United States Department of Labor
Employees' Compensation Appeals Board

K.M., Appellant	)	
and	)	**Docket No. 14-1429**
	)	**Issued: November 20, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Cincinnati, OH, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 4, 2014 appellant, through his attorney, filed a timely appeal of the April 30, 2014 decision of the Office of Workers' Compensation Programs (OWCP) which affirmed a decision denying his traumatic injury claim. 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 merit decision of the case.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he sustained a traumatic injury claim in the performance of duty.

FACTUAL HISTORY

On June 24, 2011 appellant, then a 44-year-old postmaster, filed a traumatic injury claim alleging that on May 18, 2010 while lifting heavy boxes he suffered a retinal detachment of the

[1] 5 U.S.C. §§ 8101-8193.

right eye. He reported having emergency surgery on May 19, 2010 and returned to work on October 22, 2010 and stopped completely on December 28, 2010.[2]

Appellant submitted an operative report dated May 19, 2010 in which Dr. N.D. Radtke, a Board-certified ophthalmologist, performed a scleral buckle, vitrectomy, membrane peeling, panretinal endophotocoagulation, perfluorocarbon liquid fluid exchange and air perfluorocarbon liquid exchange of the right eye. Dr. Radtke diagnosed retinal detachment, preretinal membrane with one quadrant full thickness fixed retinal folds secondary to proliferative vitreoretinopathy stage C1, right eye. Appellant submitted a March 7, 2011 report from Dr. Thomas Harper, a Board-certified ophthalmologist, who noted that appellant, sustained a left eye injury while bundling mail in April 2003 and underwent a retinal repair. Dr. Harper noted that appellant developed uncontrolled glaucoma in the right eye in December 2010.

By letter dated August 3, 2011, OWCP advised appellant of the type of factual and medical evidence needed to establish his claim and requested that he submit such evidence, particularly requesting that he submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors.

In a decision dated September 8, 2011, OWCP denied appellant's claim for a traumatic injury.

On September 14, 2011 appellant requested an oral hearing which was held on January 11, 2012. He submitted an October 3, 2011 report from Dr. Radtke who noted that on June 30, 2003 appellant had two retinal holes that were treated with cryotherapy. Dr. Radtke noted that appellant was a high myope which could lead to weakness in the retina and retinal holes which existed prior to the detachment on May 19, 2010. He opined that heavy lifting could have aggravated appellant's preexisting condition. Dr. Radtke noted that heavy lifting was not noted in appellant's chart note on May 19, 2010 but recalled afterward. He opined that for a retinal detachment to occur lifting usually accompanied obstructing venous outflow or underlying retinal breaks or tears in the eye. Dr. Radtke noted that it was feasible that the retinal detachment in the right eye could be related to the heavy lifting incident on May 18, 2010.

In a decision dated April 2, 2012, an OWCP hearing representative set aside the September 8, 2011 decision and remanded the matter for medical development. The hearing representative noted that Dr. Malik's reports April 27 and May 18, 2011 required clarification[3]

[2] On January 4, 2011 appellant filed a Form CA-2a, notice of recurrence of disability, asserting that on December 28, 2010 he had a recurrence of disability causally related to his April 1, 2003 left eye condition, claim file number xxxxxx673. He indicated that he sustained a left eye injury on April 1, 2003 which was accepted for a retinal detachment. Appellant returned to work full time and after lifting heavy boxes he developed a detached retina of the right eye. To further develop the claim OWCP referred him to a second opinion physician, Dr. Zaiba Malik, a Board-certified ophthalmologist. In reports dated April 27 and May 18, 2011, Dr. Malik opined that it was highly unlikely that heavy lifting alone could cause a retinal detachment, rather, for retinal detachment to manifest there must be an underlying retinal tear or break. He also opined that appellant was myoptic and therefore was predisposed to thinning retina and tears. OWCP thereafter developed the right eye condition as a new traumatic injury. Claim file number xxxxxx673 is not before the Board.

[3] *See id.*

and requested that he address whether the lifting incident of May 18, 2010 aggravated accelerated or precipitated appellant's right eye injury.

On April 16, 2012 OWCP sought clarification from Dr. Malik and was notified that he was no longer a practicing physician.

On May 29, 2012 OWCP referred appellant for a second opinion to Dr. Tim Conrad, a Board-certified ophthalmologist. It provided Dr. Conrad with appellant's medical records, a statement of accepted facts as well as a detailed description of appellant's employment duties. In a June 29, 2012 report, Dr. Conrad noted appellant's left eye was totally blind resulting from a retinal detachment which was not successfully repaired despite two attempts. He noted that appellant had cryotherapy treatment for right retinal tears in 2003 and had a retinal detachment in May 2010 which was repaired. Dr. Conrad noted that appellant subsequently underwent cataract and glaucoma surgery. He noted examining appellant on June 11, 2012 and found the right eye had a posterior chamber lens implant, glaucoma, mild posterior capsule opacification and epiretinal membrane. Dr. Conrad noted the right eye vision was 20/70 and was mildly myopic refraction. He opined that the heavy lifting appellant performed did not cause, accelerate, precipitate or aggravate the retinal detachment. Dr. Conrad advised that appellant developed a retinal detachment spontaneously in an eye with a high risk of such. Appellant had known retinal tears and was highly myopic. Dr. Conrad noted no studies which show a relationship between glaucoma and heavy lifting, rather the glaucoma resulted from the surgery required to repair the retinal detachment and was a known complication of retinal surgery. He noted that appellant required ophthalmologist care for the remainder of his life as he developed secondary cataracts which would require future treatment.

OWCP determined that there was a medical conflict between Drs. Radtke, appellant's treating physician, who opined that heavy lifting on May 18, 2010 caused or aggravated the right eye retinal tear and Dr. Conrad, OWCP referral physician, who opined that the heavy lifting did not cause or aggravate the diagnosed retinal tear.

Appellant submitted an August 13, 2012 report from Dr. Radtke who noted reviewing Dr. Conrad's report and disagreed with his findings noting he did not have retinal surgery experience or training. He referenced an article in *Epidemiology* from 2008 which noted that heavy occupational lifting, being overweight and having high myopia, were risk factors to retinal detachment. Also submitted was a September 4, 2012 report from Dr. Robb R. Shrader, a Board-certified ophthalmologist, who opined that appellant's right eye retinal detachment could occur spontaneously but could also be brought on by human activity such as injury and significant straining.

On October 12, 2012 OWCP referred appellant to Dr. Robert Benza, a Board-certified ophthalmologist, to resolve the medical conflict. In an October 31, 2012 report, Dr. Benza indicated that he reviewed the records provided to him and performed a physical examination of appellant. He noted a history of appellant's work-related injury. Dr. Benza noted that appellant's visual acuity was 20/80 in the right eye without correction, his near vision was 11 point with glasses, cycloplegic refraction demonstrated a -2.75 +2.75 x 85 degrees with 20/70 +1 vision. External examination of the right eye demonstrated a sluggish pupil, full eye movements, slit-lamp examination of the right eye demonstrated a moderate superior bleb and a well-centered

posterior chamber intraocular lens, the cornea was clear, interocular pressure was 14 in the right eye, fundus examination demonstrated a cup to disc ratio of .20 and 1 to 2+ cellophane maculopathy of the right macula with intact buckle in the periphery. Dr. Benza diagnosed status post retinal detachment repair, right eye, macular pucker, right eye, history of glaucoma, right eye and status post glaucoma surgery and pseudophakia of the right eye. He opined that to the best of his knowledge he was unaware of medical evidence that lifting heavy objects would cause, aggravate, precipitate or accelerate a retinal tear or detachment. Dr. Benza noted appellant's history of myopia and previous retina tears in 2003 were factors that would increase the risk of a retinal detachment. He noted that appellant was currently stable but guarded over time. Dr. Benza recommended that an ophthalmologist follow his glaucoma and general ocular care.

In a decision dated December 31, 2012, OWCP denied appellant's claim finding that the weight of the medical evidence rested with Dr. Benza, who opined that the claimed right eye condition was not causally related to work events on May 18, 2010.

Appellant requested an oral hearing which was held on April 15, 2013. He submitted a February 4, 2013 report from Dr. Radtke who disagreed with Dr. Benza regarding the etiology of the retinal detachment. Dr. Radtke noted that Dr. Benza did not have retinal surgery training or experience. He noted treating patients who had Valsalva maneuvers and developed retinal detachments. Dr. Radtke referenced an attached article in *Epidemiology* from 2008 which concluded that heavy occupational lifting, being overweight and having high myopia, were important risk factors to retinal detachments. He noted that appellant possessed all these conditions and Dr. Benza agreed that appellant's history of myopia and previous retinal tears in 2003 would be a factor to increase the risk of retinal detachments.

In a decision dated July 9, 2013, an OWCP hearing representative vacated the December 31, 2012 decision and remanded the matter for further medical development. The hearing representative instructed OWCP to provide Dr. Benza with Dr. Radtke's report and referenced articles and obtain clarification as to whether appellants' right eye condition was due to the lifting performed on May 18, 2010.

On July 24, 2013 OWCP requested supplemental report from Dr. Benza requesting that he address Dr. Radtke's February 4, 2013 report and opine whether the May 18, 2010 lifting incident caused, accelerated, aggravated or precipitated a right eye condition.

In an August 5, 2013 report, Dr. Benza noted reviewing Dr. Radtke's February 4, 2013 report and the article in *Epidemiology* from 2008. He opined that there was no strong evidence to support the contention that lifting a heavy object caused, accelerated, aggravated or precipitated the retinal detachment. Dr. Benza noted the referenced article was from research in Italy from a small population of 48 patients. He noted the article concluded that heavy lifting "could be" a risk factor and it was "cumulative lifting" which showed a dose response relationship. Dr. Benza noted that appellant's history of retinal tears in 2003 and history of myopia were risk factors for retinal detachment. He noted that there was not enough evidence, in a patient with other significant risk factors including retinal tears and myopia, to say that lifting a top heavy box caused, accelerated, aggravated or precipitated the retinal detachment.

In a decision dated September 3, 2013, OWCP denied appellant's claim for a traumatic injury on the grounds that the weight of the medical evidence rested with the referee physician, who opined that the claimed right eye condition was not related to work events on May 18, 2010.

Appellant requested an oral hearing which was held on February 18, 2014.

In a decision dated April 30, 2014, an OWCP hearing representative affirmed the September 3, 2013 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing 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 of FECA, that an injury was sustained 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 employment injury. 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.[4]

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, place and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[5]

Rationalized medical opinion evidence is generally required to establish causal relationship. 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.[6]

ANALYSIS

On June 24, 2011 appellant filed a traumatic injury claim alleging that on May 18, 2010 while lifting heavy boxes he suffered a right retinal detachment. OWCP found that a conflict of medical opinion existed between the attending physician, Dr. Radtke, a Board-certified ophthalmologist, who opined that heavy occupational lifting, being overweight and having high myopia caused appellant's right retinal detachment and the second opinion physician, Dr. Conrad, a Board-certified ophthalmologist, who opined that heavy lifting did not cause, accelerate, precipitate or aggravate the retinal detachment of the right eye. As there was a

[4] *Gary J. Watling*, 52 ECAB 357 (2001).

[5] *T.H.*, 59 ECAB 388 (2008).

[6] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

conflict in the medical opinion evidence, OWCP properly referred appellant for an impartial medical examination by Dr. Benza, a Board-certified ophthalmologist.[7]

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.[8]

In his October 31, 2012 report, Dr. Benza reviewed the entire case record and statement of accepted facts. He examined appellant thoroughly and related his clinical findings. Dr. Benza indicated that the examination findings revealed visual acuity was 20/80 in the right eye without correction. External examination of the right eye demonstrated a sluggish pupil, full eye movements while slit-lamp examination of the right eye demonstrated a moderate superior bleb and a well-centered posterior chamber intraocular lens. Dr. Benza diagnosed status post retinal detachment repair, right eye, macular pucker, right eye, history of glaucoma, right eye and status post glaucoma surgery and pseudophakia of the right eye. He noted appellant's history of myopia and previous retina tears in 2003 were factors which would increase the risk of a retinal detachment. In a supplemental report dated August 5, 2013, Dr. Benza addressed the literature referenced by Dr. Radtke regarding lifting and retinal detachment and noted the article was from research in Italy from a small population of 48 patients and concluded that heavy lifting "could be" a risk factor and it was "cumulative lifting" which showed a dose response relationship. He noted that appellant's history of retinal tears in 2003 and history of myopia were risk factors for retinal detachment and opined that there was not enough evidence, in a patient like appellant who had other significant risk factors, to say that lifting a top heavy box caused, accelerated, aggravated or precipitated the retinal detachment.

Appellant submitted a February 4, 2013 report from Dr. Radtke who noted that Dr. Benza did not have retinal surgery training or experience. Dr. Radtke referenced an article in *Epidemiology* 2008 which concluded that heavy occupational lifting, being overweight and having high myopia, are important risk factors to retinal detachments and appellant had all these conditions. He noted that Dr. Benza agreed that appellant's history of myopia and previous retinal tears in 2003 would be a factor to increase the risk of retinal detachments. However, Dr. Radtke's reports are similar to his prior reports and, as he was on one side of the conflict that Dr. Benza resolved, his reports are insufficient to overcome that of Dr. Benza or to create a new medical conflict.[9] Furthermore, Dr. Benza, in his August 5, 2013 supplemental report considered Dr. Radtke's assertions about the medical article but explained why he believed that the study did not support that appellant's condition was employment related.

[7] 5 U.S.C. § 8123(a), in pertinent part, provides: "If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

[8] *Solomon Polen*, 51 ECAB 341 (2000).

[9] *See Michael Hughes*, 52 ECAB 387 (2001); *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990). The Board notes that Dr. Radtke's report does not contain new findings or rationale upon which a new conflict might be based.

The Board finds that, under the circumstances of this case, the opinion of Dr. Benza is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that appellant's detach retina of the right eye was not causally related to the workplace lifting incident on May 18, 2010. Dr. Benza had reviewed the entire case record, statement of accepted facts and literature presented by Dr. Radtke and had examined appellant. He additionally provided well-reasoned rationale as to why appellant's current retinal detachment of the right eye was not causally related to the May 18, 2010 workplace lifting incident.

The Board finds that Dr. Benza's opinion constitutes the weight of the medical evidence and is sufficient to justify OWCP's denial of appellant's claim for compensation.

On appeal, appellant through counsel, asserted that Dr. Benza's opinion should not have carried the weight of the evidence because he was not a retinal specialist. He indicated that Dr. Radtke was a retinal specialist and treated him for 13 years and had specific knowledge of appellant's condition. The Board finds this argument to be without merit. Dr. Benza reviewed the entire case record and statement of accepted facts and examined appellant thoroughly and related his clinical findings. He opined that there was not enough evidence, in a patient like appellant who had other significant risk factors including retinal tears in 2003 and history of myopia, to say that lifting a top heavy box caused, accelerated, aggravated or precipitated the retinal detachment. Dr. Benza provided well-reasoned rationale as to why appellant's current retinal detachment of the right eye was not causally related to the May 18, 2010 workplace lifting incident and was properly found to resolve the medical conflict and represent the weight of the evidence.

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 failed to meet his burden of proof to establish that he sustained a traumatic right eye injury causally related to factors of employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 30, 2014 is affirmed.

Issued: November 20, 2014
Washington, DC

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

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

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