

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

J.B., Appellant)
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)
and)
)
DEPARTMENT OF THE AIR FORCE,)
McGUIRE AIR FORCE BASE, Trenton, NJ,)
Employer)

**Docket No. 14-163
Issued: April 7, 2014**

Appearances:
Jason S. Lomax, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 28, 2013 appellant, through his attorney, filed a timely appeal from May 1, 2013 merit decisions of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUES

The issues are: (1) whether appellant has met his burden to establish that the April 8, 2010 work injury caused additional medical conditions; and (2) whether OWCP met its burden to justify the termination of benefits for the accepted neck sprain.

¹ Since using October 30, 2013, the date the appeal was received by the Clerk of the Board, would result in the loss of appeal rights, the date of the mailing of the certified mail from appellant is considered the date of filing. The date the U.S. Postal Service postmarked the certified mail is October 28, 2013, which renders the appeal as timely filed. See 20 C.F.R. § 501.3(f)(1).

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 8, 2010 appellant, a 31-year-old maintenance worker, sustained a traumatic injury in the performance of duty when, as a passenger in a motor vehicle, he hit his head when the driver hit/bumped a curb at two miles per hour (mph). OWCP accepted his claim for neck sprain.

In February 2012 Dr. Steve J. Paragioudakis, a Board-certified orthopedic surgeon, recommended a left ulnar nerve transposition followed by a left median nerve release. He added that appellant would eventually need to undergo an anterior cervical discectomy and interbody arthrodesis with instrumentation at C5-6 and C6-7. Dr. Paragioudakis stated that appellant's present symptoms were causally related to his work accident.

Dr. David B. Dickerson, a Board-certified orthopedic surgeon, examined appellant on April 2, 2012 and diagnosed an injury to the ulnar nerve, cervical spondylosis with myelopathy, and carpal tunnel syndrome. He noted that appellant was a passenger when the driver hit a curb. Appellant was looking left and felt a pop in his neck. He did not have immediate symptoms but had significant pain the next day. Appellant's symptoms worsened over a week, and he developed some stiffness. He denied any previous neck injury but did have some neck stiffness in the past.

OWCP denied authorization for the surgeries because the request was not accompanied by an explanation of how the procedures arose from the April 8, 2010 work incident. It referred appellant, together with the medical record and a statement of accepted facts, to Dr. Kenneth Heist, an osteopath specializing in orthopedic surgeon, for a second opinion and to determine the nature and extent of the injury-related condition and the need for treatment.

Dr. Heist examined appellant on May 7, 2012. He related the history of injury and reviewed appellant's medical treatment. After describing his findings on examination, Dr. Heist diagnosed cervical sprain, preexisting degenerative spinal disease; left carpal tunnel disease and left ulnar nerve neuropathy. He felt that appellant's decreased range of cervical motion was related to his preexisting degenerative spinal disease. It was Dr. Heist's opinion that the accepted neck sprain had resolved. He explained that this was a soft-tissue injury and usually resolves within four to six months. Further, diagnostic studies were negative for traumatic pathology.

Dr. Heist noted that studies documented left ulnar and carpal tunnel syndrome. He observed that carpal tunnel syndrome was a repetitive disorder unlikely to be related to a single traumatic event. Indeed, Dr. Heist felt that neither of the peripheral nerve entrapments was related to the 2010 work incident. "It is documented that the car in which he was riding was going two mph when it bumped the curb. The mechanism of injury does not justify his complaints."

In a supplemental report, Dr. Heist clarified that appellant was injured in a motor vehicle accident while working on April 8, 2010. He felt there was no current disability causally related to the accident because x-rays performed one week later documented preexisting degenerative spinal disease. "This was not caused by a car bumping a curb at two mph." Further, appellant's

examination revealed a restriction of motion that, in Dr. Heist's opinion, was due to the preexisting condition. There were no other abnormal findings.

In an undated attending physician's form report, Dr. Dickerson indicated that appellant had no history of preexisting injury or disease. His findings included cervical spondylosis and a C4-5 disc bulge. Dr. Dickerson indicated with an affirmative mark that appellant's condition was caused or aggravated by the April 8, 2010 injury. He did not explain.

In a decision dated September 7, 2012, OWCP denied expanding its acceptance of appellant's case. It noted that Dr. Dickerson did not provide an explanation of how his diagnoses resulted from the April 8, 2010 work injury. OWCP found that the weight of the medical opinion evidence rested with Dr. Heist, who offered a well-reasoned opinion explaining why any currently diagnosed condition and associated surgery request was not related to what happened on April 8, 2010.

In a decision dated October 10, 2012, OWCP terminated appellant's compensation benefits for the accepted condition of neck sprain. It again found that the weight of the medical opinion evidence rested with Dr. Heist and established that appellant no longer had residuals or disability due to the accepted medical condition.

OWCP received a December 11, 2012 report from Dr. Paragioudakis, who found that appellant had a left C6-7 radiculopathy "most likely secondary to a disc herniation as a result of his motor vehicle accident."

In a decision dated May 1, 2013, an OWCP hearing representative affirmed OWCP's September 7, 2012 denial of expansion of the accepted medical conditions. The hearing representative found that the medical evidence failed to support that appellant's carpal tunnel syndrome or left ulnar neuropathy were causally related to the April 8, 2010 work injury.

In a second decision dated May 1, 2013, an OWCP hearing representative affirmed OWCP's October 10, 2012 decision to terminate compensation benefits for the accepted neck sprain. The hearing representative found that Dr. Heist's opinion was sufficiently rationalized to meet OWCP's burden to establish that appellant no longer suffered residuals or disability related to the accepted medical condition.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking benefits under FECA has the burden of proof to establish the essential elements of his claim by the weight of the evidence,³ including that he sustained an injury in the performance of duty and that any specific condition or disability for which he claims compensation is causally related to that employment injury.⁴

³ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between the claimed medical condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury, and must explain from a medical perspective how the current condition is related to the injury.⁵

ANALYSIS -- ISSUE 1

OWCP accepted that the work incident on April 8, 2010 caused a neck sprain. Several years later, appellant's physicians requested authorization for left carpal tunnel surgery and left ulnar nerve transposition, before an eventual cervical disc fusion. It is therefore appellant's burden of proof to submit medical opinion evidence sufficient to establish that the medical conditions for which surgery was requested were causally related to what happened on April 8, 2010.

Dr. Paragioudakis and Dr. Dickerson, appellant's orthopedic surgeons, offered some support. Dr. Paragioudakis stated in February 2012 that appellant's current symptoms were causally related to his work accident. In December 2012 he found that appellant had a left C6-7 radiculopathy "most likely secondary to a disc herniation as a result of his motor vehicle accident." Dr. Paragioudakis did not explain how he came to these conclusions.

Medical conclusions unsupported by rationale are of little probative value.⁶ It is not at all clear how a vehicle hitting/bumping a curb at two miles per hour caused carpal and cubital tunnel syndrome on the left, or how any physician is able to determine that such a low-impact mechanism of injury caused a herniated cervical disc. Without soundly explaining these matters and identifying what objective evidence justified such a conclusion, Dr. Paragioudakis' opinion carries little probative weight and is insufficient to establish the critical element of causal relationship.

Dr. Dickerson indicated that appellant had no history of preexisting injury or disease. X-rays performed one week after the April 8, 2010 work incident documented preexisting degenerative spinal disease. It does not appear, therefore, that he was working from a proper history. Medical conclusions based on inaccurate or incomplete histories are of little probative value.⁷ Dr. Dickerson indicated with an affirmative mark that appellant's cervical spondylosis and C4-5 disc bulge were caused or aggravated by the April 8, 2010 work injury. He did not explain.

The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to

⁵ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

⁶ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

⁷ *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete). See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

establish causal relationship.⁸ Appellant's burden includes the necessity of furnishing an affirmative opinion from a physician who supports his conclusion with sound medical reasoning. As Dr. Dickerson did no more than check "yes" to a form question, his opinion on causal relationship is of little probative value and is insufficient to discharge appellant's burden of proof.

Dr. Heist, the second opinion osteopath specializing in orthopedic surgery, offered a reasonably sound medical opinion to the contrary. OWCP had provided him with the medical record and a statement of accepted facts so he could base his opinion on a proper history. Dr. Heist noted that x-rays taken one week after the April 8, 2010 work injury showed preexisting degenerative spinal disease. This was not something that could be caused by a car bumping a curb at two mph. Further, diagnostic studies were negative for traumatic pathology. Dr. Heist explained the repetitive nature of carpal tunnel injury and found that mechanism of injury in this case was not consistent with appellant's complaints of peripheral nerve entrapment.

On top of the reports from the attending physicians, Dr. Heist's discussion of causal relationship tends to establish that the April 8, 2010 work injury caused little more than the accepted neck sprain. Accordingly, the Board finds that appellant has not met his burden to establish the element of causal relationship for additional medical conditions. The Board will therefore affirm OWCP's May 1, 2013 decision on this issue.

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.

LEGAL PRECEDENT -- ISSUE 2

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.⁹ Once OWCP accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.¹⁰

ANALYSIS -- ISSUE 2

OWCP accepted appellant's claim for neck sprain. It paid compensation benefits to appellant on the basis of that acceptance. On October 10, 2012 it terminated compensation benefits for the accepted neck sprain. It is therefore OWCP's burden to establish that appellant no longer suffered residuals or disability due to the accepted condition.

In his May 7, 2012 report, Dr. Heist explained that the accepted neck sprain was a soft-tissue injury that usually resolves in four to six months. It had been a couple of years, and it was his opinion that the accepted neck sprain had resolved. Dr. Heist believed that appellant's current decreased range of motion was related instead to his preexisting degenerative spinal

⁸ *E.g., Lillian M. Jones*, 34 ECAB 379 (1982).

⁹ 5 U.S.C. § 8102(a).

¹⁰ *Harold S. McGough*, 36 ECAB 332 (1984).

disease, which x-rays documented one week after the work incident. There were no other abnormal findings and there are no medical opinions to the contrary.

The Board finds that Dr. Heist's opinion is based on a proper history and is sufficiently well rationalized to establish that appellant no longer suffers from the neck sprain he sustained on April 8, 2010 but rather is currently symptomatic of his preexisting condition. The Board finds that OWCP has met its burden of proof. The Board will therefore affirm OWCP's May 1, 2013 decision on this issue.

CONCLUSION

The Board finds that appellant has not met his burden to establish that the April 8, 2010 work injuries caused additional medical conditions. The Board also finds that OWCP met its burden to justify the termination of benefits for the accepted neck sprain.

ORDER

IT IS HEREBY ORDERED THAT the May 1, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 7, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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