

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

P.M., Appellant)	
)	
and)	Docket No. 10-2302
)	Issued: June 23, 2011
U.S. POSTAL SERVICE, POST OFFICE,)	
San Juan, PR, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 14, 2010 appellant filed a timely appeal of the August 9, 2010 decision of the Office of Workers' Compensation Programs which denied modification of a decision denying his claim. Pursuant to the Federal Employees' Compensation Act¹ 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 met his burden of proof to establish that he developed an occupational disease in the performance of duty.

FACTUAL HISTORY

On August 11, 2009 appellant, then a 38-year-old sales service associate, filed an occupational disease claim, alleging that he developed cervical and lumbar pain as a result of standing for four hours a day and sitting for three hours a day while at work. He became aware

¹ 5 U.S.C. §§ 8101-8193.

of his condition and realized it was causally related to his work on July 30, 2009. Appellant stopped work on July 27, 2009.

Appellant submitted a July 27, 2007 report from Dr. Jorge Anrillaga-Vargas, Board-certified in emergency medicine, who treated appellant for chronic low back pain. He was sitting at work for a prolonged time and experienced worsening back pain. Dr. Anrillaga-Vargas diagnosed chronic low back pain and recommended home physical therapy and bed rest for three days. In a July 30, 2009 duty status report, Dr. Luis E. Faura Clavell, a Board-certified physiatrist, diagnosed lumbar strain.² Appellant reported sitting and writing at work which caused back pain. He noted findings of positive palpations of the cervical and lumbar spine, pain at the bilateral dorsal back at L4, tenderness at L5 and weakness of the bilateral lower distal area. Dr. Clavell recommended light-duty work.

On July 30, 2009 the employing establishment controverted appellant's claim noting that he alleged he strained his back because he was standing for four hours and sitting for three hours a day. The employing establishment noted his duties were performed intermittently and not continuously as alleged.

In an August 28, 2009 letter, the Office advised appellant of the evidence needed to establish his claim. It requested that he submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific work factors.

Appellant submitted a job description for a sales, services and distribution associate. Also submitted were several statements from coworkers and a union steward regarding a grievance against their supervisor. In an undated statement, appellant indicated that he believed that cumulative work duties in addition to working certified mail caused his condition.

In a September 14, 2009 report, Dr. Clavell treated appellant for low back pain. Appellant reported having recurrent lumbar muscle spasms on July 30, 2009. Dr. Clavell noted constant low back pain radiating into both legs, severe right sciatica, marked weakness of the arms, an antalgic gait and sensory dysesthesias to light touch. He diagnosed chronic low back pain, degenerative disc disease at C3-6, chronic radiculopathy at C5-6, poly-radiculopathy at L4, L5, S1, bilateral carpal tunnel syndrome as noted in a March 6, 2008 electromyogram (EMG), bilateral cubital tunnel syndrome, right shoulder contracture due to shoulder sprain and status post right shoulder arthroscopy. He noted appellant's history was significant for a fall in September 1996 which caused a severe blunt trauma to his lumbar structure eventually developing into chronic low back pain. Dr. Clavell noted that on March 6, 2008 he developed radiating pain and paresthesias which resulted in decreased tolerance for prolonged standing. He noted that appellant's back condition developed as a direct effect of his job duties requiring him to sit up to six hours per day. Dr. Clavell noted that appellant's condition recurred and was aggravated by the performance of his job duties which included prolonged sitting. He noted prolonged sitting created intravertebral and lumbar structure pressure which led to aggravation of lumbago, soft tissue inflammation and posterior facet joints ligament inflammation.

² On the duty status report, or Form CA-17, the employing establishment listed the physical activities required in appellant's job.

Dr. Clavell opined that appellant's job duties as noted on the CA-17 including lifting and carrying objects up to 10 pounds, prolonged sitting up to six hours per day and standing up to two hours per day, greatly contributed to the recurrence, progression and aggravation of appellant's initial diagnoses of lumbago into lumbar poly-radiculopathy. He opined that the cumulative, repetitive, performance of his job duties including sitting six hours per day, keyboarding up to five hours while sitting at a workstation, weakened appellant's core muscle group causing increased pressure and stress on the lumbar structures. Dr. Clavell noted that this stress led to inflammation of the spinal ligament, posterior ligaments, lower lumbar and sacral nerve roots, neural foramen with residual poly-radiculopathy. In an October 10, 2009 return to work certificate, he noted that appellant was reevaluated and diagnosed with lumbosacral strain and status post right shoulder contracture. Appellant was disabled from October 6 to December 8, 2009.

In a decision dated November 27, 2009, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that his claimed conditions were caused by his employment.

In an undated statement, appellant requested reconsideration. He indicated that he sustained a fall in September 1996 while in the army and indicated that this condition was aggravated by his work duties since joining the employing establishment in February 1999. Appellant indicated that a report from Dr. Clavell was attached to his reconsideration request; however, no additional medical report was received by the Office.

In a decision dated August 9, 2010, the Office denied modification of the November 27, 2009 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Act has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. Appellant must also establish that such event, incident or exposure caused an injury.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a

³ See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.⁴

ANALYSIS

In the instant case, it is not disputed that appellant worked as a sales service associate and was required to sit, stand, carry and lift for portions of his work shift.

The Office denied appellant's claim for compensation on the grounds that the medical evidence was not sufficient to establish that appellant's medical condition of aggravation of chronic low back pain, degenerative disc disease at C3-6, chronic radiculopathy at C5-6, poly-radiculopathy at L4, L5, S1, was causally related to his employment. However, the Board notes that medical evidence submitted by appellant supports that he sustained an aggravation of the chronic low back pain, degenerative disc disease at C3-6, chronic radiculopathy at C5-6, poly-radiculopathy at L4, L5, S1, from prolonged standing and sitting while performing his sales service associate duties. Dr. Clavell's September 14, 2009 report noted that appellant had a fall in September 1996 which caused a severe blunt trauma to his lumbar structure eventually progressing into chronic low back pain, radiating pain and paresthesias. He stated that appellant's back condition developed as a direct effect of his job duties requiring him to sit up to six hours per day. Dr. Clavell noted that appellant's condition was aggravated by prolonged sitting at work which created intravertebral and lumbar structure pressure which aggravated appellant's lumbago causing soft tissue inflammation and posterior facet joint ligament inflammation. He opined that appellant's job duties as noted on the CA-17 including lifting and carrying objects up to 10 pounds, prolonged sitting up to six hours per day and standing up to two hours per day, which greatly contributed to the recurrence, progression and aggravation of appellant's initial diagnoses of lumbago into lumbar poly-radiculopathy. Dr. Clavell opined that the cumulative, repetitive, performance of his job duties which included sitting six hours per day, keyboarding up to five hours while sitting at a workstation, weakened appellant's core muscle group causing increased pressure and stress on the lumbar structures. He noted that this stress led to inflammation of the spinal ligament, posterior ligaments, lower lumbar and sacral nerve roots, neural foramen with residual poly-radiculopathy. Although Dr. Clavell's opinion is insufficiently rationalized with regard to the affect of the 1996 nonemployment injury on the claimed condition, it is uncontroverted in the record and is sufficient to require further development of the case by the Office.⁵

In view of this evidence the Office should have referred the matter to an appropriate medical specialist to determine whether appellant sustained an aggravation of his chronic low back condition, degenerative disc disease at C3-6, chronic radiculopathy at C5-6, poly-radiculopathy at L4, L5, S1 as a result of his employment duties.

⁴ *Solomon Polen*, 51 ECAB 341 (2000).

⁵ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

Proceedings under the Act are not adversary in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.⁶

Therefore, the Board finds that the case must be remanded to the Office for preparation of a statement of accepted facts concerning appellant's working conditions,⁷ and referral of the matter to an appropriate medical specialist, consistent with Office procedures, to determine whether appellant may have sustained an aggravation of the chronic low back pain, degenerative disc disease at C3-6, chronic radiculopathy at C5-6, poly-radiculopathy at L4, L5, S1 as a result of performing his employment duties. Following this, and any other further development as deemed necessary, the Office shall issue an appropriate merit decision on appellant's claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the August 9, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development in accordance with this decision of the Board.

Issued: June 23, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁶ *John W. Butler*, 39 ECAB 852 (1988).

⁷ The Office should also request that appellant provide medical records pertaining to treatment of his 1996 injury.