United States Department of Labor
Employees' Compensation Appeals Board

E.M., Appellant	)	
and	)	**Docket No. 15-469**
	)	**Issued: May 4, 2015**
U.S. POSTAL SERVICE, POST OFFICE, South Burlington, VT, Employer	)	

Appearances:
Alan J. Shapiro, *Esq*., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 29, 2014 appellant, through counsel, timely appealed the October 23, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant established that his claimed lumbar condition was causally related to his November 16, 2013 employment exposure.

FACTUAL HISTORY

Appellant, a 46-year-old city letter carrier, filed a traumatic claim alleging that he injured his lower back on November 16, 2013 when he lifted a tray of mail from a hamper and placed it into his postal vehicle (LLV). He had sustained a prior work-related lumber work-related lumbar

[1] 5 U.S.C. §§ 8101-8193 (2006).

injury on or about June 15, 2013 claim number xxxxxx713.[2] Appellant was on a light-duty assignment at the time of the November 16, 2013 employment incident. His limitations included an eight-hour workday, five to six hours walking, and a 35-pound lifting restriction.[3] The employing establishment claimed that appellant worked outside his restrictions on November 16, 2013, noting that one of the trays he loaded into his LLV weighed 51 pounds.

A coworker, Scott R. Empie, provided a statement that he helped appellant by loading mail trays into the LLV on the morning of November 16, 2013. He stated that he observed appellant in what appeared to be a lot of pain. Appellant told Mr. Empie that his back was going into a spasm.

In a December 15, 2013 supplemental statement, appellant indicated that he did not know if he had lifted above his 35-pound restriction. He stated that he had approximately four to five mail trays in total and they were not weighed for him, nor did he have a scale to weigh them himself. Appellant questioned his supervisor's allegation that he lifted a tray weighing 51 pounds, noting that Mr. Empie helped load his mail trays into the LLV on November 16, 2013.

OWCP received prior treatment records covering the period September 4 through October 10, 2013. Dr. Flimlin first examined appellant on September 4, 2013 for complaints of low back pain and bilateral hip pain, right greater than left. Her preliminary diagnoses included hip osteoarthritis, lumbar degenerative disc disease, and low back pain radiating to both legs. At the time, Dr. Flimlin recommended obtaining a lumbar magnetic resonance imaging (MRI) scan.

When appellant returned for follow up on September 18, 2013, Dr. Flimlin diagnosed lumbar degenerative disc disease, L5-S1 disc herniation, and lumbar spinal stenosis -- congenitally small canal. She imposed a six-hour workday, a 25-pound lifting restriction, and precluded repetitive twisting from the waist. Dr. Flimlin indicated that repetitive twisting with lifting mail had certainly worsened and exacerbated appellant's condition. She advised him to continue with chiropractic treatment and to follow up with her in four weeks.

Dr. Flimlin next saw appellant on October 10, 2013. She noted that he had been working with restrictions and continued to experience back pain radiating into the right hip. Appellant also continued to receive weekly chiropractic treatment. Dr. Flimlin indicated that his lumbar MRI scan was consistent with central disc herniation at L5-S1 and lumbar spondylosis with congenitally small canal. The MRI scan also showed moderate central stenosis and severe bilateral/lateral recess stenosis. Dr. Flimlin noted that appellant had done well with chiropractic adjustments and work restrictions. At that time, she amended his work restrictions to allow for an eight-hour workday and a 35-pound lifting restriction. Dr. Flimlin advised appellant to follow up with her in eight weeks.

Appellant returned to see Dr. Flimlin on November 20, 2013. She described him as having known degenerative changes in the spine with L5-S1 disc herniation, moderate central

[2] The hearing representative's October 23, 2014 decision noted that appellant's prior claim was accepted for L5-S1 disc herniation and bilateral lumbar radiculopathy. Although appellant's counsel asked the hearing representative to consolidate (double) the two lumbar injury claims, the complete record regarding appellant's June 15, 2013 occupational disease claim number xxxxxx713 is currently unavailable for review by the Board.

[3] Dr. Mary T. Flimlin, a Board-certified physiatrist, provided the above noted work restrictions.

stenosis, and severe bilateral/lateral recess stenosis. Dr. Flimlin noted that four days earlier appellant had lifted a mail hamper onto a truck and experienced severe axial back pain. She also noted that he continued to experience some episodic right leg pain radiating along the lateral aspect of the thigh, but the reinjury four days ago was 100 percent back. Since then, appellant had been seen by a chiropractor who provided electrostimulation and back adjustments, which he had found helpful. Dr. Flimlin stated that the work incident four days ago with "bending, lifting, and twisting," caused a "recurrence of back pain." She prescribed Gabapentin and recommended an epidural steroid injection at L5-S1. Dr. Flimlin also recommended lower extremity electrodiagnostic studies to rule out L4-5 radiculopathy. As far as work limitations, she indicated that appellant could perform in a sedentary capacity with a 10-pound lifting restriction. Dr. Flimlin also precluded bending, twisting, and repetitive lifting. She advised appellant to follow-up in four to six weeks.

Dr. Mark Bradley, a chiropractor, examined appellant on November 25, 2013. He noted that he had been seeing appellant for his low back since September 11, 2013, but did not provide a specific diagnosis. Dr. Bradley reviewed a November 25, 2013 light-duty job offer and expressed his opinion that the offered position was inconsistent with Dr. Flimlin's work restrictions.

In a December 4, 2013 report, Dr. Flimlin advised that appellant could return to light duty with an eight-hour workday. She imposed a 35-pound lifting restriction. Dr. Flimlin also indicated that appellant was able to drive and could walk five to six hours per day.[4]

Dr. Michael T. Borrello, a Board-certified anesthesiologist with a subspecialty in pain medicine, examined appellant on December 9, 2013. Appellant reported having developed some low back pain approximately 6 months ago, which had since worsened. He also reported a significant aggravation on November 16, 2013 when lifting approximately 30 pounds at work. Dr. Borrello noted that appellant worked as a letter carrier and had been under a 30-pound lifting restriction. The November 16, 2013 lifting incident reportedly involved a rotational component which, according to appellant, exacerbated his low back pain with radiation into his right lower extremity down to the calf. Appellant also reported occasional numbness and tingling. Dr. Borrello diagnosed lumbar spondylosis and later administered an epidural steroid injection at L5-S1.

On December 11, 2013 Dr. Flimlin advised that appellant was temporarily totally disabled pending the results of an upcoming functional capacity evaluation.

In a January 10, 2014 decision, OWCP denied appellant's traumatic injury claim. Although he established fact of injury, OWCP found the medical evidence insufficient to establish a causal relationship between his diagnosed lower back conditions and the November 16, 2013 employment incident.

Appellant requested an oral hearing, which was held on August 6, 2014.

[4] These are the same limitations that were in place at the time of the November 16, 2013 employment incident.

OWCP received additional medical evidence, which included January 2, 2014 treatment notes from Dr. Borrello, who administered an epidural steroid injection at L5-S1. Dr. Borrello continued to diagnose lumbar spondylosis.

On January 24, 2014 Dr. Flimlin advised that appellant could immediately resume work in a part-time (four hours), light-duty capacity.

In a January 30, 2014 report, Dr. Flimlin stated that she saw appellant on November 20, 2013, four days after he reinjured his lower back while lifting a "mail hamper onto a truck" at work. She explained that he had degenerative changes in the lumbar spine, but that with the lifting incident worsened the symptoms that were related to a work-related injury. Dr. Flimlin further stated that she believed with medical certainty that the lifting incident caused a recurrence of appellant's low back pain with radicular symptoms into the right leg. She also indicated that his chiropractic treatment provided symptomatic relief and was helpful for axial unloading of the spine. In closing, Dr. Flimlin noted that the November 16, 2013 recurrence of symptoms was a reinjury of appellant's original injury.

Bang To, a certified physician assistant, treated appellant on March 6, 2014 for injuries to his head, left shoulder/elbow, and lower back. Appellant had recently fallen on ice and hit the back of his head. With respect to appellant's lumbar region, Mr. To noted that he had landed flat on his back and it was a bit sore. Mr. To also noted a prior history of two herniated lumbar discs, with constant lower back pain. He further noted that appellant was currently on work restriction. Mr. To's diagnoses included head injury, headache, left elbow pain, and lumbar spine pain, all of which he attributed to work activities. Additionally, he advised that appellant could return to regular work without restrictions.[5]

In July 10, 2014 follow-up treatment notes, Dr. Flimlin indicated that appellant was injured on November 16, 2013 and reinjured on January 13, 2014. She noted that since his last visit, he had been working eight-hour days, five days a week. Dr. Flimlin further noted that appellant periodically experienced some soreness in his low back radiating to the hip. Appellant currently denied any numbness or tingling into the legs, and there was no leg pain. Dr. Flimlin also reported improved strength and increased range of motion in the hip and lumbosacral spine. She noted a history of disc herniation with radiculopathy, which had improved significantly such that appellant no longer experienced radicular symptoms. Accordingly, Dr. Flimlin advised that he could permanently return to a nine-hour workday, five days per week. She also indicated that no follow up was necessary.

In an October 23, 2014 decision, the Branch of Hearings & Review affirmed OWCP's January 10, 2014 decision.

LEGAL PRECEDENT

A claimant seeking benefits under FECA has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence,

[5] Mr. To identified appellant as a postal service employee, but did not otherwise describe his duties.

including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[6]

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[7] The second component is whether the employment incident caused a personal injury.[8] An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[9]

ANALYSIS

Appellant attributed his current low back condition to the November 16, 2013 lifting incident. He had previously injured his lower back on or about June 15, 2013. According to the hearing representative, OWCP accepted appellant's prior disease claim number xxxxxx713 for L5-S1 disc herniation and bilateral lumbar radiculopathy. At the time of the November 16, 2013 incident, appellant was working in a light-duty capacity as a result of his preexisting lumbar condition. His treating physician, Dr. Flimlin, provided various lumbar-related diagnoses, which included degenerative disc disease, L5-S1 disc herniation, spondylosis with congenitally small canal, moderate central stenosis, and severe bilateral/lateral recess stenosis. Dr. Borrello also diagnosed lumbar spondylosis. As the hearing representative correctly noted, the issue is whether appellant's current lumbar conditions are causally related to the November 16, 2013 employment incident. As noted, causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.[10]

Although appellant's chiropractor noted that he had been treating appellant for his low back since September 2013, Dr. Bradley did not provide a specific lumbar-related diagnosis in his November 25, 2013 report.

Dr. Borrello initially examined appellant on December 9, 2013 and diagnosed lumbar spondylosis. His report referenced a "significant aggravation" on November 16, 2013 when lifting approximately 30 pounds at work. However, Dr. Borrello did not specifically comment

[6] 20 C.F.R. § 10.115(e), (f) (2014); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

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

[8] *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

[9] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[10] *Robert G. Morris*, *supra* note 8.

on whether appellant's letter carrier duties either caused or contributed to his diagnosed lumbar degenerative osteoarthritis. He merely reported appellant's description of what occurred on November 16, 2013. Accordingly, Dr. Borrello's treatment notes are insufficient to establish a causal relationship between appellant's lumbar spondylosis and the November 16, 2013 employment incident.

Mr. To, a physician assistant, treated appellant for an unrelated fall on March 6, 2014. He noted a prior history of lumbar herniated disc, but did not comment on or even mention appellant's November 16, 2013 lifting incident. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists and social workers are not considered "physician[s]" as defined under FECA.[11] As such, their opinions will not suffice for purposes of establishing entitlement to FECA benefits.[12] A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician.[13]

In her November 20, 2013 report, Dr. Flimlin indicated that four days prior appellant lifted a mail hamper onto a truck and experienced severe axial back pain. She characterized the November 16, 2013 work incident as involving "bending, lifting, and twisting," which caused a "recurrence of back pain." In her January 30, 2014 report, Dr. Flimlin stated that appellant reinjured his lower back while lifting a "mail hamper onto a truck." She noted that he had degenerative changes in the lumbar spine, and explained that the November 16, 2013 lifting incident "[reinjured] the symptoms that were related to a work-related injury on [January 13, 2014]." Dr. Flimlin believed with medical certainty that the lifting incident caused a recurrence of appellant's low back pain with radicular symptoms into the right leg. In closing, she reiterated that the November 16, 2013 recurrence of symptoms was a reinjury of appellant's original injury.

Dr. Flimlin's above-noted reports are insufficient to establish causal relationship for several reasons. First, her reported history of injury is inaccurate. Appellant did not lift a "mail hamper onto a truck." He lifted a mail tray from a hamper and placed the mail tray into his LLV. Second, on at least two occasions Dr. Flimlin referenced a January 13, 2014 work-related injury, which is not otherwise supported in the record. A physician's opinion on causal relationship must be based on a complete factual and medical background.[14] Lastly, Dr. Flimlin did not provide a specific diagnosis related to the November 16, 2013 employment incident. She variously characterized the November 16, 2013 incident as causing a recurrence of low back pain and/or a reinjury of symptoms. Back pain is a symptom, not a medical diagnosis. Subjective complaints of pain are not sufficient, in and of themselves, to support compensation benefits under FECA.[15]

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[11] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[12] *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).

[13] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

[14] *Victor J. Woodhams*, *supra* note 8.

[15] 20 C.F.R. § 10.501(a)(3).

The mere fact that a condition manifests itself during a period of employment is not sufficient to establish causal relationship.[16] Temporal relationship alone will not suffice.[17] Furthermore, appellant's personal belief that his employment activities either caused or contributed to his condition is insufficient, by itself, to establish causal relationship.[18] The Board finds that the medical evidence of record fails to establish that his current lumbar condition is causally related to his accepted November 16, 2013 employment exposure. Accordingly, OWCP properly denied appellant's traumatic injury claim.

CONCLUSION

Appellant failed to establish that his current lumbar condition is causally related to the November 16, 2013 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the October 23, 2014 decision of the Office of Workers' Compensation Programs is affirmed.[19]

Issued: May 4, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[16] *Id*. at § 10.115(e).

[17] *See D.I.*, 59 ECAB 158, 162 (2007).

[18] 20 C.F.R. § 10.115(e); *Phillip L. Barnes*, 55 ECAB 426, 440 (2004).

[19] Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision. 5 U.S.C. § 8128(a); 20 C.F.R. §§ 10.605-10.607.