

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

A.H., Appellant)	
)	
and)	Docket No. 24-0192
)	Issued: May 1, 2024
U.S. POSTAL SERVICE, BEULAH POST)	
OFFICE, Beulah, ND, Employer)	
)	

Appearances: *Case Submitted on the Record*
Jason S. Lomax, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On December 19, 2023 appellant, through counsel, filed a timely appeal from a June 22, 2023 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 a lumbar condition causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On April 21, 2022 appellant, then a 39-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that he experienced a recurrence of a disc herniation at L5-S1, right side, due to factors of his federal employment. He indicated that in 2019 he started experiencing back problems in the area of a previous injury. Appellant noted that he first became aware of his condition on June 1, 2019, and realized its relation to his federal employment on January 10, 2022. He did not stop work.

In an attached statement dated March 28, 2022, appellant explained that he first sustained an L5-S1 disc herniation in 2009 and underwent surgery to correct the problem. He explained that in 2019 his back started to hurt again. Appellant alleged that the employment factors that had aggravated his injury over the past six years of employment included prolonged sitting and continuous bending, lifting objects up to 70 pounds from the floor level to shoulder height, and twisting while delivering mail in and out of his vehicle. He also asserted that his route included driving for at least six hours per day and standing for at least two hours each day for five days per week. Appellant reported that throughout his route, he lifts, pushes, and pulls mail from the back of his vehicle to the front of his vehicle for delivery into mailboxes and that while in his vehicle delivering mail, he is constantly exposed to twisting, bending, and lifting hundreds of times per day. He asserted that these continuous, non-stop, repetitive motions put direct stress on his lower back and that the herniation of his L5-S1 disc was a direct recurrence of the previous injuries.

OWCP received progress notes dated June 17, 2019 and June 22, 2020 by Mitchel Leers, a physician assistant, who indicated that appellant was evaluated for complaints of bilateral lower back pain and left knee pain. Mr. Leers recounted that appellant had complained of back problems since he was 25, which required lumbar discectomy surgery. He noted that appellant was a postal worker, which involved sitting for long periods of time, bending, and lifting heavy objects. On physical examination of the lumbar spine, Mr. Leers observed pain with palpation to the right side of the paravertebral muscle and decreased range of motion due to pain. Straight leg raise testing was positive on the right. Examination of the left knee revealed no swelling, bruising, or redness. Mr. Leers diagnosed chronic right-sided low back pain with right-sided sciatica. In a progress note date July 10, 2020, he examined appellant and diagnosed chronic bilateral low back pain without sciatica.

A June 23, 2020 magnetic resonance imaging (MRI) scan revealed central to right paracentral disc protrusion causing severe narrowing in the right lateral recess with posterior lateral compression and displacement of the right S1 nerve root at the L5-S1 level, moderate spinal canal stenosis and mild-to-moderate left lateral recess narrowing, and mild degenerative changes.

Progress notes dated July 6 and October 1, 2020 by Kayla Leigh Olson, a physician assistant, indicated that appellant was evaluated for chronic back pain issues. She noted that appellant had a work injury in 2011 and had experienced worsening symptoms since May 2020.

Ms. Olson reported that appellant was a postal carrier who drove most of the day and was finding it difficult to remain seated. She provided examination findings and diagnosed chronic right-sided low back pain with right-sided sciatica.

Appellant submitted a November 16, 2021 progress note by Robert Volk, a family nurse practitioner, who noted appellant's complaints of back pain radiating from the right leg up to his back. In a separate note of the same date Mr. Volk held appellant off of work from November 11, through 23, 2021.

A lumbar spine MRI scan dated November 18, 2021 showed large recurrent right paracentral disc at the L5 interspace, which should cause mass effect upon the right S1 nerve root.

In a report dated December 7, 2021, Mr. Volk noted appellant's complaints of intermittent right-sided low back pain with sciatica. On physical examination, he noted that appellant was positive for back pain and gait problem, and negative for joint swelling, neck pain, and neck stiffness. Mr. Volk diagnosed acute right-sided low back pain with right-sided sciatica and sciatica of the right side. In a work status note dated January 4, 2022, he requested that appellant be excused from work due to back pain and the use of narcotic medications until appellant had an appointment on January 10, 2022.

In a report dated January 10, 2022, Dr. Eric Belanger, a Board-certified neurosurgeon, recounted appellant's complaints of back and leg pain. He reported that neurologic examination revealed L5-S1 weakness and positive straight leg raise testing. Dr. Belanger diagnosed recurrence of disc herniation at L5-S1, right side.

In a letter dated January 11, 2022, Mr. Volk indicated that appellant was seen by a neurosurgeon on January 10, 2022, and was currently awaiting back surgery. He requested that appellant be excused from work "due [to] back pain and use of narcotic medications until the patient has surgery and is released by the neurosurgeon specialist."

In a report dated March 10, 2022, Ms. Olson indicated that appellant had a history of a work-related injury several years ago that required a discectomy. She noted that appellant had a recurrence of disc herniation in L5-S1 on the right side and was unable to work. Ms. Olson provided examination findings and diagnosed herniated lumbar intervertebral disc.

In an April 6, 2022 letter, Ms. Olson explained that she did not feel that appellant's back symptoms were caused by his employment, but she did feel that the prolonged sitting that the patient does with his job while driving to deliver mail would aggravate the symptoms. She noted that appellant had a large recurrent right paracentral disc at the L5 interspace that was causing mass effect on the right S1 nerve root.

In a development letter dated April 27, 2022, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. In a separate letter of the same date, OWCP also requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor, regarding his occupational disease claim. It afforded both parties 30 days to respond.

In an undated and unsigned response, the employing establishment indicated that in 2019 and 2020 appellant stated his back was aggravated to the point of needing time off work. It noted that appellant never reported or filed an injury in this time frame or reported the injury as job related. The employing establishment agreed with appellant's description of his employment duties as involving repetitive motion for reaching, stretching, and turning to deliver mail and standing for approximately two hours to case their mail. It indicated that packages may weigh up to 70 pounds, but disagreed with the statement that appellant lifted them off the floor to shoulder height. The employing establishment also explained that for the last six months, appellant was instructed to put his trays of mail on the cart and push them, instead of carrying them to his vehicle. It provided a list of appellant's work duties and physical requirements.

In an undated statement, K.S., a part-time, flexible clerk for the employing establishment, indicated that on November 9, 2021 appellant came to work "acting like he was in pain." She recounted that appellant informed her that it was an old injury from working at a restaurant. K.S. noted that she helped him mark his packages and then appellant went home.

Appellant submitted a November 11, 2021 progress note by Mr. Volk who recounted appellant's complaints of worsening right-sided back pain. Mr. Volk noted lumbar examination findings of swelling, tenderness, decreased range of motion, and positive right straight leg raise test. He diagnosed acute right-sided low back pain with right-sided sciatica, sciatica of the right side, and history of back surgery.

In a May 2, 2022 progress note and duty status report (Form CA-17), Ms. Olson indicated that appellant had a previous back injury from several years ago that had flared back up. She noted that appellant worked as a rural mail carrier and drove to deliver mail, which had become difficult due to prolonged sitting triggering his pain. Ms. Olson provided examination findings and diagnosed spinal stenosis of the lumbar region and chronic right-sided low back pain with right-sided sciatica.

In a letter dated May 3, 2022, a health and resource management specialist for the employing establishment, controverted appellant's claim alleging that he had not established the medical component of fact of injury.

In a report dated May 18, 2022, Dr. Jacinta Klindworth, a Board-certified family practitioner, noted that appellant had an original injury in 2010 as a result of lifting. She reported that appellant had an L5 disc herniation, which required a procedure. Dr. Klindworth indicated that on June 17, 2019 appellant was evaluated by another local provider for complaints of persistent pain over the previous two weeks that he attributed to heavy lifting with his job as a mail carrier and calving. She discussed the medical treatment that appellant received for continuing back symptoms and reviewed diagnostic testing. Dr. Klindworth indicated that appellant was having significant pain with lifting, driving, and exercising or standing for longer than 10 minutes. She noted that appellant was a rural mail carrier who spent most of his day in a car. Dr. Klindworth diagnosed herniated lumbar intervertebral disc, spinal stenosis of the lumbar region, and chronic right-sided low back pain.

In an undated statement, appellant explained that when his back went out in 2019 and 2020, he did not suspect that his work duties were a contributing factor to his injury. He reported that

when his back went out again in 2021, he knew that it was serious because he was unable to return to work and sought medical treatment from a specialist regarding his condition. Appellant indicated that he was evaluated by an orthopedic surgeon who confirmed to him through diagnostic testing and examination that this issue was being aggravated by his work duties.

By decision dated May 31, 2022, OWCP denied appellant's occupational disease claim finding that he had not established that his diagnosed lumbar conditions were causally related to the accepted factors of his federal employment.

On May 25, 2023 appellant, through counsel, requested reconsideration.

In a work capacity evaluation form (Form OWCP-5c) dated June 9, 2022, Ms. Olson checked a box marked "No" indicating that appellant was unable to perform his usual job without restrictions. She noted that appellant was unable to sit for prolonged periods of time. Ms. Olson indicated that appellant could work part time with restrictions for two to three hours per day.

In an after-visit summary note dated September 14, 2022, Kara S. Kref, a nurse practitioner, described that appellant had to lift a large mixing bowl of pizza dough and injured his lower back. She diagnosed lower back muscle strain.

In a report dated May 22, 2023, Dr. Joshua B. Macht, a Board-certified internist, noted a date of accident of June 1, 2019. He explained that prior to federal employment, appellant first injured his back at 25 years old while working at a pizza place and subsequently underwent surgery with discectomy. Dr. Macht indicated that appellant fully recovered from this injury without any residual back symptoms or functional limitations. He reported that appellant began to work for the employing establishment in February 2016 as a rural carrier. Dr. Macht recounted that for the first few years, appellant did not have any recurrence of his back issues. He noted that appellant recalled experiencing some mild recurrent symptoms in 2019 and sought treatment in June 2019 for lower back pain and stiffness. Dr. Macht indicated that appellant stated that over time, his condition worsened and became triggered more significantly by his work activities. He discussed the medical treatment that appellant received, including lumbar MRI scans.

Dr. Macht reported that appellant indicated that the job duties that trigger his symptoms include prolonged sitting, bending and twisting to collect mail beside him and behind, sitting and driving for about 5.5 hours, and bending to reach packages in containers. Appellant noted that outside of his work activities, he would exercise by weightlifting and running several days per week but did not recall these activities triggering his back pain symptoms. He reported that he stopped lifting weights in 2020 after his back symptoms progressively worsened. Dr. Macht diagnosed aggravation of lumbar intervertebral disc degeneration. He indicated that he had reviewed appellant's medical records and performed an interview with appellant. Dr. Macht noted that appellant was asymptomatic for years following his lumbar disc herniation at age 25. He recounted that appellant began working for the employing establishment as a rural carrier in 2016 and began to experience progressive lower back symptoms with right-sided lumbar radiculopathy in 2019. Dr. Macht reported that prior to 2019, appellant had asymptomatic lumbar degenerative disc disease at the L5-S1 level status-post successful surgical treatment following a disc herniation at age 25. He noted that appellant's job duties required him to perform prolonged sitting and

driving and to bend and twist from a sitting position to reach mail and packages next to him and behind him.

Dr. Macht explained that all of these activities required engagement of appellant's lumbar musculature and put strain on his lumbar vertebral column in order to lift and carry items up to 70 pounds, particularly the bending and twisting motions. He reported: "these repetitive activities performed over the course of his work caused swelling, inflammation, and accelerated degeneration of the lumbar spine, ultimately resulting in significant disc protrusion at the previously diseased level from his initial back injury." Dr. Macht indicated that while appellant did some weightlifting and running for exercise, these activities did not significantly trigger his symptoms. He noted that appellant's work duties constituted the most significant physical activity putting strain on his lower back and further reported that appellant had no other medical history or other factors to explain the aggravation of his lumbar condition. Dr. Macht concluded that appellant's recurrence of lower back pain with onset of right-sided lumbar radiculopathy in 2019 has a direct causal relationship to his work duties as a rural carrier for the employing establishment. He recommended that appellant's claim be accepted for aggravation of lumbar intervertebral disc disease.

In a statement dated May 25, 2023, appellant indicated that he began working as a rural carrier for the employing establishment in February 2016. He explained that as a rural carrier, he drives and sits for prolonged periods, typically 5.5 hours per day. Appellant noted that he also has to bend frequently to pick up packages and often has to twist from a sitting position to reach mail and packages behind or next to him. He reported that he has to lift and carry packages that can weigh up to, but not limited to 70 pounds.

By decision dated June 22, 2023, OWCP denied modification of its May 31, 2022 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,⁴ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is 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 upon a traumatic injury or an occupational disease.⁶

³ *Id.*

⁴ *D.D.*, Docket No. 19-1715 (issued December 3, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *Y.G.*, Docket No. 20-0688 (issued November 13, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *C.H.*, Docket No. 19-1781 (issued November 13, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (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 claimant.⁷

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ 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 specific employment factors identified by the claimant.⁹ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors, is sufficient to establish causal relationship.¹⁰

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹¹

ANALYSIS

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

In a May 22, 2023 report, Dr. Macht opined that appellant's recurrence of lower back symptoms in 2019 had a direct causal relationship to his federal employment duties. He noted appellant's original back injury, which required surgery with discectomy, and indicated that appellant fully recovered from this injury without any residual back symptoms or functional limitations. Dr. Macht discussed the development of appellant's back symptoms beginning in June 2019 and the medical treatment that he received, including diagnostic imaging. He noted that appellant's job duties required him to perform prolonged sitting and driving and to bend and twist from a sitting position to reach mail and packages next to him and behind him. Dr. Macht explained that all of these activities required engagement of appellant's lumbar musculature and put strain on his lumbar vertebral column in order to lift and carry items up to 70 pounds,

⁷ *T.M.*, Docket No. 20-0712 (issued November 10, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

⁸ *J.F.*, Docket No. 18-0492 (issued January 16, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *A.M.*, Docket No. 18-0562 (issued January 23, 2020); *I.J.*, 59 ECAB 408 (2008); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁰ *E.W.*, Docket No. 19-1393 (issued January 29, 2020); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (May 2023); *see L.C.*, Docket No. 19-1301 (issued January 29, 2020); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

particularly the bending and twisting motions. He reported: “these repetitive activities performed over the course of his work caused swelling, inflammation, and accelerated degeneration of the lumbar spine, ultimately resulting in significant disc protrusion at the previously diseased level from his initial back injury.” Dr. Macht accurately described appellant’s employment factors and provided rationale explaining how, physiologically, the repetitive sitting, bending, twisting, and lifting required engagement of appellant’s lumbar musculature, put strain on his lumbar vertebral column, and caused swelling, inflammation, and accelerated degeneration of the lumbar spine, ultimately resulting in significant disc protrusion.¹²

It is well established that proceedings under FECA are not adversarial in nature, and while appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹³ OWCP has an obligation to see that justice is done.¹⁴ While Dr. Macht’s opinion is insufficient to establish the claim, it is sufficient to require further development of the medical evidence.¹⁵ The case must therefore be remanded for further development.

On remand, OWCP shall refer appellant to a specialist in an appropriate field of medicine, along with the case record and a statement of accepted facts. Its referral physician shall provide a well-rationalized opinion as to whether appellant’s diagnosed condition as related by Dr. Macht was causally related to or aggravated by factors of his federal employment, including prolonged sitting and standing and repetitive bending, lifting, and twisting. If the physician opines that the diagnosed condition is not causally related, he or she must explain with rationale how or why the opinion differs from that of Dr. Macht. After this and other such further development of the case record as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

¹² *S.C.*, Docket No. 20-0492 (issued May 6, 2021); *R.S.*, Docket No. 18-1551 (issued March 1, 2019).

¹³ *S.C.*, *id.*; *R.S.*, Docket No. 19-1774 (issued April 3, 2020); *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769, 770-71.

¹⁴ *See A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

¹⁵ *See L.B.*, Docket No. 23-0961 (issued December 15, 2023); *B.C.*, Docket No. 16-1853 (issued January 19, 2016); *John J. Carlone*, 41 ECAB 354 (1989).

ORDER

IT IS HEREBY ORDERED THAT the June 22, 2023 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: May 1, 2024
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board