United States Department of Labor
Employees' Compensation Appeals Board

D.E., Appellant	)	
and	)	**Docket No. 16-0516**
	)	**Issued: June 24, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Albany, NY, Employer	)	

Appearances:
David W. Covino, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 27, 2016 appellant, through counsel, filed a timely appeal from a November 2, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish a cervical condition causally related to an accepted January 10, 2014 employment incident.

FACTUAL HISTORY

On January 10, 2014 appellant, a 52-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging an injury on that day as a result of slipping on snow-covered ice while crossing a lawn. He stated that he felt extreme pain on the left side of his body, including

[1] 5 U.S.C. § 8101 *et seq.*

numbness, and tingling in the left arm traveling into the left leg. An accident report from the employing establishment indicated that appellant was crossing a lawn on January 10, 2014 when he slipped on snow-covered ice and caught himself prior to falling to the ground, injuring his left arm. Appellant stopped work on January 11, 2014.

In a January 10, 2014 duty status report (Form CA-17), a physician assistant diagnosed pain and paresthesias in the left upper and lower extremities and advised that appellant was not allowed to participate in work-related activity until after his next visit on January 29, 2014.

By letter dated February 14, 2014, OWCP indicated that when appellant's claim was received it had been administratively approved as it appeared to be a minor injury resulting in minimal or no lost time from work and the employing establishment had not controverted continuation of pay (COP) or challenged the claim.[2] It stated that it had reopened the claim because appellant had not returned to full-time work. OWCP requested that he submit medical evidence from a physician addressing causal relationship.

In response, appellant submitted a January 10, 2014 report from a physician assistant who diagnosed low back, neck, and limb pain, and paresthesia. He found appellant status post L5-S1 injury on March 9, 2012 and was doing well until he slipped while at work that day. The physician assistant stated that appellant did not fall down, but instantly felt paresthesias in his neck, left upper extremity, and right lower extremity.

A January 27, 2014 magnetic resonance imaging (MRI) scan of the cervical spine showed multilevel degenerative disc disease, uncovertebral and facet arthropathy, most pronounced at C5-6 with moderate-to-severe central spinal canal stenosis and severe bilateral neuroforaminal narrowing (left greater than right). No abnormal cervical spinal cord signal was seen.

On January 29, 2014 Dr. Ross Moquin, a Board certified neurosurgeon, diagnosed cervical stenosis and disc displacement with myelopathy. He found tenderness at the cervical and lumbar spine and severely reduced range of motion. Dr. Moquin asserted that appellant was status post lumbar decompression and fusion surgery and had increased pain in his neck, back, and left arm after a fall on January 10, 2014 in the course of his federal duties. Appellant was not symptomatic prior to the employment incident. Dr. Moquin opined that appellant's cervical conditions were undoubtedly related to the work-related incident and recommended surgery.

By decision dated March 21, 2014, OWCP denied appellant's claim because the medical evidence was insufficient to establish causal relationship between his diagnosed conditions and the accepted January 10, 2014 employment incident.

On April 21, 2014 appellant requested an oral hearing before the Branch of Hearings and Review. He submitted a March 9, 2012 operative report from Dr. Moquin who performed an L5-S1 lumbar interbody fusion.

[2] On February 10, 2014 the employing establishment advised appellant that the last day of his COP was February 24, 2014 and enclosed a (Form CA-7) to claim compensation for loss of wages beyond the COP period, noting that OWCP would not pay compensation until it had accepted his claim. Appellant subsequently submitted two claims for wage-loss compensation, Form CA-7, for the period February 22 to March 7, 2014 and March 8 to 21, 2014.

In an April 18, 2014 report, Dr. Moquin diagnosed cervical spondylytic myelopathy and opined that it occurred and was made worse by factors of appellant's federal employment, including repetitive actions of carrying mail. He found objective evidence of compression on the spinal cord with cord signal changes consistent with a spinal cord injury, particularly marked T2 signal changes found on an MRI scan. Dr. Moquin explained that appellant's myelopathy was evident in his weakness, atrophy, and hyperreflexia. Appellant had a preoperative visit on June 3, 2014. On June 12, 2014 Dr. Moquin performed a C3-7 anterior arthrodesis.

On November 2, 2014 Dr. Moquin reviewed appellant's medical records and asserted that on January 10, 2014 appellant slipped on ice and felt an immediate onset of cervical pain and radiating left arm pain and numbness. He reviewed the January 27, 2014 MRI scan of the cervical spine, which demonstrated significant spinal stenosis with spinal cord compression at multiple levels. Dr. Moquin opined that this level of stenosis was at a critical degree causing myelopathy and his January 29, 2014 examination revealed severe cervical pain radiating into the arms. He had treated appellant for a previous lumbar injury and he did not have any of these signs, symptoms, or complaints before the January 10, 2014 slip and fall. Dr. Moquin opined that appellant had preexisting spinal stenosis from degenerative changes, but this spinal stenosis was asymptomatic and not disabling prior to his January 10, 2014 slip and fall at work. He concluded that appellant's spinal stenosis was severely aggravated and became symptomatic and disabling as a result of the slip and fall. Dr. Moquin explained that spinal stenosis occurs as we age when degenerative changes such as bone spurs cause a narrowing of the spinal canal. This condition is typically asymptomatic until trauma or further degeneration narrows the spinal canal until the spinal cord, which runs through the spinal canal, is compressed. When the spinal cord is compressed, it becomes symptomatic.

Dr. Moquin opined that, because appellant had an onset of severe neck and radiating arm pain immediately after the January 10, 2014 incident, his preexisting spinal stenosis became symptomatic and caused spinal cord compression because of the slip and fall. He further opined that the January 27, 2014 MRI scan supported his opinion that appellant aggravated or activated preexisting spinal stenosis because it documented for the first time the spinal cord compression at multiple cervical levels. Dr. Moquin asserted that his examinations of appellant shortly after the incident revealed significant triceps and biceps weakness, which were objective signs of spinal cord compression. He stated that it was important to note that appellant did not have any history of cervical injury, pain, or disability before his January 10, 2014 slip and fall on ice. Dr. Moquin asserted that this was strong evidence that the slip on ice caused the spinal cord compression documented on the cervical MRI scan, which was performed only 17 days after the injury without any intervening trauma. He noted that spinal cord compression was a medical emergency and, unless the cord was promptly decompressed paralysis could result. Dr. Moquin performed cervical surgery on June 12, 2014 to treat appellant's injury. He opined that appellant was not capable of performing his regular duties and could perform some limited sedentary or light-duty work if available.

A telephonic hearing was held before an OWCP hearing representative on November 12, 2014. Appellant's counsel submitted a December 13, 2014 brief contending that appellant's preexisting spinal stenosis condition was a compensable injury if it was aggravated, activated, accelerated, or precipitated by his job duties. Counsel argued that Dr. Moquin's opinion was rationalized and established causal relationship. On December 5, 2014 the

employing establishment forwarded to OWCP a letter after receiving the hearing transcript arguing that the claim should be denied.

By decision dated January 29, 2015, the hearing representative affirmed the prior decision.

On July 20, 2015 appellant's counsel requested reconsideration. Appellant submitted CA-17 forms dated March 18, April 29, and June 9, 2015 from Dr. Moquin.

In a March 18, 2015 report, Dr. Moquin diagnosed neck pain, herniated cervical disc with myelopathy, muscle weakness, and numbness. He found that appellant had bilateral/lateral neck, bilateral/posterior neck, left shoulder, and left arm pain. Aggravating factors included bending, exertion, flexion, pushing, rotation, stress, turning head, walking, and working. Associated symptoms included decreased mobility, difficulty sleeping, numbness, tingling, and weakness. Dr. Moquin opined that appellant had reached a plateau in his recovery and was not capable of returning to his regular duties. He did not recommend any further surgery.

On April 29, 2015 Dr. Moquin reiterated that appellant was clearly not myelopathic before the injury, but then became myelopathic afterwards and had no significant issues prior to this slip and fall in the course of his duties. He further opined that appellant was not doing well because there was a delay to get the surgery authorized. In a June 9, 2015 progress report, Dr. Moquin found that appellant was feeling somewhat better, but continued to have significant issues with neck, arm, and leg pain, and was not able to return to work.

On June 18, 2015 Dr. Moquin clarified that what he meant by a "slip and fall" was that appellant actually fell, but was able to catch himself before his torso hit the ground. He explained that, when the neck is forcefully hyperflexed, the spinal cord will quickly rub across the anterior vertebrae in the spinal canal. Dr. Moquin noted that in patients such as appellant, with preexisting spinal stenosis narrowed by osteophytes (or bone spurs) in the spinal canal, when the neck is forcefully hyperflexed the spinal cord is pinched or squeezed between the anterior bone spurs, which he likened to a very rough washboard, and the posterior ligamentum flavum. This typically causes edema (swelling), hemorrhage (bleeding), or ischemia of the central portion of the spinal cord in patients with the spinal canal bone spurs, which Dr. Moquin opined that the slip at work was the mechanism of appellant's cervical spinal cord compression. He reported that appellant consistently stated and demonstrated that he forcefully hyperflexed his neck in the slip and fall and immediately developed extensive radiating pain and motor weakness in his arms and lesser symptoms in his legs. Dr. Moquin asserted that this was convincing proof that appellant's slip and fall caused the cervical cord compression, not because his torso hit the ground, but because of the forceful hyperflexion of the neck during the slip (with or without a fall). He noted that males over 50-years-old who had preexisting spinal stenosis were most at risk for this type of injury and appellant fit into that category. Dr. Moquin also explained that appellant's carrying a mailbag for many years was a likely cause of the preexisting spinal stenosis.

By decision dated November 2, 2015, OWCP denied modification of its prior 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 timely filed within the applicable time limitation period of FECA, that an injury[3] was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[4]

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. A fact of injury determination is based on two elements. 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 sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her condition relates to the employment incident.[5]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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.[6]

ANALYSIS

On appeal, appellant's counsel argues that the medical evidence of record is sufficient to establish causal relationship, specifically noting the opinion of Dr. Moquin who defined a "fall" as going from a higher place to a lower place without the necessity of striking one's torso on the ground. Counsel contends that nowhere in the record did appellant state that his torso struck the ground when he slipped and fell on January 10, 2014.

On his claim form, appellant alleged that he sustained an injury on January 10, 2014 as a result of slipping on snow-covered ice while crossing a lawn. An accident report from the employing establishment confirmed that he was crossing a lawn on January 10, 2014 when he slipped on snow-covered ice and caught himself prior to falling to the ground. The Board finds

[3] OWCP regulations 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. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

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

[5] *Id.*

[6] *Id.*

that while the record establishes a consistent factual history of the injury, *i.e.* appellant slipped on ice on January 10, 2014 and caught himself before hitting the ground, he did not meet his burden of proof to establish a causal relationship between the conditions for which compensation is claimed and the employment incident.

In his reports, Dr. Moquin diagnosed cervical stenosis, disc displacement with myelopathy, and cervical spondylytic myelopathy and performed cervical spine surgery on June 12, 2014. He opined that appellant had preexisting spinal stenosis from degenerative changes and his condition became symptomatic and caused spinal cord compression because of the slip and fall. Dr. Moquin further opined that the January 27, 2014 MRI scan supported his opinion that appellant aggravated and activated preexisting spinal stenosis because it documented for the first time the spinal cord compression at multiple cervical levels. He asserted that his examinations of appellant shortly after the incident revealed significant triceps and biceps weakness, which were objective signs of spinal cord compression. Dr. Moquin stated that it was important to note that appellant did not have any history of cervical injury, pain, or disability prior to his January 10, 2014 slip and fall on ice. He asserted that this was strong evidence that the slip on ice caused the spinal cord compression documented on the cervical MRI scan, which was performed only 17 days after the date of injury without any intervening trauma. On June 18, 2015 Dr. Moquin clarified that what he meant by a "slip and fall" was that appellant actually fell, but was able to catch himself before his torso hit the ground. He explained that when the neck is forcefully hyperflexed in patients such as appellant who have preexisting spinal stenosis, the spinal cord is pinched or squeezed between anterior bone spurs and the posterior ligamentum flavum. Dr. Moquin opined that appellant's slip and fall caused the cervical cord compression, not because his torso hit the ground, but because of the forceful hyperflexion of the neck during the slip (with or without a fall).

The Board finds that Dr. Moquin failed to provide sufficient medical rationale explaining how slipping and falling on January 10, 2014 caused appellant's cervical conditions. Dr. Moquin indicated that his conditions occurred at work, but such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how his physical activity at work actually caused or aggravated the diagnosed conditions.[7] The Board finds that he failed to sufficiently explain the mechanism of how slipping and catching himself before falling to the ground caused a hyperflexion of appellant's neck. Dr. Moquin's opinion was based, in part, on temporal correlation. However, the Board has held that neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[8] Dr. Moquin did not otherwise sufficiently explain the reasons how diagnostic testing and examination findings led him to conclude that the January 10, 2014 incident at work caused or contributed to the diagnosed conditions. Thus, the Board finds that the reports from him are insufficient to establish that appellant sustained an employment-related injury.

[7] *See K.W.*, Docket No. 10-98 (issued September 10, 2010).

[8] *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

Appellant also submitted evidence from a physician assistant. These documents do not constitute competent medical evidence because a physician assistant is not a "physician" as defined under FECA.[9] As such, this evidence is also insufficient to meet his burden of proof.

Other medical evidence of record, including diagnostic test reports such as the January 27, 2014 MRI scan of the cervical spine, is of limited probative value and insufficient to establish the claim as it does not specifically address whether appellant's diagnosed conditions are causally related to the January 10, 2014 work incident.[10]

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 has not met his burden of proof to establish a cervical condition causally related to a January 10, 2014 employment incident.

[9] 5 U.S.C. § 8101(2); *Sean O'Connell*, 56 ECAB 195 (2004) (reports by nurse practitioners and physician assistants are not considered medical evidence as these persons are not considered physicians under FECA). *See also Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

[10] *See K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Linda I. Sprague*, 48 ECAB 386 (1997) (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).

ORDER

IT IS HEREBY ORDERED THAT the November 2, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 24, 2016
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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