellant for low back and hip pain. Appellant's medical history was significant for a work injury in 2005 where he sustained a herniated disc at L5-S1, major nerve compression, and herniated disc at L4-5. His current symptoms started on April 28, 2017, when he was bending under his desk at work to plug in cords and had shooting pain in his back. Dr. Sachs indicated that appellant's anatomy was fairly intact until his injury in 2005. X-rays revealed DDD at L4-5 with associated radiculopathy, marked degeneration, narrowing at L4-5 and L5-S1 consistent with DDD, retrolisthesis of L4-5, and narrowing of the nerve root at L4-5. Dr. Sachs diagnosed DDD at L4-5 and L5-S1 with associated radiculopathy. He opined that appellant's symptoms were a direct extension of the initial injury in 2005, which was exacerbated in 2017. In a note of even date, Dr. Sachs opined that based on physical findings appellant was injured during a work-related incident on April 28, 2017. He recommended nonoperative treatment and advised that appellant would remain out of work until further evaluation.

On December 12, 2017 appellant requested reconsideration.

By decision dated March 1, 2018, OWCP denied modification of the decision dated June 22, 2017.

On May 19, 2017 Dr. Genevieve Jones, a Board-certified family practitioner, treated appellant and diagnosed degenerative arthritis of the lumbar spine. In a return to work note of even date, she diagnosed lower back pain, hip pain, shoulder pain, and degenerative arthritis of the lumbar spine. Dr. Jones returned appellant to limited-duty work.

In an April 13, 2018 report, Dr. Charles Reitman, a Board-certified orthopedist, treated appellant for low back and hip pain. He opined that appellant was injured during a work-related

incident on April 28, 2017 when he was bending down under his desk moving equipment and connecting cables and felt a shot of pain in his back. Dr. Reitman indicated that appellant's history was significant for a work injury in 2005 where he was diagnosed with L4-5 and L5-S1 disc herniation. Appellant reported occasional flare-ups in muscle spasms between 2005 and 2017, but indicated that he was asymptomatic for six months leading up to the 2017 incident. Dr. Reitman noted that based on diagnostic imaging and physical findings he diagnosed DDD at L4-5 and L5-S1, which developed after a work injury in 2005 and was aggravated on April 28, 2017 when he was bending under a desk at work to connect cables. He advised that appellant was not able to return to work.

On April 23, 2018 appellant requested reconsideration.

By decision dated July 19, 2018, OWCP denied modification of the decision dated March 1, 2018.

On October 30, 2018 appellant asserted that he provided narratives from his physicians sufficient to require OWCP to fully develop his claim.

In a report dated January 10, 2019, Dr. Raymond F. Topp, a Board-certified orthopedist, evaluated appellant on November 6, 2018, for a work-related injury that occurred on April 28, 2017. Appellant reported crawling under his desk to plug in equipment when he experienced severe pain in his back. Dr. Topp noted that appellant had a previous work-related lumbar injury in 2005 after performing lunges at work.³ Upon review of the medical records he noted that appellant's anatomy was intact until 2005 and he then experienced significant changes after the 2017 injury. Dr. Topp opined that twisting and turning of his body and back while maneuvering underneath a desk on April 28, 2017 aggravated the previous injury of 2005.

On January 14, 2019 appellant requested reconsideration. In a statement of even date, he noted commencing work at the local employing establishment office on March 20, 2017. Appellant indicated that by April 17, 2017 he had experienced back and neck pain caused by a change in his working conditions, stress, and poorly designed workstation. He informed his supervisor that he was having difficulty at work due to the sedentary nature of his job and was experiencing nerve, back, and leg pain. Appellant noted that when he filed the Form CA-1 it was based on an injury occurring in a single shift; however, he experienced back and leg pain prior to filing the CA-1 form. He indicated that he was unsure if he should file a Form CA-1 or a Form CA-2. Appellant reported working for the Federal Government for 27 years and never received consistent information regarding when to file a traumatic injury or occupational disease claim. He noted that out of pure confusion and desperation he filed numerous claim forms at various times.

By decision dated February 12, 2019, OWCP denied modification of the July 19, 2018 decision.

Appellant submitted an August 11, 2019 report from Dr. Elmore Alexander, an osteopath, who evaluated him for an employment injury, which developed after prolonged sitting and

³ Dr. Topp noted that a magnetic resonance imaging (MRI) scan performed on September 23, 2005 revealed a large right-sided L5-S1 protrusion with an extruding fragment extending behind the S1 vertebral body and a right paracentral disc protrusion at L4-5, L2-3, and L1-2.

repetitive motion activities performed over the years and which culminated on April 28, 2017. Dr. Alexander reported that appellant's current duties required long hours of continuous sitting, performing docket management, data entry, and administrative duties. Appellant noted working more than 50 hours a week. Dr. Alexander advised that being assigned a sedentary assignment limiting mobility contributed to injuries of the muscles, bones, tendons, and ligaments due to lack of movement after many years of being active. He noted that reduction of body movement makes the muscles more likely to pull, cramp, and strain when stretched suddenly. Dr. Alexander indicated that fatigue in the muscles slows the blood supply, puts high tension on the spine, especially in the back and neck, which causes steady compression on the spinal discs that hinders their nutrition and contributes to instability and premature degeneration. He further indicated that appellant required a chair that was suitable for his body and shape. Dr. Alexander opined that the cause of the severe sprain of appellant's mid and low back was caused by prolonged sitting and repetitive motion activities performed over the years. He diagnosed intervertebral disc disorders with myelopathy, lumbar region, and other intervertebral disc degeneration of the lumbosacral region. Dr. Alexander concluded that appellant sustained an employment injury as a result of work activities over 21 years culminating on April 28, 2017. He advised that appellant's description of the "incident is precisely compatible with the long-term mechanism of injury."

On December 23, 2019 appellant requested reconsideration.

By decision dated April 20, 2020, OWCP denied modification of the decision dated February 12, 2019.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 period of FECA,⁴ 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.⁵ 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.⁶

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; (2) medical evidence establishing the presence or existence of the disease or

⁴ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *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).

condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁷

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.⁹ 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 factor(s).¹⁰

ANALYSIS

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

Appellant filed a claim for a traumatic injury (Form CA-1) on May 2, 2017, describing factors of employment consistent with an occupational disease. He alleged that he developed back and extremity pain as a result of the positioning of his keyboard, monitor, and chair, performing data entry, and the sedentary nature of his work. An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift.¹¹ A traumatic injury is defined as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift.¹² Throughout the development of his claim, appellant expressed confusion as to whether he should file a Form CA-1 or a Form CA-2 and stated that out of pure confusion and desperation he filed numerous forms at various times. Accordingly, the Board finds this claim is for an occupational disease and not a traumatic injury.

In his report dated August 11, 2019, Dr. Alexander opined that appellant developed an occupational injury after prolonged sitting and repetitive motion activities performed over the years and which culminated on April 28, 2017. He described appellant's work duties, which required long hours of continuous sitting, performing docket management, data entry, and administrative duties for more than 50 hours a week. Dr. Alexander advised that being assigned a sedentary assignment limiting mobility contributed to appellant's injuries to the muscles, bones, tendons, and ligaments due to lack of movement after many years of being active.

Dr. Alexander explained that a reduction of body movement makes the muscles more likely to pull, cramp, and strain when stretched suddenly. He described that fatigue in the muscles slows the blood supply, puts high tension on the spine, especially in the back and neck, causes steady

⁷ *R.G.*, Docket No. 19-0233 (issued July 16, 2019). See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

¹⁰ *Id.*; *Victor J. Woodhams*, *supra* note 7.

¹¹ 20 C.F.R. § 10.5(q).

¹² *Id.* at § 10.5(ee).

compression on the spinal discs that hinders their nutrition, and contributes to instability and premature degeneration. Dr. Alexander opined that the cause of the severe sprain of appellant's mid and low back was due to repetitive motion activities followed by prolonged sitting performed over 21 years. He diagnosed intervertebral disc disorders with myelopathy, lumbar region, and other intervertebral disc degeneration of the lumbosacral region. In conclusion, Dr. Alexander opined that appellant sustained an employment injury as a result of work activities performed over years culminating on April 28, 2017. He advised that appellant's description of the incident "is precisely compatible with the long-term mechanism of injury."

The Board finds that the report from Dr. Alexander is sufficient to require further development of the medical evidence. Dr. Alexander provided an understanding of the medical record and case history. His report provides a pathophysiological explanation as to how appellant's prolonged sitting and repetitive motion activities performed resulted in his diagnosed intervertebral disc disorders with myelopathy and other intervertebral disc degeneration of the lumbosacral region. The Board has long held that it is unnecessary that the evidence of record in a case be so conclusive as to suggest causal connection beyond all possible doubt. Rather, the evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound, and logical.¹³ Accordingly, Dr. Alexander's medical opinion is well-rationalized and logical and is, therefore, sufficient to require further development of appellant's claim.¹⁴

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹⁵ OWCP has an obligation to see that justice is done.¹⁶

On remand OWCP shall refer appellant, a statement of accepted facts, and the medical record to a specialist in the appropriate field of medicine. The chosen physician shall provide a rationalized opinion as to whether the diagnosed conditions are causally related to the accepted factors of appellant's federal employment. If the physician opines that the diagnosed conditions are not causally related, he or she must explain, with rationale, how or why the opinion differs from that of Dr. Alexander. Following this and such other further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

¹³ *W.M.*, Docket No. 17-1244 (issued November 7, 2017); *E.M.*, Docket No. 11-1106 (issued December 28, 2011); *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983) and cases cited therein.

¹⁴ *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *William J. Cantrell*, 34 ECAB 1223(1983).

¹⁵ *See id.* *See also A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

¹⁶ *See B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

ORDER

IT IS HEREBY ORDERED THAT the April 20, 2020 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 27, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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