

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

R.H., Appellant)

and)

**DEPARTMENT OF DEFENSE, EDUCATION)
ACTIVITY, FORT RUCKER PRIMARY)
SCHOOL, Fort Rucker, AL, Employer)**

**Docket No. 16-0140
Issued: April 1, 2016**

Appearances:

*J. Emerson Garrison, for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 2, 2015 appellant, through his representative, filed a timely appeal from an October 5, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish an aggravation of lumbar conditions causally related to factors of his federal employment.

FACTUAL HISTORY

On August 18, 2014 appellant, then a 60-year-old former automation clerk, filed an occupational disease claim (Form CA-2) alleging that, on or before August 11, 2013, he

¹ 5 U.S.C. § 8101 *et seq.*

sustained an aggravation of a lumbar sprain, lumbar stenosis, lumbosacral spondylosis, and a multilevel lumbar fusion due to unspecified employment factors. He indicated that he was initially aware of the conditions on December 4, 2009 and related them to his employment on August 11, 2013. On the reverse of the form, appellant's supervisor noted that appellant was removed for cause, effective August 1, 2014. Appellant asserted that he worked as a school registrar, but was not given any assistance. He was required to answer the telephone, review student paperwork, unlock the door, call parents, take attendance for absent teachers, and supervise students taking an alternate bus home. Appellant alleged that his supervisor refused to let him stay at work late to finish tasks he could not complete during school hours. He described an incident where he was blamed for leaving work before escorting a delivery driver into the building and not completing data input because the coworker assisting him went outside to watch a military policeman's dog perform tricks.

Dr. Richard M. Gilbert, an attending physician Board-certified in occupational medicine, opined on August 15, 2014 that a lumbar condition accepted under another claim prevented appellant from performing the automation clerk position as narcotic medication impaired his executive functions. Appellant could not multitask within required time frames at work. Dr. Gilbert noted that appellant's condition was directly related to the accepted back injury, and was not expected to improve.

In an August 25, 2014 report, Dr. Robert Bradley, an attending Board-certified neurosurgeon, related appellant's complaints of lumbar pain with bilateral lumbar radiculopathy, exacerbated by standing, walking, and attempted sitting. He noted that appellant underwent an L5-S1 posterior fusion and left L5-S1 laminectomy on May 10, 2012. Dr. Bradley diagnosed postlaminectomy syndrome and chronic pain syndrome. He opined that appellant was permanently disabled.

Dr. David P. Herrick, an attending Board-certified anesthesiologist specializing in pain management, provided an August 25, 2014 report diagnosing a history of back pain, degenerative lumbar disc disease, and lumbar radiculitis related to an accepted December 4, 2009 occupational injury. He noted that epidural steroid injections were effective in temporarily controlling appellant's pain symptoms.

OWCP advised appellant by September 22, 2014 letter of the additional evidence needed to establish his claim, including a detailed description of the work factors alleged to have caused the claimed condition, and a report from his attending physician explaining how and why those factors would cause the claimed condition. It afforded him 30 days to submit such evidence.

In response, appellant submitted an undated report from Dr. Herrick, attributing appellant's condition to a December 4, 2009 injury. Dr. Herrick opined that appellant's condition was not improved and that narcotic medications impaired his cognitive abilities. He found appellant totally disabled for work.

Appellant submitted personnel documents showing that he accepted the office automation clerk position effective December 15, 2011 and began work on January 3, 2012. He was permitted to sit or stand at his convenience. The employing establishment terminated appellant

for cause effective August 1, 2014 due to failure to follow directives, inattention to duty, and inappropriate conduct.

The employing establishment provided an October 6, 2014 letter controverting appellant's claim, asserting that appellant voluntarily accepted the automation clerk position and that Dr. Gilbert had no direct knowledge of appellant's duties. It explained that, under File No. xxxxxx039, OWCP accepted that, on December 4, 2009, appellant sustained a lumbar sprain, lumbar stenosis, and lumbosacral spondylosis without myelopathy when he fell from a floor cleaning machine. Appellant also underwent a lumbar fusion, authorized by OWCP. The employing establishment noted that he filed a claim for a recurrence of disability (Form CA-2a) on August 18, 2014 under File No. xxxxxx039.

By decision dated October 27, 2014, OWCP denied the claim, finding that fact of injury was not established. It found that there was insufficient evidence to establish that appellant sustained a new injury or condition unrelated to the December 4, 2009 employment injury under File No. xxxxxx039.²

Appellant disagreed, and in a March 25, 2015 letter received on March 30, 2015, requested reconsideration.

In a March 24, 2015 letter, Dr. Gilbert explained that the December 4, 2009 employment injury disabled appellant from performing the automation clerk position. "[Appellant] ha[d] not improved medically from that injury and could not perform the functions of this position because of that injury." He opined that working as an automation clerk "exacerbated and intensified" appellant's lumbar pain, necessitating narcotic medication." Dr. Gilbert contended that the automation clerk job was a "medically unacceptable position due to the continuing disability" from the accepted December 4, 2009 employment injury. "This did not become evident until [appellant] was actually performing the job functions of this position." He attached a copy of his August 15, 2014 report previously of record.

By decision dated October 5, 2015, OWCP affirmed as modified the October 27, 2014 decision, finding that appellant had established fact of injury, but causal relationship was not established. It found that the medical evidence of record did not contain any rationale explaining how his duties as an automation clerk aggravated the accepted lumbar injuries or were otherwise medically inappropriate.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden 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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the

² Following issuance of the October 27, 2014 decision, OWCP mistakenly transferred appellant's case to OWCP's Branch of Hearings and Review. It realized that he had not requested a hearing, and returned his case to the district office.

employment injury.³ 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.⁴

An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift.⁵ 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.⁶

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a 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.⁷

ANALYSIS

Appellant claimed that, on or before August 11, 2013, his duties as an automation clerk aggravated an accepted lumbar sprain, stenosis, and spondylosis resulting from a December 4, 2009 occupational injury in File No. xxxxxx039. OWCP accepted that the identified work factors of answering the telephone, data entry, and clerical duties occurred as alleged, but denied the claim as the medical evidence did not establish a causal relationship between those factors and his condition on and after August 11, 2013.

In support of his claim, appellant submitted reports from Dr. Gilbert, an attending physician Board-certified in occupational medicine. Dr. Gilbert opined that the automation clerk position was medically inappropriate as narcotic medication prevented him from complying with required time frames, and that his duties exacerbated appellant's lumbar pain. Similarly, Dr. Bradley, an attending Board-certified neurosurgeon, explained that standing, walking, and attempted sitting aggravated appellant's bilateral lumbar radiculopathy. While both physicians

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ 20 C.F.R. § 10.5(q).

⁶ *Solomon Polen*, 51 ECAB 341 (2000).

⁷ *Id.*

noted that appellant's work duties aggravated his pain symptoms, neither set forth the medical mechanics whereby performing any aspect of the automation clerk position would cause the claimed aggravation as of August 11, 2013. Because neither opinion provided such rationale, Dr. Gilbert's and Dr. Bradley's opinions are insufficient to establish causal relationship in this case.⁸

Dr. Herrick, an attending Board-certified anesthesiologist, diagnosed lumbar radiculitis related to the accepted December 4, 2009 employment injury, but did not address any causal relationship between appellant's condition as of August 11, 2013 and his automation clerk duties. His opinion is therefore insufficient to meet appellant's burden of proof in establishing causal relationship.

OWCP advised appellant by September 22, 2014 letter of the necessity of providing a narrative report from his attending physician with medical rationale supporting causal relationship. As appellant did not provide such evidence, OWCP's October 5, 2015 decision denying the claim is proper under the law and facts of the case.

On appeal, appellant's representative contends that OWCP unjustly denied appellant's claim, and that all relevant evidence had been submitted. As stated above, appellant's physicians did not provide sufficient explanation as to how his duties as an automation clerk aggravated the accepted lumbar conditions. Therefore, appellant did not provide sufficient medical evidence to establish his claim and has failed to meet his burden of proof.⁹

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 meet his burden of proof in establishing that he sustained an aggravation of accepted lumbar conditions causally related to factors of his federal employment.

⁸ *Deborah L. Beatty*, 54 ECAB 340 (2003).

⁹ Appellant also submitted an August 11, 2014 note from a nurse practitioner. As nurse practitioners are not considered physicians under FECA, and this document was not signed or reviewed by a physician, it does not constitute medical evidence in this case. *Roy L. Humphrey*, 57 ECAB 238 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 5, 2015 is affirmed.

Issued: April 1, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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