

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

E.L., Appellant)	
)	
and)	
)	
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION MASSACHUSETTS PORT AUTHORITY, East Boston, MA, Employer)	Docket No. 16-0635 Issued: November 7, 2016
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)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On February 18, 2016 appellant, through counsel, filed a timely appeal of a December 18, 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 to consider the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish a traumatic injury on August 14, 2012 causally related to the accepted 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 the decision is contrary to law and fact.

FACTUAL HISTORY

This case has previously been before the Board.

On August 15, 2012 appellant, then a 59-year transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that on August 14, 2012 he sustained a chest hernia and experienced pain in his lower back, radiating up to his neck when he attempted to grab a beer keg that had fallen off a cart at work. OWCP accepted that the August 14, 2012 incident occurred as alleged, but by decision dated May 13, 2013 denied the claim as it found that the medical evidence of record was insufficient to establish a back condition causally related to the August 14, 2012 incident.

By decision dated July 16, 2014, the Board affirmed OWCP decisions dated November 27, 2013 and January 19, 2014.³ The Board found that appellant failed to submit rationalized medical opinion evidence addressing whether the diagnosed conditions, work restrictions, and disability were caused by the August 14, 2012 employment incident. The facts and circumstances as referred to in the prior Board decisions are incorporated herein by reference.⁴

By letter dated December 10, 2014, appellant, through counsel, requested reconsideration and submitted the additional medical evidence including medical reports from Dr. Polly D. Fraga, an attending Board-certified internist.

In an October 19, 2010 report, Gail Spellman, nurse practitioner, diagnosed low back pain due to the lifting of a heavy object. Appellant was lifting a heavy suitcase off the counter for a routine bag search when he twisted his back and felt a sharp pain. Ms. Spellman released appellant to return to work with restrictions of no lifting more than 15 pounds.

In a November 6, 2014 report, signed by Ms. Spellman and cosigned by Dr. Fraga, it was noted that appellant was seen on October 19, 2010 for low back spasms and pain. The report listed a history that in the prior week, appellant had twisted his back while lifting a heavy suitcase for a routine bag check. Appellant continued to work despite pain and back spasms. He was unable to get out of bed a couple days later.

An incomplete form report regarding causal relationship signed by Ms. Spellman on November 6, 2014 and cosigned by Dr. Fraga on November 13, 2014 concluded that appellant's condition was causally related to the employment incident.

³ Docket No. 14-0676 (issued July 16, 2014).

⁴ The record also indicates that appellant had filed three previous traumatic injury claims. At a hearing held on September 9, 2013 before an OWCP hearing representative, appellant testified that he sustained a back injury in October 2010, which caused intermittent days of disability. It appears that the claim was accepted by OWCP.

Appellant also submitted an unsigned and undated⁵ report diagnosing lower back pain, lumbar neuritis, and lumbar dysfunction. He also submitted findings from a physical examination and review of a November 4, 2012 magnetic resonance imaging (MRI) scan.

In a January 30, 2014 nonmerit decision, OWCP found that the medical evidence appellant submitted failed to address whether appellant sustained a back injury causally related to the August 14, 2012 employment incident and was insufficient to warrant a merit review.

Following the Board's July 16, 2014 decision, by letter dated June 19, 2015, appellant, through counsel, requested reconsideration and submitted an April 6, 2015 report from Dr. Fraga. Dr. Fraga reported that appellant sustained two separate work injuries with the first occurring on October 10, 2010 and the second occurring on August 14, 2012. She opined that both work injuries contributed to his disability, physical and objective evidence findings, and medical conditions. Dr. Fraga provided appellant's medical treatment history including treatment and a March 2013 surgery by a neurosurgeon. Physical examination findings were listed from when she first saw appellant on October 19, 2010 up to April 2015, when he was seen for his annual physical examination. A review of an October 2014 (MRI) scan revealed mild acromioclavicular osteoarthritis, some subdeltoid/subacromial bursitis, mild bicipital tendon tenosynovium and rotator cuff tendinopathy with partial supraspinatus/subscapularis thickness tears, and infraspinatus fraying. Dr. Fraga opined that the progression of changes shown on the MRI scans are "consistent with long-term sequela from the initial" October 2010 injury. She related that the findings from an October 2014 MRI scan of appellant's left shoulder were consistent with the August 2012 work incident. Dr. Fraga reported that due to appellant's back pain, he needed to have frequent position changes, could not lift more than five pounds, and was unable to sit or stand for more than 15 minutes. She opined that these findings were consistent with the type of injury sustained in August 2012. Dr. Fraga opined that the August 2012 employment incident either directly or proximately caused appellant's lower back, cervical spine, and shoulder injuries. She concluded that appellant's L3-4, L4-5 disc bulging and foraminal narrowing, L5-S1 arthropathy which were consistent with the 2010 injury while the partial rotator cuff tears were consistent with the August 2012 incident. Dr. Fraga concluded that there might be other causes for appellant's medical condition, but the primary causes were the work accidents and activities described in her report.

By decision dated December 18, 2015, OWCP denied modification. It found that Dr. Fraga's April 6, 2015 report was repetitive of appellant's neurosurgeon's reports and her prior medical notes, and was insufficiently rationalized to establish that appellant sustained a back injury causally related to the accepted August 14, 2012 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ 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

⁵ There is a fax date of November 14, 2014 noted on the report.

⁶ 5 U.S.C. § 8101 *et seq.*

disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁷ 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.⁸

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.⁹ First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.¹⁰ 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.¹¹

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹² 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.¹³ 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.¹⁴

ANALYSIS

OWCP accepted that the August 14, 2012 employment incident occurred as alleged. The issue is whether appellant established that the incident caused a back, neck, and hernia conditions. By decision dated July 16, 2015, the Board affirmed OWCP's denial of appellant's claim. The Board's review of the previous medical evidence of record is *res judicata*.¹⁵

Following the Board's last decision, which affirmed the denial of the claim, appellant submitted to OWCP a December 10, 2014 request for reconsideration accompanied by medical evidence. OWCP denied reconsideration by decision dated January 30, 2015 as it found the

⁷ C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁸ S.P., 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁹ B.F., Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 7.

¹⁰ D.B., 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

¹¹ C.B., Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 7.

¹² Y.J., Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

¹³ J.J., Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006)

¹⁴ I.J., 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁵ See *R.L.*, Docket No. 15-1010 (issued July 21, 2015). See also *A.P.*, Docket No. 14-1228 (issued October 15, 2014).

medical evidence submitted was repetitive and insufficient to warrant a merit review. By letter dated June 19, 2014, appellant requested reconsideration and submitted additional evidence in support of his request. In a December 18, 2015 decision, OWCP denied modification as it found on merit review the medical evidence of record insufficiently rationalized to establish that appellant sustained an injury causally related to the August 14, 2012 employment incident.

The issue on appeal is whether appellant established that he sustained an injury as a result of the August 14, 2012 employment incident. The Board finds that he has failed to submit sufficient medical evidence to supporting that he sustained an injury causally related to the August 14, 2012 employment incident.¹⁶

Dr. Fraga's April 6, 2015 report found that both the October 10, 2010 work-related injury and the August 14, 2012 employment incident contributed to appellant's disability and neck, lower back, and shoulder injuries. She provided a summary of medical treatment provided including treatment provided by appellant's neurosurgeon from October 2010 to the present. While Dr. Fraga opined that the August 14, 2012 employment incident also contributed to appellant's neck, lower back, and shoulder injuries, she failed to provide a rationalized opinion explaining how the August 14, 2012 employment incident caused or aggravated the diagnosed neck, lower back, and shoulder conditions. Dr. Fraga generally opined that the August 14, 2012 incident was a proximate or direct cause of his medical conditions. This general statement fails to provide a sufficient explanation as to the mechanism of injury pertaining to this traumatic injury claim, namely, how attempting to grab a beer keg that had fallen off a cart at work would cause or aggravate appellant's neck, lower back, and shoulder conditions.¹⁷ Without explaining physiologically how the movements involved in the employment incident caused or contributed to the diagnosed conditions, Dr. Fraga's opinion that attempting to grab a beer keg was a direct or proximate cause of appellant's injuries is equivocal in nature and of limited probative value.¹⁸

The remaining medical evidence is also insufficient to support appellant's claim. The undated and unsigned report diagnosing lower back pain, lumbar neuritis, and lumbar dysfunction is of no probative value. Reports that are unsigned or bear illegible signature and lack proper identification cannot be considered probative medical evidence.¹⁹ Additionally, the October 19, 2010 report signed by Ms. Spellman, a nurse practitioner, has no probative value as a nurse practitioner is not a physician as defined under FECA.²⁰

The November 6, 2014 report signed by Ms. Spellman and cosigned by Dr. Fraga, and an incomplete form report regarding causal relationship signed by Ms. Spellman on November 6, 2014 and cosigned by Dr. Fraga on November 13, 2014 are insufficient to support appellant's claim as neither report addressed whether appellant's disability, work restrictions, and diagnosed

¹⁶ See *Robert Broome*, 55 ECAB 339 (2004).

¹⁷ *S.W.*, Docket 08-2538 (issued May 21, 2009); *Robert Broome*, *supra* note 16.

¹⁸ See *L.M.*, Docket No. 14-973 (issued August 25, 2014); *R.G.*, Docket No. 14-113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-548 (issued November 16, 2012).

¹⁹ *R.M.*, 59 ECAB 690 (2008); *D.D.*, 57 ECAB 734 (2006); *Richard J. Charot*, 43 ECAB 357 (1991).

²⁰ *L.D.*, 59 ECAB 648 (2008); *Paul Foster*, 56 ECAB 208 (2004).

conditions were caused or aggravated by the August 14, 2012 employment incident.²¹ Thus, the reports from Dr. Fraga and Ms. Spellman are insufficient to establish appellant's claim.

On appeal counsel contends that OWCP's decision was contrary to fact and law. Based on the findings and reasons stated above, the Board finds that counsel's arguments are not substantiated.

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 that he sustained an injury on August 14, 2012 causally related to the accepted employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 18, 2015 is affirmed.

Issued: November 7, 2016
Washington, DC

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

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

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

²¹ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, *supra* note 12; *Jaja K. Asaramo*, 55 ECAB 200 (2004).