United States Department of Labor
Employees' Compensation Appeals Board

T.E., Appellant	)	
and	)	**Docket No. 11-58**
	)	**Issued: July 20, 2011**
U.S. POSTAL SERVICE, PROCESSING & DELIVERY CENTER, Gary, IN, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 12, 2010 appellant filed a timely appeal of the August 17, 2010 decision of the Office of Workers' Compensation Programs denying his claim. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has met his burden of proof to establish that he sustained an occupational disease in the performance of duty causally related to factors of his federal employment.

On appeal, appellant contended, *inter alia*, that he hurt every day from running between 1,500 to 2,500 pieces of mail on a low cost tray system. He noted that he goes to the Veterans Administration (VA) for physical therapy.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 18, 2010 appellant, then a 51-year-old mail handler, filed a recurrence claim, alleging a recurrence of a November 6, 2007 injury commencing on February 17, 2010 in Master File No. xxxxxx892. He noted that he sustained a pain in his back and legs due to repetitive lifting of trays every day during his federal employment. Appellant noted that at the time of his recurrence, he was restricted to no lifting over 25 pounds.

In support of his claim, appellant submitted copies of forms by Dr. I. Benjamin Anigbo, a Board-certified family practitioner. In a disability certificate dated February 18, 2010, Dr. Anigbo diagnosed appellant with lumbosacral radiculopathy and advised appellant to stay home until he was evaluated by Dr. Elian Shepherd, a Board-certified orthopedic surgeon. In a radiology requisition of the same date, Dr. Anigbo ordered a magnetic resonance imaging (MRI) scan of appellant's lumbosacral spine and noted that appellant had chronic lower back. Lastly, appellant submitted a referral form wherein he referred appellant to Dr. Shepherd for evaluation and treatment of appellant's lumbosacral radiculopathy.

By letter dated March 8, 2010, the Office informed appellant that it was treating his claim for recurrence as a new claim, and instructed him as to what he needed to submit.

In a February 23, 2010 note, Dr. Joseph Veleeparambil, a Board-certified radiologist, interpreted x-rays of appellant's lumbosacral spine as showing mild osteoarthritic changes and degenerative disc disease at L5-S1. An MRI scan of the same date was interpreted by Dr. Shodhan Patel, a Board-certified radiologist, as showing mild degeneration at L3-4 and L4-5 without any associated changes of disc herniation or spinal stenosis. Dr. Patel noted moderate disc degeneration at L5-S1 and associated mild broad base disc protrusion and moderate marginal spurring causing compromise of bilateral neural formina indicating foraminal stenosis. He also noted postoperative changes of laminectomy on the right side at L5-S1 level for resection of previously seen disc herniation at L5-S1.

On March 4, 2010 appellant filed a claim for traumatic injury alleging that an injury occurred on February 17, 2010 when he sustained pain in both legs and right shoulder from performing repetitive tray loading.

In a March 11, 2010 note, Dr. Anigbo indicated that appellant was to see Dr. Harsoor and that his return to work date will depend on this next visit on March 17, 2010.

Appellant submitted a supplemental statement on March 31, 2010 wherein he described how his employment duties over a period of time continuously caused back pain, which he self-medicated.

On March 23, 2010 Dr. Anigbo referred appellant to Dr. Heather A. Nath, a Board-certified anesthesiologist, for evaluation and treatment, again noting a diagnosis of lumbosacral radiculopathy postspinal surgery.

By decision dated April 22, 2010, the Office denied appellant's claim because appellant did not demonstrate that the claimed medical condition was related to the established work factors on and prior to February 7, 2010.

On May 11, 2010 appellant requested review of the written record before OWCP's hearing representative.

In further support of his claim, appellant submitted a February 26, 2010 follow-up note wherein Dr. Shepherd noted that appellant presented with right leg pain. Dr. Shepherd noted no recent injury but stated that for the last few months appellant has experienced pain going down his right leg and posterior thigh which was aggravated by activity. He noted that appellant ambulated with a peculiar gait. Dr. Shepherd noted that appellant's MRI scan study demonstrated postsurgical changes at L5-S1 on the right side.

In an April 9, 2010 report, Dr. Nath noted that on February 17, 2010 appellant indicated that he had an exacerbation of low back pain. She reviewed appellant's MRI scan and found that he had only a residual disc bulge at L5-S1 and that his symptoms are of S1 distribution. Dr. Nath noted that, based on symptoms and radiologic findings, she will proceed with a bilateral S1 transforminal epidural steroid injection. She also excused appellant from work, indicating that he could return to work on April 12, 2010.

In a May 3, 2010 report, Dr. Anigbo stated that appellant has been treated for a rotator cuff injury lumbosacral sprain and lumbosacral surgery for bulging disc and that "these may be as a consequence of his type of work."

By decision dated August 17, 2010, the hearing representative affirmed the denial of appellant's claim.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,[2] including the fact that he is an "employee" within the meaning of the Act[3] and that he filed his claim within the applicable time limitation.[4] The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was 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 on a traumatic injury or an occupational disease.[6]

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease, an employee must submit: (1) a factual statement identifying employment actors alleged to have caused or contributed to the presence of occurrence of the disease or

[2] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[3] *See M.H.*, 59 ECAB 461 (2008); *Emiliana de Guzman (Mother of Elpedio Mercado*, 4 ECAB 357, 359 (1951); *see* 5 U.S.C. § 8101(1).

[4] *R.C.*, 59 ECAB 427 (2008); *Kathyrn A. O'Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8112.

[5] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

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.[7]

Causal relationship is a medical issue,[8] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,[9] must be one of reasonable medical certainty,[10] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[11]

ANALYSIS

OWCP accepted that appellant was exposed to the work conditions that he alleged caused his injury. However, it denied appellant's claim as he failed to submit rationalized medical evidence in support of his claim. The Board finds that appellant did not establish that he sustained a diagnosed condition causally related to the accepted factors of his federal employment.

Drs. Veleeparambil and Patel discussed appellant's diagnostic tests but did not address causal relationship. Dr. Shepherd noted no recent injury and stated that appellant experienced pain for the last few months. However, he also did not address the cause of appellant's injury. Although Dr. Nath indicated that appellant had an exacerbation of low back pain on February 17, 2010, she did not explain how this exacerbation was related to appellant's work. The only medical report that does note a possible connection between appellant's injury and the accepted employment incident is the May 3, 2010 report by Dr. Anigbo who stated that appellant had been treated for a rotator cuff injury, lumbosacral sprain and lumbosacral surgery for bulging disc and that these may be a consequence of his type of work. However, Dr. Anigbo never discusses appellant's employment nor does he provide medical rationale explaining a link between appellant's employment and a medical condition. Furthermore, his comment that appellant's injuries "may be as a consequence of his type of work" is couched in speculative terms and therefore lacked reasonable medical certainty.[12] Accordingly, appellant has not established that he sustained an employment injury causally related to his accepted factors of employment.

[7] *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

[8] *Mary A. Briggs*, 37 ECAB 578 (1986).

[9] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[10] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[11] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[12] *Kathy A. Kelley*, 55 ECAB 205 (2004).

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. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an occupational disease in the performance of duty causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 17, 2010 is affirmed.

Issued: July 20, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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