

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

Y.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Belmar, NJ, Employer**

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**Docket No. 16-1592
Issued: December 27, 2016**

Appearances:
James D. Muirhead, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 1, 2016 appellant, through counsel, filed a timely appeal from an April 26, 2016 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 has met his burden of proof to establish an injury causally related to the accepted December 14, 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.*

FACTUAL HISTORY

On December 27, 2013 appellant, then a 53-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained injuries in a motor vehicle accident on December 14, 2013 while in the performance of duty. He reported on the claim form that he was rear-ended by another vehicle. The record indicates that appellant returned to work on December 17, 2013, and then was off work from January 7 to May 18, 2014.

OWCP advised appellant on January 9, 2014 that medical evidence was necessary to substantiate his claim. It requested that he submit a narrative report from his treating physician which provided a diagnosis and established causal relationship between the diagnosed condition and the employment incident. Appellant was afforded 30 days to submit this additional evidence.

Appellant received emergency room treatment on December 14, 2013.³ Diagnostic tests included a left shoulder x-ray that was reported as normal by Dr. Leonard Zawodniak, a radiologist, and a cervical spine x-ray that Dr. Zawodniak indicated showed degenerative changes with no fracture.

In a report dated January 7, 2014, Dr. David Dickerson, a Board-certified orthopedic surgeon, reported that appellant was involved in a motor vehicle accident and his left shoulder hit the seat. He reported that appellant had pain in the left shoulder, and left side of the neck, with paresthesia in the arm. Dr. Dickerson provided results on examination and diagnosed brachial neuritis or radiculitis, and cervical disc degeneration. He also completed a duty status report (Form CA-17) indicating appellant was totally disabled for work.

By decision dated February 11, 2014, OWCP denied the claim for compensation. It accepted that a motor vehicle accident occurred as alleged, but found the medical evidence was insufficient to establish a diagnosed injury causally related to the December 14, 2013 employment incident.

Appellant, through counsel, requested a hearing before an OWCP hearing representative on March 11, 2014. A hearing was held on September 12, 2014.

The medical evidence submitted included a February 17, 2014 report from Dr. John Coccaro, a Board-certified anesthesiologist, who indicated that appellant was involved in a motor vehicle accident on December 14, 2013. Dr. Coccaro provided results on examination and diagnosed cervical radiculitis, displaced cervical disc without myelopathy, and cervical spinal stenosis.

Appellant also submitted treatment reports from March 11 to June 20, 2014 from Dr. Kulbir Walia, Board-certified in pain medicine. In the March 11, 2014 report, Dr. Walia provided a history that appellant was rear-ended at work three months earlier and now reported left neck pain radiating down the left arm. He indicated that a magnetic resonance imaging (MRI) scan dated January 18, 2014 had shown disc osteophyte complex at C3-7. Dr. Walia

³ There is a hospital form report that is difficult to read and provides an illegible signature.

provided results on examination and diagnosed cervical herniated nucleus pulposus (HNP) and cervical radiculopathy.

By decision dated November 3, 2014, a hearing representative⁴ affirmed the February 11, 2014 decision. The hearing representative found the medical evidence was insufficient to establish the claim for compensation.

Appellant, through counsel, requested reconsideration on April 9, 2015. Counsel noted that the November 3, 2014 decision was issued by a different hearing representative. As to the medical evidence, appellant submitted a March 1, 2015 report from Dr. Walia, who reviewed appellant's treatment and the diagnostic studies. Dr. Walia diagnosed cervical HNP, cervical radiculopathy, myalgia, and myositis. He opined that "the causality of neck pain radiating down the left arm involving the left first and second digits is established to the motor vehicle accident" of December 14, 2013, noting that appellant denied having prior symptoms. Dr. Walia further opined:

"The acceleration and deceleration forces suffered by the neck and spine at the time of the impact led to the development of pain secondary to trauma to the soft tissue as well as spine. As documented, [appellant] suffered from myofascial pain, cervical facet joint[-]related pain, and cervical radicular pain secondary to cervical spine disc pathology. Even though MRI of the cervical spine completed on [January 18, 2014] revealed multilevel loss of normal disc height, [appellant] had not sought medical opinion and care for neck and left upper extremity symptoms until after the motor vehicle accident of review."

Dr. Walia indicated that appellant's injuries were fixed and permanent, with periodic pain and discomfort, limitations, and restrictions of the cervical region. He noted that appellant's condition would worsen with age, and future medical treatment may include physical therapy and possible surgery.

By decision dated April 17, 2015, OWCP reviewed the merits and denied modification. It found the medical evidence was not sufficiently rationalized to establish the claim.

On August 18, 2015 appellant, through counsel, requested reconsideration. He submitted a May 29, 2015 report from Dr. Casey Lee, a Board-certified orthopedic surgeon. Dr. Lee provided a history of a December 14, 2013 motor vehicle accident where appellant was rear-ended and there was a whiplash-type movement of the back and neck. He provided results on examination and diagnosed cervical spondylosis with left-side radiculopathy. In a note dated June 9, 2015, Dr. Lee reported that December 15, 2013 x-rays showed no significant abnormality of the cervical spine except flattened cervical lordosis. He also indicated that a cervical spine MRI scan dated January 18, 2014 showed mild degenerative changes.

⁴ The decision indicated the hearing representative who presided over the September 12, 2014 hearing was no longer with the Branch of Hearings and Review, and the decision was written by another hearing representative.

In a decision dated November 16, 2015, OWCP reviewed the case on its merits and denied modification. It found the medical evidence was insufficient to establish the claim for compensation.

Appellant, through counsel, again requested reconsideration on February 12, 2016. He submitted a February 2, 2016 report from Dr. Lee. Dr. Lee opined, “this patient’s symptoms of neck pain and radicular symptoms to his arm are causally related to the accident of December 14, 2013. This patient has degenerative changes of the disc at C5-6 with bilateral neuroforaminal narrowing and moderate central canal narrowing. It is probable that this patient had some degenerative changes of the cervical spine prior to the accident, but the patient’s current symptoms are precipitated and aggravated by the accident.”

By decision dated April 26, 2016, OWCP reviewed the merits and denied modification. It found the medical evidence was not sufficient to establish the claim for compensation.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish that he or she sustained an injury while in the performance of duty.⁵ In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether “fact of injury” has been established. Generally “fact of injury” consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.⁶

Rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background, of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician’s opinion.⁷

ANALYSIS

In the present case, appellant filed a traumatic injury claim alleging that he sustained injuries in a December 14, 2013 motor vehicle accident. He alleged that he was rear-ended by another vehicle while in the performance of duty OWCP has accepted that the incident occurred as alleged.

The issue is whether the medical evidence is sufficient to establish an injury causally related to the December 14, 2013 motor vehicle accident. The Board has reviewed the medical

⁵ *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

⁶ *See John J. Carlone*, 41 ECAB 354, 357 (1989).

⁷ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

evidence and finds it is sufficient to require further development. Appellant received emergency room medical treatment on December 14, 2013. Dr. Dickerson treated appellant on January 7, 2014 and reported a history of the motor vehicle accident and diagnosed a brachial neuritis and cervical disc degeneration. In a February 17, 2014 report, Dr. Coccaro provided a history of the December 14, 2013 accident and diagnosed cervical radiculitis, displaced cervical disc without myelopathy, and cervical spinal stenosis.

Appellant received treatment from Dr. Walia as of March 11, 2014. In a March 1, 2015 report, Dr. Walia provided a history of treatment and opined that appellant had sustained cervical injuries with radiculopathy from the December 14, 2013 motor vehicle accident, noting acceleration and deceleration forces to the neck and spine. In a May 29, 2015 report, Dr. Lee noted a whiplash-type movement occurred with the December 14, 2013 accident and he diagnosed cervical spondylosis with left-side radiculopathy. In his February 2, 2016 report, Dr. Lee opined that the motor vehicle accident had aggravated the cervical degenerative condition.

The medical record provides sufficient evidence supporting a cervical injury resulting from the December 14, 2013 motor vehicle accident to require OWCP to further develop the medical evidence on the issue of a diagnosed condition causally related to the employment incident.⁸ Although appellant has the burden of proof to establish the essential elements of his claim, OWCP shares responsibility in the development of the evidence.⁹ On remand OWCP should further develop the medical evidence as necessary on the issue of causal relationship. After such further development as it deems appropriate, OWCP should issue a *de novo* decision with respect to appellant's claim.

CONCLUSION

The Board finds the case is not in posture for decision and is remanded to OWCP for further development of the medical evidence.

⁸ See *J.S.*, Docket No. 15-0282 (issued March 23, 2015) (medical evidence supporting an injury from a motor vehicle accident sufficient to require further development); *B.G.*, Docket No. 12-1944 (issued April 9, 2013) (uncontroverted evidence supported causal relationship between motor vehicle accident and spinal conditions required further development of the evidence).

⁹ See *Udella Billups*, 41 ECAB 260, 269 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 26, 2016 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: December 27, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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