

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

V.P., Appellant)	
)	
and)	Docket No. 22-0706
)	Issued: November 3, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
Princeton, NJ, Employer)	
)	

Appearances:

Michael D. Overman, Esq., for the appellant¹
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 April 7, 2022 appellant, through counsel, filed a timely appeal from an October 21, 2021 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 disability from work for the period March 8, 2018 through November 2, 2020 causally related to his accepted employment injury.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On September 15, 2015 appellant, then a 50-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed cervical radiculopathy and lumbar radiculopathy due to factors of his federal employment, including "the constant--repetitive movements." He indicated that he first became aware of his condition in April 2014 and realized its relationship to his federal employment in August 2014. Appellant did not stop work.

By decision dated February 18, 2016, OWCP denied appellant's claim finding that he had not submitted medical evidence containing a medical diagnosis in connection with the accepted factors of employment. Following a May 26, 2016 oral hearing, by decision dated August 4, 2016, OWCP's hearing representative affirmed the February 18, 2016 decision with modification. He accepted that appellant was diagnosed with cervical and lumbar conditions, but denied the claim finding insufficient medical evidence to establish that appellant's medical conditions were causally related to the accepted employment factors.

Appellant disagreed with the decision and requested reconsideration on October 21, 2016 and March 15, 2017. By decisions dated January 6 and May 30, 2017, OWCP denied modification of its prior decisions.

Appellant, through counsel, appealed to the Board. By decision dated March 1, 2018, the Board affirmed the May 30, 2017 OWCP decision, finding that the medical evidence of record was insufficient to establish causal relationship between appellant's cervical and lumbar conditions and the accepted factors of employment.⁴

On May 25, 2018 appellant, through counsel, requested reconsideration and submitted medical evidence.⁵

³ Docket No. 17-1925 (issued March 1, 2018); Docket No. 20-0415 (issued July 30, 2020).

⁴ Docket No. 17-1925 *id.*

⁵ Although appellant's attorney claimed to be filing a request for reconsideration from the Board's March 1, 2018 decision, OWCP is not authorized to review Board decisions. The decisions and orders of the Board are final as to the subject matter appealed and such decisions and orders are not subject to review, except by the Board. *See* 20 C.F.R. § 501.6(d). Although the March 1, 2018 Board decision was the last merit decision, the May 30, 2017 OWCP decision is the appropriate subject of possible modification by OWCP.

In a report dated May 4, 2018, Dr. Steven J. Valentino, an osteopath Board-certified in orthopedic surgery, indicated that appellant was evaluated for complaints of severe neck and low back pain. He noted that appellant's symptoms began in April 2015 as a result of constant bending, twisting, and picking up mail. Dr. Valentino opined that appellant's condition of aggravation of degenerative disc disease with radiculopathy was a direct and natural response to appellant's work activities.

By decision dated October 16, 2018, OWCP denied modification of its prior decision.

On May 8, 2019 appellant, through counsel, requested reconsideration and submitted medical evidence.

In a report dated April 24, 2019, Dr. Valentino opined that the bending, lifting, twisting, and picking up mail that appellant performed at work resulted in torsion injuries, which created damage to his intervertebral discs. He explained that torsional damage can manifest itself as separation of the discs, similar to the annual changes observed during the early stages of disc degeneration, and may cause radial tears. Dr. Valentino reported that people who lift heavy objects on a daily basis and those who lift with a twisting motion are over three times as likely to suffer a disc injury.

By decision dated August 7, 2019, OWCP denied modification of the October 16, 2018 decision.

Appellant, through counsel, appealed to the Board. By decision dated July 30, 2020, the Board set aside the August 7, 2019 decision and remanded the case for further development of the medical evidence to determine whether appellant sustained cervical and lumbar conditions causally related to the accepted factors of his federal employment.⁶

OWCP subsequently referred appellant, along with a statement of accepted facts (SOAF), a copy of the case record, and a series of questions, to Dr. Kevin S. White, an osteopath Board-certified in orthopedic surgery, for a second opinion evaluation regarding his occupational disease claim. In a report dated November 2, 2020, Dr. White indicated that appellant alleged that he sustained injuries to his neck, arms, back, legs, and knees due to repetitive bending, kneeling, and twisting of the upper part of his body. He noted appellant's medical history and that he stopped working for the employing establishment in 2018. Dr. White recounted appellant's current complaints of neck pain radiating to both arms and back pain radiating to the toes. On physical examination of appellant's cervical spine, he observed tenderness to palpation along the cervical midline region and no pain on range of motion. Examination of appellant's thoracolumbar spine revealed tenderness to palpation along the midline lumbar paraspinal muscles and no pain on range of motion. Dr. White diagnosed cervical and lumbar strains superimposed on preexisting degenerative disc disease.

In response to OWCP's questions, Dr. White noted that appellant did not sustain a specific injury to his cervical and lumbar spine, but suffered a repetitive, overuse injury while working as a mail carrier for the employing establishment. He opined that appellant's cervical and lumbar

⁶ Docket No. 20-0415 (issued July 30, 2020).

degenerative disc disease with facet syndrome and cervical and lumbar radiculopathy were causally related to appellant's accepted employment factors. Dr. White explained that appellant sustained a temporary aggravation of his preexisting cervical and lumbar disc disease and that these conditions had ceased after completion of his physical therapy sessions. He also reported that appellant's "period of disability due to the work-related condition most likely began at the said date of injury, which is 4/01/14 ... [and] the disability ceased after the completion of physical therapy and injections." Dr. White concluded that appellant had reached maximum medical improvement and no longer suffered residuals of his employment conditions.

By decision dated December 31, 2020, OWCP accepted appellant's claim for temporary aggravations of cervical and lumbar disc disorder with radiculopathy, resolved.

On March 8, 2021 appellant filed a claim for compensation (Form CA-7) for disability from work for the period March 8, 2018 through November 2, 2020. On the reverse side of the claim form, the employing establishment noted that appellant had retired due to disability on March 7, 2018.

In a March 9, 2021 development letter, OWCP informed appellant that the evidence submitted was insufficient to establish total disability from work for the period March 8, 2018 through November 2, 2020. It requested that he submit additional factual and medical evidence to establish that he was unable to work during the period claimed due to his employment injury. OWCP afforded appellant 30 days to provide the necessary evidence. No additional evidence was received.

By decision dated April 12, 2021, OWCP denied appellant's claim for compensation for disability for the period March 8, 2018 through November 2, 2020.

On April 19, 2021 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review.

In a report dated April 20, 2021, Dr. Valentino indicated that appellant first presented with complaints of low back pain radiating into the legs with numbness and weakness and neck pain radiating into the arms. He discussed appellant's physical examination findings and various diagnostic imaging reports dated from 2005 through 2021. Dr. Valentino reported that appellant's symptoms began on April 1, 2014 as a result of constant bending, twisting, picking up mail, and carrying a mailbag. He explained that the bending, lifting, twisting, and picking up mail during the course of his employment resulted in torsional injuries which created damage to the intervertebral discs. Dr. Valentino further explained torsional damage can cause radial tears of the annulus communicating from the nucleus to the disc periphery. He recounted that appellant attempted to return to work, but his symptoms worsened such that he retired in March 2018. Dr. Valentino opined that appellant remained symptomatic and required ongoing treatment.

A telephonic hearing was held before a representative of OWCP's Branch of Hearings and Review on August 6, 2021.

In an August 17, 2021 progress note, Dr. Valentino indicated that appellant was treated for complaints of low back pain localized at the bilateral L3 through S1 region. On examination of

appellant's lumbar spine, he observed that range of motion was significantly limited. Motor and sensory examinations were normal. Dr. Valentino diagnosed low back pain.

By decision dated October 21, 2021, OWCP's hearing representative affirmed the April 12, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁷ has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁸ The term disability is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.⁹ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.¹⁰

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence.¹¹ The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the claimed disability and the accepted employment injury.¹²

ANALYSIS

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

Following the Board's July 30, 2020 decision, OWCP referred appellant to Dr. White for a second opinion evaluation regarding his occupational disease claim. In a November 2, 2020 report, Dr. White noted that appellant had worked as a mail carrier for the employing establishment and had stopped work in 2018. He opined that appellant's cervical and lumbar degenerative disc disease with facet syndrome and cervical and lumbar radiculopathy were medically connected to appellant's employment factors. Dr. White explained that appellant sustained a temporary aggravation of his preexisting cervical and lumbar disc disease and was now fully recovered. He

⁷ *Supra* note 2.

⁸ *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

¹⁰ *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.G.*, Docket No. 18-0597 (issued October 3, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

¹¹ *L.O.*, Docket No. 20-0170 (issued August 13, 2021); *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

¹² *V.A.*, Docket No. 19-1123 (issued October 29, 2019); *C.B.*, Docket No. 18-0633 (issued November 16, 2018).

reported that appellant was disabled due to the work-related condition on April 1, 2014 and that the disability ceased after he completed physical therapy.

It is well established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter.¹³ While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.¹⁴ Accordingly, once OWCP undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹⁵

The Board finds that Dr. White provided an opinion, which was generally supportive of appellant's claim for wage-loss compensation.¹⁶ He indicated that appellant was disabled due to his work-related condition on April 1, 2014. Dr. White, however, did not, address specific dates of disability from March 8, 2018 through November 2, 2020. While he noted that appellant fully recovered after he completed physical therapy, he did not mention a period of disability nor discuss specific examination findings to establish how appellant was physically capable of work after a specific date. Accordingly, this case must be remanded for a supplemental opinion by Dr. White to determine whether appellant's disability from work for the period March 8, 2018 through November 2, 2020 was causally related to his accepted employment conditions. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

¹³ *N.L.*, Docket No. 19-1592 (issued March 12, 2020); *M.T.*, Docket No. 19-0373 (issued August 22, 2019); *B.A.*, Docket No. 17-1360 (issued January 10, 2018); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

¹⁴ *C.L.*, Docket No. 20-1631 (issued December 8, 2021); *L.B.*, Docket No. 19-0432 (issued July 23, 2019); *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

¹⁵ *T.K.*, Docket No. 20-0150 (issued July 9, 2020); *T.C.*, Docket No. 17-1906 (issued January 10, 2018).

¹⁶ *See J.C.*, Docket No. 21-1216 (issued April 19, 2022).

ORDER

IT IS HEREBY ORDERED THAT the October 21, 2021 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: November 3, 2022
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