



## ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an upper or lower back condition causally related to factors of his employment.

## FACTUAL HISTORY

On November 30, 2011 appellant, then a 47-year-old manager of distribution operations, filed an occupational disease claim alleging degenerative disc disease and arthritis of his back as a result of walking the floors and checking containers. He first became aware of his condition and realized that it was caused by his employment on May 1, 2011.<sup>3</sup>

In a November 15, 2011 report, Dr. Kenneth W. Reichert, II, a Board-certified neurosurgeon, stated that appellant underwent surgery on July 27, 2010 and returned to work. He did not describe the type of surgery performed. Dr. Reichert noted that it was becoming more difficult for appellant to work without pain due to the amount of walking and bending he performed on a daily basis. He reported that appellant was unable to perform his duties to full capacity.

On December 13, 2011 OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested that he submit a detailed description of the employment activities that he believed caused his condition and respond to specific questions. OWCP also requested that appellant submit a comprehensive medical report, including a diagnosis, results of examinations and tests and a physician's opinion with medical rationale explaining the cause of his condition.

In a decision dated February 7, 2012, OWCP denied appellant's claim. It accepted that his work duties included continuous walking and checking containers but found insufficient medical evidence to establish that he sustained a back condition as a result of his employment duties.

On April 24, 2012 appellant submitted a request for reconsideration.

In a May 26, 2011 computerized tomography (CT) scan report, Dr. John R. Grogan, a Board-certified diagnostic radiologist, observed that appellant's thoracic alignment was normal and disc height was well maintained throughout the spine. He noted mild osteophytic spurring of the T4-5 facet joints and mild circumferential disc bulging at T10-11. Dr. Grogan diagnosed mildly diffusely enlarged serpentine appearing dorsal thoracic vein, upper thoracic facet arthropathy at T4-5, mild-to-moderate canal stenosis at T10-11 secondary to disc bulging and ligamentum flavum hypertrophy and multilevel lumbar degenerative changes.

In a November 14, 2011 report, Dr. Max Lee, a Board-certified neurosurgeon, noted appellant's complaints of worsening low back pain and bilateral lower extremity numbness. Appellant complained of chronic low back pain since 2004 and bilateral leg weakness and

---

<sup>3</sup> The record reveals that appellant filed a previous occupational disease claim (File No. xxxxxx540) and two previous traumatic injury claims (File Nos. xxxxxx989 & xxxxxx106).

numbness since June 2011. Dr. Lee noted that appellant's previous low back surgery in 2004 and morphine pump placed in 2007. He conducted an examination and observed back pain and arthralgias. No tenderness to palpation or instability was found. Appellant had full range of motion and normal strength and tone of head, spine and bilateral arms and legs. Dr. Lee diagnosed low back pain and thoracic spondylosis. He recommended further testing because appellant demonstrated signs and symptoms of cervical myelopathy.

In a November 25, 2011 CT scan of the spine, Dr. Eric Fisher, a Board-certified diagnostic radiologist, related appellant's complaints of upper and lower extremity pain and weakness. He observed a reversal of normal cervical lordosis, posterolateral endplate osteophytic ridge with disc bulging and endplate spurring. Dr. Fisher diagnosed mild C5-6 right lateral recess stenosis effacing the ventral thecal sac with probable mild cord flattening and no evidence for foraminal compromise.

In a November 30, 2011 report, Dr. Lee related a history of appellant's complaints of worsening low back pain and bilateral lower extremity numbness. Since the CT scan, appellant experienced an increase in his left leg weakness specifically in his hip. Dr. Lee provided a history of injury and examination findings that were identical to the November 14, 2011 examination. He reported that the May 26, 2011 CT scan of the cervical spine revealed evidence of a reversal of the normal lordotic curvature, congenital narrowing of the central canal and osteophyte ridging at C5-6 causing flattening of the thecal sac and cervical spinal cord. Dr. Lee stated that the cervical CT myelogram suggested spinal cord compression extending from C5-7 and to a lesser degree C4-5. He also observed some stenosis at T10-11 and stenosis with spinal cord compression in the cervical spine C5-6, C6-7 and to a lesser degree C4-5. Dr. Lee diagnosed low back pain and thoracic spondylosis.

In a February 27, 2012 report, Dr. Lee provided a history of injury and examination findings that were similar to his previous reports. He noted that appellant felt that his condition was worsening over time and that his low back pain caused him to sleep only one hour at a time. Appellant stated that he had to crawl to the bathroom at times due to his leg weakness. Dr. Lee diagnosed low back pain and thoracic spondylosis.

In April 3 and May 8, 2012 operative reports, Dr. Lee noted appellant's diagnoses of cervical stenosis and myelopathy.

In an April 11, 2012 report, Dr. Lee noted that he examined appellant for a postoperative wound check. He stated that appellant underwent an anterior discectomy and fusion C4-7 on April 3, 2012 but it was decided to stop the surgery because appellant became hypotensive. Dr. Lee observed that the incision was clean, dry and intact with no signs of infection. He opined that appellant's cervical degenerative disc disease was directly attributed to the physical demands of his job, such as heavy lifting.

In an April 11, 2012 statement of medical necessity form, Dr. Lee check marked diagnoses for degenerative disc disease, radiculopathy and spinal stenosis. He indicated that a bone growth stimulator was necessary for multilevel fusion, previous back surgery, obesity and all/mixed graft.

By decision dated June 27, 2012, OWCP denied the claim, finding insufficient medical evidence to establish that his back condition was causally related to factors of his employment.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence<sup>4</sup> including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.<sup>5</sup> In an occupational disease claim, appellant's burden requires submission of 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 employment factors identified by the employee.<sup>6</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>7</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical 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.<sup>8</sup>

### **ANALYSIS**

Appellant alleged that he sustained an upper and lower back condition as a result of his duties as a manager of distribution operations. OWCP accepted that his duties included repetitive walking and checking containers. Appellant was diagnosed with a cervical condition. The Board finds that he failed to provide sufficient medical evidence to establish that he developed an upper or lower back condition as a result of his employment duties.

Appellant submitted several reports by Dr. Lee, who noted his complaints of worsening low back pain and bilateral lower extremity numbness. Dr. Lee related that appellant complained of chronic low back pain since 2004 and bilateral leg weakness and numbness since June 2011. He briefly noted a history that appellant underwent previous low back surgery in 2004. Upon examination, Dr. Lee did not observe any tenderness to palpation or instability. Range of motion was full. Dr. Lee diagnosed low back pain and spondylosis. He observed that diagnostic reports reviewed stenosis with spinal cord compression and evidence of reversal of

---

<sup>4</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>5</sup> *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>6</sup> *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>7</sup> *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

<sup>8</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

the normal lordotic curvature. Dr. Lee however did not provide a rationalized medical opinion causally relating appellant's low back condition to the factors of his federal employment.

In an April 11, 2012 postoperative report, Dr. Lee opined that appellant's cervical degenerative disc disease was directly attributed to the physical demands of the job, such as heavy lifting. Although he provided an opinion on causal relationship regarding appellant's cervical condition, the Board finds that his opinion is not well rationalized. Dr. Lee attributes appellant's condition to the physical demands of his job, such as heavy lifting. The Board notes, however, that the record does not contain any description of appellant's job duties as including heavy lifting and that appellant attributed his condition to duties of repetitive walking and checking containers. Medical reports must be based on a complete and accurate factual and medical background.<sup>9</sup> Because Dr. Lee fails to accurately describe appellant's work duties, his opinion lacks probative value. The Board notes that he failed to adequately explain how appellant's spinal conditions developed or worsened as a result of his duties of heavy lifting. Such opinion is necessary as the record reveals a preexisting condition for which appellant had surgery. Dr. Lee did not address whether appellant's duties caused any aggravation or contribution to the degenerative disc disease. Medical evidence that states a conclusion but does not offer sufficient rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>10</sup> Dr. Lee's reports are insufficient to establish appellant's claim.

Appellant also submitted various diagnostic reports by Drs. Grogan and Fisher. Although the physicians provide a diagnosis of appellant's spinal conditions, neither physician provides any opinion on causal relationship. The Board has found that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>11</sup>

Dr. Reichert's November 15, 2011 report does not contain any opinion on the cause of appellant's spinal condition. The Board finds that his reports are also insufficient to establish causal relationship.

On appeal, appellant stated that his work duties included repetitive walking and checking containers. He explained that checking containers required lifting and moving parcels, tubs and bags of priority mail. Appellant alleged that heavy lifting was only one example used by Dr. Lee. As noted, Dr. Lee's reports lack probative value as he does not adequately explain how appellant's duties as an operator caused or contributed to his spinal conditions. Causal relationship is a medical issue that can only be shown by reasoned medical opinion evidence that is supported by medical rationale.<sup>12</sup> Because appellant has not provided such medical opinion in this case, he has failed to meet his burden of proof.

---

<sup>9</sup> *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

<sup>10</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

<sup>11</sup> *R.E.*, Docket No. 10-679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

<sup>12</sup> *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

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 did not establish that his upper or lower back conditions were causally related to factors of his employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 27 and February 7, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 5, 2013  
Washington, DC

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

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board