United States Department of Labor
Employees' Compensation Appeals Board

E.P., Appellant	)	
	)	
and	)	**Docket No. 16-0153**
	)	**Issued: August 25, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Edison, NJ, Employer	)	
	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 3, 2015 appellant, through counsel, filed a timely appeal from a September 1, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[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.*

ISSUE

The issue is whether appellant met his burden of proof to establish that his claim should be expanded to include cervical and lumbosacral radiculopathy and bilateral carpal tunnel syndrome.

FACTUAL HISTORY

This case has previously before the Board.[3] By decision dated December 10, 2014, the Board affirmed OWCP's decision denying appellant's claim for disability compensation for the period May 31 to July 22, 2013. The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are set forth below.

OWCP accepted that on February 1, 2013 appellant, then a 53-year-old mail handler, sustained a traumatic injury when he fell from a platform at work and landed on the left side of his face and body. Appellant stopped work on February 1, 2013. His claim was accepted for left contusion of the face and hip.

In an April 15, 2013 magnetic resonance imaging (MRI) scan of appellant's cervical spine, Dr. Jeffrey Lang, a Board-certified diagnostic radiologist who specializes in neuroradiology, observed central herniated disc at C4-5 with reversal of the cervical lordosis and old intravertebral herniated disc/grade 1 compression of T1 and T2.

On April 15, 2013 appellant underwent an x-ray of the lumbar spine ordered by Dr. Michael Green, a Board-certified internist, who reported slight dextroscoliosis and mild facet joint narrowing on the right at the L4-5 level and at the L3-4 level on the left.

Appellant was treated by Dr. Mark A. Filippone, Board-certified in physical medicine and rehabilitation. In a May 21, 2013 report, Dr. Filippone noted that he had treated appellant since February 18, 2013 after a February 1, 2013 work injury. He related appellant's complaints of neck pain and of pain, numbness, and tingling in his fingers and hands. Upon examination, Dr. Filippone observed pain, guarding, and spasm in the cervical and lumbar paraspinals bilaterally. Tinel's and Phalen's signs were positive bilaterally. Dr. Filippone provided electromyography (EMG) and nerve conduction studies test findings and indicated that they showed evidence of right C5-6 cervical radiculopathy and right L4-5 and S1 lumbosacral radiculopathy. He opined that the electrodiagnostic abnormalities were directly and solely the result of the injuries appellant sustained at work for the employing establishment. In an attending physician's report (Form CA-20), Dr. Filippone noted a date of injury of February 1, 2013. He provided diagnoses of cervical and lumbar radiculopathy and carpal tunnel syndrome. Dr. Filippone authorized appellant to return to limited duty on May 22, 2013.

On May 25, 2013 appellant returned to work and presented his most recent work restrictions. He worked for two days before the employing establishment informed him that they

[3] Docket No. 14-1614 (issued December 10, 2014).

could no longer accommodate his work restrictions because they were not related to his accepted conditions.

In a letter dated June 14, 2013, appellant's counsel requested that OWCP expand appellant's claim to include cervical and lumbar radiculopathies and bilateral carpal tunnel syndrome. He asserted that Dr. Filippone's May 21, 2013 report demonstrated that appellant sustained these conditions as a result of his February 1, 2013 employment injury.

Dr. Filippone continued to treat appellant and indicated in reports dated June 5 and 20, 2013 that appellant's neck and low back pain were resolving with physical therapy and conservative treatment, but remained essentially unchanged. He reviewed appellant's medical history and conducted an examination. Dr. Filippone reported that appellant had guarding and spasm in the cervical and lumbar paraspinals and preserved peripheral pulses. He indicated that central and neurologic examinations were unchanged. Homans' sign was negative. Dr. Filippone recommended that appellant continue to work limited duty.

In a July 10, 2013 prescription and duty status note, Dr. Filippone authorized appellant to resume full-time regular duty beginning July 22, 2013. On July 22, 2013 appellant returned to full duty.

OWCP referred appellant's claim, along with the medical record and statement of accepted facts (SOAF), to Dr. Jeffrey Lakin, a Board-certified orthopedic surgeon, for a second opinion examination to determine whether he continued to suffer residuals of his February 1, 2013 work injury and whether was able to return to work. In a July 26, 2013 report, he described the February 1, 2013 employment injury and reviewed the medical treatment he received. Dr. Lakin noted that appellant no longer experienced pain in his neck and back, but complained of occasional discomfort in the lower back region in the area of the hip. He indicated that appellant returned to full duty two days ago and was able to do all activities and walk without difficulty. Dr. Lakin reported that he reviewed appellant's diagnostic records and agreed with the radiologist that appellant had a herniated disc at C4-5 and vertebral herniated disc and grade 1 compression of T1 and T2. Upon examination of appellant's cervical spine, he observed no tenderness and active range of motion. Dr. Lakin reported that thoracic and lumbosacral examinations also revealed no tenderness or spasms. Straight leg raise testing was negative in the sitting and supine positions. Motor examination was also 5/5 and sensation was intact. Dr. Lakin also noted that appellant was nontender at the bilateral sacroiliac joints and sciatic notches. Examination of the left hip revealed nontenderness and symmetric range of motion.

Dr. Lakin opined that appellant's accepted conditions of contusion of the face and left hip had resolved and he had no disabling residuals. He explained that appellant had no concurrent medical condition preventing him from returning to gainful employment. Dr. Lakin concluded that appellant was capable of returning to his date-of-injury job as a mail handler and was not totally disabled from any gainful employment due to the accepted condition.

Appellant continued to receive medical treatment from Dr. Filippone. In reports dated August 15 to December 12, 2013, Dr. Filippone reexamined appellant and noted that his medical history and review of systems remained unchanged. Upon examination, he observed further decreased prominence of the dominant right thenar eminence. Phalen's and Tinel's signs were

positive on the right. Dr. Filippone reported that, even though appellant was still symptomatic, he could work full-time regular duty.

In a September 30, 2013 narrative report, Dr. Filippone accurately described the February 1, 2013 employment injury and reviewed appellant's medical treatment. He recounted that May 21, 2013 EMG and nerve conduction studies of bilateral upper and lower extremities showed evidence of a right C5-6 cervical radiculopathy, right C4-5 and S1 lumbosacral radiculopathy, and carpal tunnel syndrome. Upon examination, Dr. Filippone observed pain, guarding, and spasm in the cervical and lumbar paraspinal muscles, especially in the cervical paraspinals. He indicated that central and peripheral neurologic examinations were unchanged. Dr. Filippone diagnosed herniated disc at C4-5, old intravertebral herniated disc grade 1 compression of T1 and T2, mild facet joint narrowing on the right at L4-5 and on the left at L3-4, internal derangement of both knees, contusion of the pelvis and left hip, C5-6 cervical radiculopathy, L4-5 and S1 lumbosacral radiculopathy, and bilateral carpal tunnel syndrome. He opined that "all of the above abnormalities [were] directly and solely the result of the injury sustained at work on February 1, 2013."

Appellant's counsel again requested in letters dated October 18 and 22, 2013 that appellant's accepted conditions be expanded to include C4-5 disc herniation, low back condition, internal derangement and radiculopathies as a result of his work injury.

Dr. Filippone continued to treat appellant and indicated in reports dated March 11 to December 1, 2014 that his medical history and review of systems remained unchanged. Upon examination, he observed pain, guarding, and spasm in the cervical and lumbar paraspinals, as well as the sciatic notches. Tinel's and Phalen's signs were positive. Dr. Filippone also reported tenderness on palpation over the biceps tendon in the right shoulder and tenderness with pain upon forward flexion of the right shoulder.

On January 6, 2015 appellant's counsel requested *via* a letter that OWCP issue a decision regarding whether appellant's claim be expanded to include cervical and lumbar radiculopathy and carpal tunnel syndrome.

In a February 3 and March 4, 2015 narrative reports, Dr. Filippone noted appellant's medical history and indicated that the review of systems were unchanged. He conducted an examination and observed that appellant could forward flex at the waist fingertips to within four inches of the floor with increasing low back pain, radiating to the lower extremities, extend the low back to 20 degrees with increasing low back pain, and laterally flex to 30 degrees with increasing lower back pain. Fabere sign was negative on the left and right. Homan's sign was also negative. Dr. Filippone reported no carotid or cranial bruits. He indicated that appellant continued to work full-time, regular duty.

In a decision dated April 10, 2015, OWCP denied appellant's request to expand his claim to include cervical disc herniation and radiculopathy. It found that the medical evidence was insufficient to establish that appellant sustained additional diagnoses related to his February 1, 2013 work injury.

On April 16, 2015 appellant's counsel requested a hearing before an OWCP hearing representative. On May 21, 2015 a video hearing was held. Appellant was represented by his counsel who alleged that appellant provided *prima facie* evidence that he sustained additional medical conditions related to the February 1, 2013 employment injury and asserted that OWCP did not properly develop the medical evidence. Counsel stated that Dr. Filippone's July 10, 2013 report contained enough medical support to support that appellant's claim should be expanded. He noted that Dr. Filippone adequately described the mechanism of injury and related appellant's cervical and lumbar conditions to appellant's February 1, 2013 employment injury. Counsel further reported that OWCP should not have relied on Dr. Lakin's second opinion report because it was deficient. He noted that while Dr. Lakin agreed with appellant's cervical MRI scan that appellant had a herniated disc at C4-5, Dr. Lakin did not provide an opinion on the cause of appellant's cervical and lumbar conditions. Counsel alleged that there was sufficient medical evidence to support expansion of appellant's claim to include C4-5 disc herniation, internal derangement, and radiculopathy. The hearing representative requested additional information from appellant, specifically whether he had any history of injury prior to the work injury and reports of the medical treatment for his neck.

In a July 5, 2015 statement, appellant explained that he was working full duty but continued to experience lower back pain. He was treated by Dr. Filippone and also underwent physical therapy. Appellant related that if his request to expand his claim was approved Dr. Filippone would like more thorough examinations and tests. He stated that Dr. Lakin did not do anything different from Dr. Filippone's examinations.

By decision dated September 1, 2015, an OWCP hearing representative affirmed the April 10, 2015 decision denying the expansion of appellant's claim.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence[5] including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[6] Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.[7] The opinion of the physician must be based on a complete 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.[8] The weight of the medical evidence is determined by its reliability,

[4] *Supra* note 2.

[5] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[6] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[7] *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

[8] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[9]

ANALYSIS

OWCP accepted that on February 1, 2013 appellant sustained contusions to the left side of his face and hip when he fell off a platform at work. He stopped work and returned to full duty on July 22, 2013. In various letters appellant, through counsel, requested that his claim be expanded to include cervical disc herniation, cervical and lumbar radiculopathies, and carpal tunnel syndrome. OWCP denied expansion of his claim, finding insufficient medical evidence to establish that he sustained additional conditions causally related to the February 1, 2013 employment injury.

Appellant received medical treatment from Dr. Filippone in reports dated May 21, 2013 to March 4, 2015. Dr. Filippone provided an accurate history of the February 1, 2013 employment injury and noted that appellant continued to complain of neck pain and of numbness, pain, and tingling in his hands and fingers. He provided findings on examination and EMG and nerve conduction study test results dated May 21, 2013. Dr. Filippone noted that the diagnostic reports showed evidence of right C5-6 cervical radiculopathy and right L4-5 and S1 lumbosacral radiculopathy. In a September 30, 2013 narrative report, he opined that the electrodiagnostic abnormalities were directly and solely the result of the injuries appellant sustained at work on February 1, 2013. Dr. Filippone reported that, although appellant remained symptomatic, he was capable of working full duty.

Dr. Filippone diagnosed cervical and lumbar radiculopathy and carpal tunnel syndrome, and opined that these conditions resulted from appellant's work injury. Although he provided an opinion on causal relationship, the Board finds that his opinion is of limited probative value because he did not provide adequate medical rationale to support his opinion.[10] Dr. Filippone did not explain the mechanism of injury of how appellant's fall at work on February 1, 2013 could have caused or contributed to an additional cervical disc herniation, cervical and lumbar radiculopathy, and carpal tunnel syndrome. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.[11] Because Dr. Filippone failed to provide any medical rationale explaining how appellant sustained cervical and lumbar conditions or carpal tunnel syndrome as a result of his February 1, 2013 work injury, the Board finds that Dr. Filippone's reports are insufficient to establish that appellant sustained additional conditions as a result of his employment injury.

The additional diagnostic reports dated April 15, 2013 by Drs. Green and Lang are also insufficient to establish appellant's expansion claim. Although the reports contained examination findings diagnoses of cervical and lumbar conditions, none of the physicians

[9] *James Mack*, 43 ECAB 321 (1991).

[10] *See G.M.*, Docket No. 15-1645 (issued December 7, 2015).

[11] *T.M.*, Docket No. 08-975 (issued February 6, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

provided any opinion on the cause of appellant's conditions. The Board has found that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[12]

On appeal, appellant's counsel alleged that appellant provided *prima facie* evidence to show that his claim should be expanded to include cervical and lumbar radiculopathy and bilateral carpal tunnel syndrome. He asserted that Dr. Filippone's reports established that appellant sustained injuries to his neck, back, and bilateral upper extremities, along with his left hip and side, when he fell from a loading platform at work on February 1, 2013. As noted above, however, Dr. Filippone's reports are insufficient to establish that appellant's claim should be expanded to include cervical and lumbar conditions, in addition to his accepted left hip and face contusion. He failed to provide any medical rationale explaining how appellant's cervical and lumbar conditions were causally related to the accepted February 1, 2013 employment injury.

Counsel further argued that OWCP improperly found that the weight of medical evidence rested with Dr. Lakin's July 26, 2013 second opinion report. The Board notes, however, that OWCP did not accord the weight of medical evidence to Dr. Lakin. It simply noted that Dr. Lakin examined appellant and opined that he did not have any concurrent medical conditions which prevented him from returning to work. OWCP denied appellant's claim because he did not submit sufficient medical evidence to establish that he sustained additional medical conditions as a result of his February 1, 2013 employment injury.

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[13] Appellant has failed to provide such rationalized medical opinion demonstrating that he sustained cervical and lumbar conditions on February 1, 2013. Accordingly, the Board finds that he has failed to meet his burden of proof to establish his claim.

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 did not meet his burden of proof to establish that his claim should be expanded to include cervical and lumbosacral radiculopathy, and bilateral carpal tunnel syndrome.

[12] *R.E.*, Docket No. 10-679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

[13] *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

ORDER

IT IS HEREBY ORDERED THAT the September 1, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 25, 2016
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board