

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

B.C., Appellant

and

**U.S. POSTAL SERVICE, BRENTWOOD POST
OFFICE, Brentwood, TN, Employer**

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**Docket No. 20-1501
Issued: July 27, 2021**

Appearances:
Andrew Douglas, Esq., for the appellant¹
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 August 11, 2020 appellant, through counsel, filed a timely appeal from a July 16, 2020 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 lumbar condition causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On December 10, 2018 appellant, then a 39-year-old rural letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed lumbosacral spondylosis due to factors of his federal employment, including repetitive motions involved in delivering mail. He explained that, when he replicated the movements of servicing mailboxes, his pain would instantly intensify. Appellant indicated that he first became aware of his condition on May 23, 2018 and first realized that it was caused or aggravated by factors of his federal employment on November 28, 2018. He stopped work on May 24, 2018.

In an August 29, 2014 medical report, Dr. David McCord, a Board-certified orthopedic surgeon, evaluated appellant for low back pain. Appellant described an August 21, 2014 employment incident where he injured his back while leaning over in the back of his mail truck.³ On review of x-ray scans Dr. McCord noted degeneration at L4-5 and L5-S1 with a minor degree of levoscoliosis. He opined that appellant's injury was definitely an acute injury following years of chronic low back pain.

In an August 14, 2015 diagnostic report, Dr. Barry Allen, a Board-certified radiologist, performed a magnetic resonance imaging (MRI) scan of appellant's lumbar spine, finding hypolordosis of the lumbar spine. He diagnosed moderate-to-severe degenerative disc disease at L4-5.

In an April 30, 2018 diagnostic report, Dr. Daniel Starnes, a Board-certified radiologist, performed an MRI scan of appellant's cervical, thoracic, and lumbar spine, finding degenerative bone and disc changes in the cervical region with canal stenosis, localized myelomalacia and mild degenerative bone and disc disease in the thoracic and lumbar region.

In a September 27, 2018 medical note, Dr. James Andry, a Board-certified neurologist, indicated that he was treating appellant for lumbosacral spondylosis without myelopathy since May 23, 2018. He noted that an electromyography (EMG) scan revealed no ongoing nerve damage.

In an October 29, 2018 statement, appellant detailed his history of back pain beginning in 2016 where he was diagnosed with cervical spondylosis. Dr. Rudolph Glattes, a Board-certified orthopedic surgeon, performed surgery on July 12, 2016 to treat his back condition. Appellant underwent physical therapy and was released to return to work with no limitations on January 30, 2017. He worked until November 2017 when he had a mild lumbar sprain. Appellant began experiencing mild aggravation in his back while delivering his mail route in mid-April 2018

³ Appellant previously filed a Form CA-1 on March 17, 2015 for a lower back injury under OWCP File No. xxxxxx863. On June 9, 2015 OWCP accepted his claim for a sprain of the lumbosacral joint. Appellant's claims have not been administratively combined.

into May. He alleged that he had been diagnosed with lumbosacral spondylosis and that his doctors informed him that his condition was caused when the lumbar spine is affected by degenerative changes. Appellant asserted that his repetitive motion and lifting worsened his condition and caused pain, muscle spasms, numbness, tingling, and weakness causing falls. He also provided a timeline of his doctor's visits dating from June 2016 to October 26, 2018 and a list of his treating physicians.

In a December 13, 2018 letter, the employing establishment controverted appellant's claim, offering that J.C., a postmaster, explained that appellant initially left the office after an argument over an investigation interview concerning attendance and fraudulent scams in the office. Appellant also noted that he was not working on May 23 or November 28, 2018, the dates where he said he first became aware of his condition and first realized it was caused or aggravated by his federal employment, respectively.

In a development letter dated December 19, 2018, OWCP referenced appellant's five previous claims for lower back pain.⁴ It provided a questionnaire for his completion to establish the employment factors alleged to have caused or contributed to his medical condition and requested a medical report from his attending physician explaining how and why his federal work activities caused, contributed to, or aggravated his medical condition. OWCP afforded appellant 30 days to submit the requested information.

In an April 25, 2018 diagnostic report, Dr. Brent Roach, a Board-certified diagnostic radiologist, performed an x-ray scan of appellant's lumbar spine, which revealed minimal levoconvex curvature at the thoracolumbar junction with slight chronic appearing anterior wedging at the T12 vertebral body. In a diagnostic report of even date, Dr. Martin Jordanov, a Board-certified radiologist, performed an x-ray scan of appellant's cervical spine, finding normal alignment.

Appellant submitted a calendar with entries dating from July to November 2018 providing dates and times in which he was scheduled for physical therapy.

In a January 2, 2019 medical note, Dr. Andry diagnosed lumbar spine disc disease and opined that, based on his medical opinion, the degenerative changes at L4-5 could have been the result of repeated heavy lifting. Based on a description of appellant's work duties, he explained that these activities would be adequate to contribute to the changes seen on his MRI scan. Dr. Andry opined that continued and repeated heavy lifting would contribute to the progression of appellant's condition.

⁴ The Board notes that appellant has a number of prior claims. On April 29, 2008 appellant filed a claim for an April 28, 2008 traumatic injury for a back injury. OWCP processed the claim as a short form closure under OWCP File No. xxxxxx735. On August 21, 2014 appellant filed a claim for an August 21, 2014 traumatic injury for a lower back slipped disc under OWCP File No. xxxxxx981. It formally denied appellant's traumatic injury claim on September 29, 2014. On March 17, 2015 appellant filed a claim for a lower back injury under OWCP File No. xxxxxx863. On June 9, 2015 OWCP accepted his claim for a sprain of the lumbosacral joint. On November 25, 2017 appellant filed a claim for a November 25, 2017 traumatic injury for low back pain. OWCP processed the claim as a short-form closure under OWCP File No. xxxxxx286.

In a January 14, 2019 response to OWCP's development questionnaire, appellant explained that his condition was caused by the repetitive bending and lifting he performed as daily functions of his job. He reasoned that the employing establishment's statement that he had not reported an injury before was false and stated that a letter from his doctor would explain how his diagnosed condition was causally related to his federal employment. Appellant specifically described his employment activities as the repetitive functions of bending at the waist, twisting and stretching to reach mailboxes while driving his mail carrier in a seated position. He also noted that he lifted buckets of mail to carry to his next destination. Appellant drove his mail carrier on average two and a half to three hours a day and lifted mail buckets on average of 45 minutes to an hour a day.

By decision dated January 25, 2019, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that his diagnosed lumbar condition was causally related to the accepted factors of his federal employment.

On January 21, 2020 appellant, through counsel, requested reconsideration of OWCP's January 25, 2019 decision. Counsel contended that the newly attached medical evidence would be sufficient to establish causal relationship between the appellant's diagnosed medical condition and the accepted factors of his federal employment.

In a May 8, 2019 medical report, Corinne Grgas, a nurse practitioner, diagnosed lumbar pain and arthritic-like pain. She ordered multiple diagnostic studies of appellant's lumbar spine.

In a June 5, 2019 diagnostic report, Dr. Carol Ashman, a Board-certified radiologist, performed an MRI scan of appellant's lumbar spine, which demonstrated an L4-5 mild disc bulge with posterior annular fissure resulting in moderate central canal stenosis and mild-to-moderate benign chronic anterior compression deformity of the T12 vertebral body.

Dr. Glattes, in a June 6, 2019 report, diagnosed cervical pain, stiffness in the neck and back, lumbar facet syndrome, lumbar radiculopathy and lumbar stenosis with neurogenic claudication. He provided work restrictions for appellant to follow.

In an August 13, 2019 medical note, Dr. Andry recounted his treatment of appellant regarding his low back pain. He explained that based on a review of diagnostic testing and appellant's employment duties he could not attribute any nerve damage to his injury. Dr. Andry noted that, as a neurologist, he did not have expertise in the management of degenerative changes of the spine, but stated that it was widely known that long-standing strains, such as the one mentioned in appellant's job duties, can cause the injuries demonstrated in his MRI scans. He recommended the expertise of an occupational medicine physician for further evaluation.

By decision dated April 2, 2020, OWCP denied modification of its January 25, 2019 decision.

On May 4, 2020 appellant, through counsel, requested reconsideration of OWCP's April 2, 2020 decision. Counsel recounted the history of appellant's injury and his subsequent medical treatment. He argued that new medical evidence from Dr. John Ellis, Board-certified in internal medicine, would be sufficient to establish appellant's claim.

Appellant submitted medical reports dated from May 10 to July 6, 2016 in which Dr. Charlton Woosley, a chiropractor, treated appellant for low back pain related to his diagnoses of lumbar radiculopathy, other intervertebral disc displacement, cervicocranial syndrome and sacroiliitis.

In a January 28, 2020 narrative medical report, Dr. Ellis reviewed the history of appellant's injury dating back to 2008 in which he began to experience pain in his low back while lifting and getting in and out of his long-life vehicle (LLV) at work. He referenced employment incidents dated from August 21, 2014 to November 25, 2017, as well as a July 14, 2016 cervical fusion procedure appellant underwent to treat his related conditions. Dr. Ellis then discussed his most recent complaints of back pain beginning in April 2018 related to lifting trays of mail and magazines and his subsequent medical treatment. On review of appellant's medical records and diagnostic reports, he diagnosed a lumbosacral strain, lumbar disc derangement, lumbar spondylosis (arthritis), bilateral L4, 5 and S1 spinal nerve impingement and depression secondary to chronic pain. Dr. Ellis opined that his diagnoses arose out of and in the course of employment and that his employment factors contributed to, aggravated and/or caused his conditions. He explained that lifting trays and driving the LLV required a lot of bending and rotating of the lower spine that caused multiple sprains and strains of appellant's spine. Dr. Ellis differentiated the present claim by reasoning that the injury was cumulative trauma that became so severe that appellant could no longer continue working. He indicated that the evidence of annular tears were consistent with abnormal stresses on the lower lumbar vertebrae, causing increased pressure on the discs and tears. Dr. Ellis noted that appellant's repetitive duties caused his spinal cord impingement, which made him more prone to injuries in his lower lumbar spine, iliolumbar and sacroiliac ligaments and intervertebral discs. He recommended that appellant undergo an EMG scan for further evaluation and placed him on temporarily total disability from June 12, 2018 through the present.

By decision dated July 16, 2020, OWCP denied modification of its April 2, 2020 decision.

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,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

⁵ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *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 *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).

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 condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁸

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁹ 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.¹⁰ 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).¹¹

In a case in which 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.¹²

ANALYSIS

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

In support of his claim, appellant submitted multiple medical reports in which his treating physicians noted his previous lower back injuries and observed his federal employment duties that required him to perform repetitive lifting, bending, twisting, and stretching activities. Specifically, Dr. Ellis' January 28, 2020 narrative medical report provided that lifting trays and driving the LLV required a lot of bending and rotating of the lower spine that caused cumulative trauma to appellant's spine in addition to his previous injuries.

The Board finds that Dr. Ellis provided an affirmative and rationalized opinion on causal relationship in his January 28, 2020 narrative medical report. In his report, Dr. Ellis recounted appellant's history of low back pain as it related to his employment duties and his previous employment injuries. On examination he diagnosed a lumbosacral strain, lumbar disc derangement, lumbar spondylosis (arthritis), bilateral L4, 5 and S1 spinal nerve impingement and depression secondary to chronic pain and opined that appellant's repetitive employment duties contributed, aggravated and/or caused his medical conditions. Dr. Ellis explained that lifting trays

⁸ *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).

⁹ *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

¹¹ *Id.*; *Victor J. Woodhams*, *supra* note 8.

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

and driving an LLV required a lot of bending and rotating of the lower spine that caused multiple sprains and strains of appellant's spine. He differentiated the present claim from his previous claims by reasoning that the injury was cumulative trauma that became so severe that appellant could no longer continue working. Dr. Ellis stated that the evidence of annular tears were consistent with abnormal stresses on the lower lumbar vertebrae, causing increased pressure on the discs and tears. He noted that appellant's repetitive duties caused his spinal cord impingement, which made him more prone to injuries in his lower lumbar spine, iliolumbar, and sacroiliac ligaments and intervertebral discs.

Dr. Ellis identified the employment factor, which appellant consistently claimed had precipitated his lumbar conditions, identified physical findings upon examination and treatment, and provided a rationalized opinion citing to the facts of the case. Thus, the Board finds that Dr. Ellis' opinion is sufficient to require further development of the record.¹³

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.¹⁴ OWCP has an obligation to see that justice is done.¹⁵

OWCP previously accepted on June 9, 2015 that appellant sustained a sprain of the lumbosacral joint as the result of a March 17, 2015 employment incident under OWCP File No. xxxxxx863. It also processed two additional claims for lower back injuries as short form closures under OWCP File Nos. xxxxxx735 and xxxxxx286, respectively. On December 10, 2018 appellant filed the current claim for lumbosacral spondylosis caused by his repetitive duties as a rural letter carrier. OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files.¹⁶ For example, if a new injury case is reported for an employee who previously filed an injury claim for a similar condition of the same part of the body, doubling is required.¹⁷ OWCP had previously accepted that appellant had sustained a sprain of the lumbosacral joint under OWCP File No. xxxxxx863 and processed additional claims as short form closures under OWCP File Nos. xxxxxx735 and xxxxxx286; however, these cases have not been administratively combined with

¹³ *D.H.*, Docket No. 19-0633 (issued January 8, 2020); *J.J.*, Docket No. 19-0789 (issued November 22, 2019); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *A.F.*, Docket No. 15-1687 (issued June 9, 2016). See also *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

¹⁴ *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

¹⁵ *R.B.*, Docket No. 18-0162 (issued July 24, 2019); *K.P.*, Docket No. 18-0041 (issued May 24, 2019).

¹⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000); *D.M.*, Docket No. 19-0340 (issued October 22, 2019).

¹⁷ *Id.*; *D.T.*, Docket No. 19-1375 (issued March 24, 2020); *D.L.*, Docket No. 17-1588 (issued January 28, 2019).

the present file. The case must be remanded to OWCP to administratively combine OWCP File Nos. xxxxxx863, xxxxxx735, xxxxxx286 and the present case file.¹⁸

On remand OWCP shall administratively combine the files and refer appellant, a statement of accepted facts, and the medical evidence of record to a physician in the appropriate field of medicine. The chosen physician shall provide a rationalized opinion addressing whether the diagnosed lumbar 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 provide rationale explaining how or why the opinion differs from that of Dr. Ellis. Following this and any other further development as may be deemed necessary, OWCP shall issue a *de novo* decision on appellant's claim.

CONCLUSION

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

¹⁸ *K.T.*, Docket No. 17-0432 (issued August 17, 2018).

ORDER

IT IS HEREBY ORDERED THAT the July 16, 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

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

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