

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

L.C., Appellant)

and)

U.S. POSTAL SERVICE, PROCESSING &)
DISTRIBUTION CENTER, Atlanta, GA,)
Employer)

**Docket No. 11-1750
Issued: March 27, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On July 26, 2011 appellant filed a timely appeal from a January 31, 2011 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 the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a traumatic injury in the performance of duty on September 15, 2005.

FACTUAL HISTORY

On January 10, 2008 appellant, then a 54-year-old building equipment mechanic, filed a traumatic injury claim alleging that he fell down two flights of stairs while transporting a file

¹ 5 U.S.C. § 8101 *et seq.*

cabinet on September 15, 2005 and consequently sustained nerve damage to his neck and back. He stopped work on October 1, 2007 and did not return.

An October 11, 2007 status note from Dr. Michael V. Yancey, a Board-certified neurological surgeon, diagnosed degenerative spine disease and excused appellant from work through November 18, 2007.

In a January 10, 2008 statement, Jorge Benitez recalled that he and appellant were using an appliance hand truck to move an oversized locker down a stairway on September 15, 2005 when they lost control of it. Appellant, who was in front of the truck, “jump[ed] backward and down those 10 or 12 stairs to the bottom landing” and narrowly avoided being crushed against a wall. A few weeks following the incident, Mr. Benitez was told by appellant that “his back was not well.” A January 10, 2008 statement from Abraham Askew, another coworker and eyewitness, substantiated this account.

OWCP informed appellant in a January 25, 2008 letter that additional evidence was needed to establish his claim. It requested that he submit a physician’s report explaining how the September 15, 2005 employment incident caused or contributed to a neck or back condition.

Appellant submitted additional medical evidence. Hospital outpatient records from Drs. Niloofar Bazargan and Jamya Pittman, Board-certified internists, for the period September 6 to December 27, 2006 noted that appellant complained of bilateral knee and lower back pain.²

A December 15, 2006 magnetic resonance imaging (MRI) scan obtained by Dr. Timothy S. Hanes, a Board-certified diagnostic radiologist, exhibited L3-4 and L4-5 height and signal losses, L3-4 spinal canal stenosis, L4-5 focal disc protrusion effacing the left neural foramen and L5-S1 degenerative disc disease.

Dr. Shannon J. Smith, a Board-certified physiatrist, related in a February 9, 2007 progress note that appellant experienced bilateral knee and lower back symptoms. On examination, she observed bilateral quadriceps weakness, medial and lateral knee joint line tenderness, pain elicited during lumbar flexion and a positive right straight leg raise test. Dr. Smith diagnosed lumbar degenerative disc disease and knee osteoarthritis.

In a March 20, 2007 report, Dr. Sandra D. Wordlaw-Watkins, a Board-certified family practitioner, remarked that appellant’s lumbosacral pain first arose “years ago.” She observed posterior lumbar tenderness on palpation. Dr. Wordlaw-Watkins diagnosed lower back pain.

March 26, 2007 cervical x-rays obtained by Dr. Carlos Ordonez, a Board-certified radiologist, showed degenerative disc changes at C5-6 and C6-7 while an April 10, 2007 MRI scan obtained by Dr. Greta J. Sybers, a Board-certified diagnostic radiologist, confirmed multilevel cervical degenerative changes as well as compressive myelopathy extending from C4-5 through C7-T1.

² Unsigned follow-up notes dated January 3 and February 16, 2007 diagnosed chronic back pain. An unsigned June 21, 2007 progress note stated that appellant attributed a left leg condition “to an injury moving a file cabinet.”

In a May 9, 2007 progress note, Dr. Saman Ghaffari, an osteopath and Board-certified physiatrist, evaluated appellant and observed decreased sensation to pinprick at the C4, C5 and L5 dermatomes, limited lumbar range of motion (ROM), bilateral patellar clonus and reduced left lower extremity strength. He diagnosed cervical myelopathy, left L5 radiculopathy and neuropathic pain.

Dr. Eric A. Awad, a Board-certified neurologist, indicated in a June 7, 2007 report that appellant's neck and lower back pain radiated to the left upper and lower extremities. On examination, he observed limited neck and lower back ROM, left upper extremity pronator drift, flexion contracture, tone increase and diminished fine motor movements and left lower extremity myotatic and Babinski's reflexes. Dr. Awad diagnosed compressive cervical myelopathy, adding that "[t]his was not triggered by a particular trauma or injury. [Appellant] thinks it may have gotten worse by an accident one year ago."

On July 30, 2007 Dr. Yancey stated that appellant noted injuring himself at work about one year earlier while helping move a file cabinet. Specifically, the cabinet "started falling down the stairs" and appellant had to "twist and move out of the way in order to keep from falling." Dr. Yancey observed decreased sensation to pinprick at the right T1 and left C8, T1, L3, L4, S1 and S2 dermatomes, bilateral ankle clonus, brisk bilateral biceps, triceps, brachioradialis, patellar and plantar reflexes and diminished left arm and leg strength. He reviewed the April 10, 2009 MRI scan and diagnosed idiopathic lower back pain and cervical degenerative disc disease, herniated nucleus pulposus and spinal stenosis.

An August 7, 2008 cervical x-ray obtained by Dr. Kristin H. Lewis, a Board-certified diagnostic radiologist, exhibited spondylosis, particularly at C6-7, degenerative disc disease and possible bony foraminal encroachment.³ An August 7, 2008 cervical myelogram and computed tomography scan from Dr. Daniel G. Schwartzberg, a Board-certified diagnostic radiologist, demonstrated C5-6 degeneration with minor ventral sac impingement and C6-7 degeneration with lateral right C7 nerve root and ventral sac impingement. Drs. Hai T. Tran, an osteopath and Board-certified physiatrist, and Lisa M. Billars, a Board-certified neurologist, each diagnosed C4-7 myelopathy in August 23 and September 15, 2007 progress notes, respectively.

In September 27 and November 1, 2007 reports, Dr. Howard A. McMahan, a Board-certified orthopedic surgeon, stated that appellant was involved in a motor vehicle accident on July 29, 2007. Examination revealed limited cervical and lumbar ROM, degenerative facet arthropathy at L3-4, L4-5 and L5-S1 and hyperactive deep tendon reflexes.⁴

A November 29, 2007 progress note from Dr. Sushil K. Basra, a Board-certified orthopedic surgeon, noted findings consistent with myelopathy. In a January 15, 2008 progress note, Dr. Alice V. Fann, a Board-certified physiatrist, related that an October 11, 2007 nerve conduction study showed electrophysiological evidence of L4-5 radiculopathy and sensorimotor peripheral neuropathy.

³ An August 7, 2007 lumbar x-ray obtained by Dr. Lewis was negative.

⁴ Likely, due to poor print quality, portions of Dr. McMahan's reports were unreadable.

In a March 4, 2008 decision, OWCP denied the claim, finding that the medical evidence did not establish that the claimed condition was related to the September 15, 2005 work incident.

Appellant requested reconsideration on July 21, 2008. He provided a March 28, 2008 note from Dr. Yancey, in which the physician stated:

“Based on the history given to me by [appellant], it is my opinion that he suffers from a cervical myelopathy that stems from an on-the-job injury, which occurred in 2005.... Also, based on that same history given to me by [appellant], it is my opinion that he suffers from lumbar spondylosis with lumbar disc displacement, lower back pain and radiculopathy.”

On September 2, 2008 OWCP denied modification of the March 4, 2008 decision.

Appellant requested reconsideration on September 29, 2008 and submitted new evidence. In an April 9, 2008 report, Dr. Awad concluded that appellant’s neck and back pain “became a lot more prominent since an accident at work ... when he sustained a fall....” In a December 19, 2008 decision, OWCP denied modification of the September 2, 2008 decision.

Appellant requested reconsideration on November 23, 2009 and thereafter.⁵ He submitted new medical evidence. In a November 16, 2009 report, Dr. Yancey noted that appellant underwent cervical and lumbar decompression surgeries on April 30 and October 29, 2008, respectively. On examination, he observed decreased sensation to pinprick at the right C3 and C4 as well as the left C3, C4, C5, C6, T1, L1, L3, L4, L5, S1 and S2 dermatomes, brisk bilateral biceps, triceps, brachioradialis, patellar and plantar reflexes, a positive left Babinski’s reflex and diminished left arm strength. Dr. Yancey diagnosed cervical and lumbar degenerative disc disease and spondylosis, lower back pain and cervical myelopathy. He reiterated that appellant’s condition was causally related to a September 2005 employment incident.

In an undated report, Dr. Awad opined that appellant’s cervical and lumbar injuries were due to a work-related accident in September 2005. He explained that appellant had been asymptomatic prior to this event. Dr. Awad added that the July 29, 2007 motor vehicle accident was minor and noncontributory.

On January 31, 2011 OWCP denied modification of its prior decision finding that causal relationship was not established between the September 15, 2005 incident and the claimed conditions.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his claim by the weight of reliable, probative and substantial evidence,⁶

⁵ In decisions dated March 18, August 13 and September 2, 2010, OWCP denied appellant’s reconsideration application on the grounds that it was untimely filed. However, in a letter dated January 7, 2011, it determined that he had timely requested reconsideration on November 23, 2009.

⁶ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

including that he is an “employee” within the meaning of FECA and that he filed his claim within the applicable time limitation.⁷ 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.⁸

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time and place and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁹

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician’s 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, 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.¹⁰

ANALYSIS

While the case record supports that appellant was transporting a file cabinet on September 15, 2005, the Board finds that he failed to establish his traumatic injury claim because the medical evidence did not sufficiently demonstrate that this accepted employment incident caused or contributed to a neck, back, arm or leg condition.¹¹

In a July 30, 2007 report, Dr. Yancey remarked that appellant injured himself on the job approximately one year earlier while moving a file cabinet down a stairway. He clarified in subsequent March 28, 2008 and November 16, 2009 records that appellant’s diagnosed cervical myelopathy, lower back pain, cervical and lumbar spondylosis and degenerative disc disease resulted from this event in September 2005. Dr. Yancey’s opinion, however, did not adequately explain how the September 15, 2005 work incident pathophysiologically caused or contributed to

⁷ R.C., 59 ECAB 427 (2008).

⁸ *Id.*; Elaine Pendleton, 40 ECAB 1143, 1145 (1989).

⁹ T.H., 59 ECAB 388 (2008).

¹⁰ I.J., 59 ECAB 408 (2008).

¹¹ The Board notes that appellant initially filed for a neck and back condition only. However, the case record indicates that he amplified and expanded his claim to include allegations of left upper and lower extremity injuries. See Wilfred M. Hamilton, 41 ECAB 524 (1990).

appellant's condition.¹² The need for such rationale is particularly important because the case record indicates that appellant was involved in a motor vehicle accident on July 29, 2007.

Dr. Awad related appellant's account that his cervical myelopathy "may have gotten worse by an accident one year ago" in a June 7, 2007 report. He later specified that appellant sustained a fall at work in an April 9, 2008 report. In addition, an undated report from Dr. Awad concluded that appellant's cervical and lumbar injuries were due to this September 2005 event, adding that he had been asymptomatic beforehand. Nonetheless, these reports offered limited probative value on the issue of causal relationship because they did not provide fortifying medical rationale.¹³ The mere assertion that appellant was asymptomatic before September 15, 2005 and symptomatic afterward, by itself, cannot establish causal relationship.¹⁴

A June 21, 2007 progress note, which reiterated appellant's stance that his left leg condition stemmed from moving a file cabinet, cannot constitute competent medical evidence because it was not signed by a physician.¹⁵ Finally, the remaining medical records offered diminished probative value on the issue of causal relationship because none provided an opinion on the cause of appellant's injury.¹⁶ In the absence of rationalized medical opinion evidence, appellant failed to meet his burden of proof.

Appellant argues on appeal that the medical evidence established that he sustained a work-related disability. As noted, the medical evidence did not sufficiently demonstrate that the accepted September 15, 2005 employment incident caused or aggravated a diagnosed neck, back, arm or leg condition.

The Board notes that appellant submitted new evidence after issuance of the January 31, 2011 decision. The Board lacks jurisdiction to review evidence for the first time on appeal.¹⁷ However, appellant may submit this or new evidence or argument as part of a formal 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.

¹² *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994).

¹³ *George Randolph Taylor*, 6 ECAB 986, 988 (1954). The Board notes that Dr. Awad's opinion did not detail appellant's transport of a file cabinet. See *John W. Montoya*, 54 ECAB 306, 309 (2003) (a physician's opinion must discuss whether the employment incident described by the claimant caused or contributed to diagnosed medical condition). See also *M.W.*, 57 ECAB 710 (2006); *James A. Wyrick*, 31 ECAB 1805 (1980) (medical opinions based on an incomplete or inaccurate history are of diminished probative value).

¹⁴ *T.M.*, Docket No. 08-975 (issued February 6, 2009).

¹⁵ See *R.M.*, 59 ECAB 690 (2008) (medical reports lacking proper identification, such as unsigned treatment notes, do not constitute probative medical evidence). See also 5 U.S.C. § 8101(2). Even if this note was signed by a physician, it would be of limited probative value as it seemed to merely convey appellant's belief regarding causal relationship. See *P.K.*, Docket No. 08-2551 (issued June 2, 2009) (an award of compensation may not be based on appellant's belief of causal relationship).

¹⁶ *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹⁷ 20 C.F.R. § 501.2(c).

CONCLUSION

The Board finds that appellant did not establish that he sustained a traumatic injury in the performance of duty on September 15, 2005.

ORDER

IT IS HEREBY ORDERED THAT the January 31, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 27, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board