

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

R.K., Appellant)
and) Docket No. 15-1524
U.S. POSTAL SERVICE, POST OFFICE,) Issued: August 10, 2016
Elmer, NJ, Employer)

)

Appearances:
Thomas R. Uliase, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On July 2, 2015 appellant, through counsel, filed a timely appeal of a February 17, 2015 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.

ISSUE

The issue is whether appellant established an injury causally related to an August 15, 2013 employment incident.

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.*

On appeal counsel argues that appellant provided *prima facie* evidence, both factually and medically, establishing her traumatic injury claim. In the alternative, he argues that OWCP abused its discretion in failing to develop the medical evidence.

FACTUAL HISTORY

On August 15, 2013 appellant, then a 54-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that at 8:20 a.m. on August 15, 2013 she sustained a back sprain while attempting to lift a tub of mail off of a rack.

In an August 15, 2013 report, Dr. Stanley L. Bagan, a treating physician specializing in internal medicine, noted that appellant was seen for a work injury to her left upper back. Appellant related that she had developed left upper back pain and spasm due to lifting magazines from a shelf. He found appellant totally disabled.

Dr. Bagan, in an August 19, 2015 disability note, reported that appellant was currently disabled from work until further evaluation by an orthopedic specialist.

By correspondence dated August 28, 2013, OWCP informed appellant that when it had initially received her claim it appeared to be a minor injury. As appellant had not returned to work in a full-time capacity, it reopened her claim for consideration of the merits. OWCP informed appellant that the medical evidence was insufficient to establish her claim. It advised her as to the medical evidence required to establish her claim and afforded her 30 days to provide the requested evidence.

Appellant submitted an August 29, 2013 physical therapy note from Ashley G. Miller, a physical therapist.

In an August 20, 2013 report, Dr. Rahul V. Shah, an examining Board-certified orthopedic surgeon, diagnosed employment-related thoracic pain and thoracic and lumbar sprains/strains. Appellant related that the injury occurred on August 15, 2013 as the result of lifting a tub of mail down from a shelf. She heard a pop in her back, reported it, and stopped work. Physical examination findings included thoracic lumbar junction spasm, negative straight leg raise, and femoral stretch tests. Dr. Shah opined that appellant's thoracic pain was emanating from her cervical sprain/strain.

In a progress note dated September 10, 2013, Dr. Shah diagnosed employment-related thoracic and lumbar sprains/strains and possible left-sided T12 radiculopathy. He reported that appellant was seen for a follow-up on her employment-related thoracic strain/sprain and noted that she was currently not working. A review of a lumbar magnetic resonance imaging (MRI) scan revealed lumbago. Dr. Shah reported that appellant was capable of performing sedentary work with restrictions.

By decision dated October 8, 2013, OWCP denied appellant's claim as it found she had failed to establish that a diagnosed condition causally related to the August 15, 2013 incident.

In a form dated October 22, 2013, appellant requested reconsideration.

In progress notes dated September 27, 2013, Dr. Shah diagnosed thoracic and lumbar strains/sprains due to an employment injury. Physical examination findings reiterated thoracic lumbar junction spasm, negative straight leg raise, and femoral stretch tests. Dr. Shah reviewed MRI scans of the lumbar and thoracic spine which revealed minimal L2-3 degenerative retrolisthesis, prominent L3-4 lateral broad-based disc protrusion/disc herniation, mild-to-moderate L2-4 central spinal stenosis, L4-5 moderate central spine stenosis, T9-10 small left paracentral disc herniation with disc fragment, T8-9 mild central disc protrusion, T9-10 minimal left paracentral disc protrusion, and T3-4 minimal right paracentral disc protrusion. He opined that appellant was capable of performing sedentary work with minimal standing and walking and lifting no more than 10 pounds.

Dr. Shah, in progress notes dated October 15 and 22, 2013, noted that appellant was seen for thoracic pain and noted an August 15, 2013 injury date. In October 23, 2013 notes, he noted that she felt a pop in her back on August 15, 2013 while lifting mail from one cart to another cart. Dr. Shah attributed appellant's thoracic sprain, T8-9 left-side disc protrusion, and T8-9 left-sided radiculopathy to the August 15, 2013 work incident. Examination findings and work restrictions were unchanged from the prior report.

In an October 21, 2013 statement, a customer service supervisor related that on August 15, 2013 appellant stated that she injured her back and that another carrier was called to do her route so that appellant could see a doctor.

On October 28, 2013 OWCP received an undated statement from another coworker, who observed appellant on August 15, 2013 standing by a tub of mail and complaining that she hurt her back lifting a tub of flats down from a shelf.

In a November 12, 2013 progress report, Dr. Shah reiterated the injury and medical history and physical examination findings found in his prior reports. He diagnosed thoracic pain, lumbago, sciatica, employment-related thoracic and lumbar sprains/strains, and left-sided T12 radiculopathy. Dr. Shah also diagnosed L3-4 right-sided stenosis of unknown cause.

By decision dated December 18, 2013, OWCP denied reconsideration.

Subsequent to the December 18, 2013 decision, OWCP received a December 24, 2013 progress note from Dr. Shah providing an update on appellant's condition.

By letter dated August 6, 2014, appellant's counsel requested reconsideration.

In a March 5, 2014 report, Dr. Shah reported that appellant was first seen on August 20, 2013 for an employment injury sustained as the result of lifting a tub of mail down off a shelf. He described the medical treatment from the date of injury until she was seen by him on February 25, 2014 for pain and persistent discomfort including the history of injury and diagnoses received. Dr. Shah noted that, based on the mechanism of injury, subsequent findings described in the report and appellant's improvement with thoracic epidural steroid injection, that it was clear that the cause of her injuries was the bending and twisting while she was pulling a mail bin.

By decision dated February 17, 2015, OWCP found the evidence submitted by appellant insufficient to establish modification, found discrepancies in the description of how the injury occurred, and thus, the factual portion of fact of injury had not been established. It further found Dr. Shah's description of how the injury occurred and appellant's description of how the injury occurred were inconsistent and cast serious doubt on the validity of her claim.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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, that an injury was sustained while 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.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

OWCP regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.⁶ To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a fact of injury has been established.⁷ First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.⁸ Second, the employee must submit sufficient evidence, generally only 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 medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹⁰ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.¹¹ The opinion of the physician must be based on a complete

³ 5 U.S.C. § 8101 *et seq.*

⁴ C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁵ S.P., 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁷ B.F., Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 3.

⁸ D.B., 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

⁹ C.B., Docket No. 08-1583 (issued December 9, 2008); D.G., 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 3.

¹⁰ Y.J., Docket No. 08-1167 (issued October 7, 2008); A.D., 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

¹¹ J.J., Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

factual and medical background of the employee, 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 employee.¹²

ANALYSIS

On August 15, 2013 appellant filed a traumatic injury claim alleging that on that day she sustained a back sprain due to lifting a tub of mail off of a shelf/rack. OWCP by decisions dated October 8 and December 18, 2013 denied appellant's claim finding that she had not established that the August 15, 2013 incident caused or aggravated a back sprain. By decision dated February 17, 2015, it found the evidence sufficient to establish modification, but denied the claim as it found appellant had failed to establish that the August 15, 2013 incident occurred as alleged due to inconsistencies in the case record regarding the claimed injury.

The Board finds that appellant has established the factual aspect of the claimed August 15, 2013 injury. Statements from a supervisor and a coworker are supportive of appellant's description of how the August 15, 2013 incident occurred. The Board finds that Dr. Shah's description of the August 15, 2013 incident does not vary greatly from appellant's description. Dr. Shah describes the incident as occurring while lifting mail down off a shelf, which is consistent with appellant's statement on her CA-1 form and her coworker's statement. In explaining why he thought the diagnosed conditions were employment related, Dr. Shah attributed them to bending and twisting while pulling mail off a shelf. Thus, contrary to OWCP's finding in its February 17, 2015 decision, the Board finds that appellant has established an employment incident during her scheduled work shift on August 15, 2013.¹³

Given that appellant has established a work incident in the form of lifting mail down from a shelf on August 15, 2013 the case shall be remanded to OWCP to consider whether the medical evidence of record establishes a medical condition due to that incident. After this further development, OWCP shall issue a *de novo* decision regarding appellant's claimed August 2013 work injury.

CONCLUSION

The Board finds that this case is not in posture for decision. The weight of the factual evidence established that the August 15, 2013 incident occurred as alleged. OWCP must now determine whether the medical opinion evidence establishes that this incident caused an injury.

¹² *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹³ *Thelma Rogers*, 42 ECAB 866 (1991).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 17, 2015 is set aside and the case remanded to OWCP for proceedings consistent with this decision of the Board.

Issued: August 10, 2016
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board