

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

C.A., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Lovington, NM, Employer)

**Docket No. 16-0492
Issued: October 12, 2016**

Appearances:

*Alan J. Shapiro, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 20, 2016 appellant, through counsel, filed a timely appeal of an August 21, 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(e), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained a low back injury on January 11, 2013, 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.*

FACTUAL HISTORY

This case has previously been before the Board.³ The facts of the case as previously presented in the prior Board decision are incorporated herein by reference.

On January 11, 2013 appellant, then a 26-year-old mail carrier, filed a traumatic injury claim (Form CA-1), alleging that he injured his left leg and lower back while stepping out of a mail vehicle. His supervisor did not indicate on the claim form that appellant had stopped work.

In a January 14, 2013 report, received by OWCP on March 14, 2013, Dr. Amar Bains, a specialist in family medicine, noted that appellant pulled a muscle at work when he stepped out of his truck, set his foot on the ground the wrong way, and felt a sudden, sharp pain in his left lower lumbar region that radiated down his left leg. He reported that appellant's low back pain caused him difficulty weight-bearing and walking. Dr. Bains performed an x-ray examination and recommended that appellant undergo a magnetic resonance imaging (MRI) scan. He diagnosed sciatica and radiculitis.

In a February 7, 2013 report, received by OWCP on March 14, 2013, Dr. Bains noted that appellant underwent a lumbar MRI scan which revealed a left paracentral L5-S1 disc herniation, compressing the left SI nerve root and causing a slight indentation on the thecal sac. The MRI scan also showed a plus facet arthrosis, resulting in minimal foraminal encroachment, with a small left paracentral L4-5 disc herniation which slightly impresses the thecal sac. Dr. Bains opined that this was a work-related injury and diagnosed sciatica, radiculitis, and multiple disc herniations.

By decision dated April 12, 2013, OWCP denied appellant's claim, finding that he failed to submit sufficient medical evidence in support of his claim that he sustained left leg and lower back injuries causally related to the accepted January 11, 2013 employment incident.

On August 12, 2013 appellant requested reconsideration of the April 12, 2013 decision.

In a July 10, 2013 report, received by OWCP on August 12, 2013, Dr. Jeffrey Nees, a specialist in neurosurgery, noted that he had been treating appellant for low back pain since June 3, 2013. He indicated that appellant sustained a work injury in January 2013 when he stepped out of his mail truck, planted his foot, and experienced pain in the left side of his back, which radiated down his left leg. Dr. Nees performed a left L5-S1 discectomy and opined that the injury to appellant's back was directly related to his work and happened on the job and that the care rendered for this injury, culminating in surgery, was a direct result of this work-related injury. In a September 6, 2013 addendum to the July 10, 2013 report, he diagnosed displacement of lumbar intervertebral disc without myelopathy, spinal stenosis in the cervical region, and displacement of cervical intervertebral disc without myelopathy. Dr. Nees opined that appellant's injury was the direct and proximate cause of his diagnosed neck and back conditions.

By decision dated December 4, 2013, OWCP denied modification of the April 12, 2013 decision.

³ Docket No. 14-1123 (issued August 21, 2014).

On February 3, 2014 counsel requested reconsideration of the April 12, 2013 decision. Appellant resubmitted Dr. Bains' January 14, 2013 report, with diagnostic test results.

By decision dated February 25, 2014, OWCP denied modification of the April 12, 2013 decision.

Appellant appealed to the Board on April 14, 2014. By decision dated August 21, 2014,⁴ the Board affirmed OWCP's December 4, 2013 and February 25, 2014 decisions.

By letter dated May 11, 2015, counsel requested reconsideration on May 11, 2015.

In a February 17, 2015 report, Dr. Nees essentially reiterated his previous findings and conclusions.

By decision dated May 18, 2015, OWCP denied appellant's request for reconsideration as it neither raised substantive legal questions, nor included relevant and pertinent new evidence sufficient to require OWCP to review its prior decision. It found that Dr. Nees' February 17, 2015 report was cumulative and duplicative of his previously submitted July 10, 2013 report.

By letter dated August 14, 2015, counsel requested reconsideration on August 14, 2015.

In an undated report, received by OWCP on August 17, 2015, Dr. Nees opined that there was clear evidence of a cause and effect relationship between appellant's stepping down from his mail truck and the onset of his back and left leg pain. He reasoned that the force of appellant's body weight coming down on his leg transmitted sufficient force to his L5-S1 disc that some of the interior disc material was forced out through the annulus fibrosus, resulting in his nerve impingement and subsequent pain. Dr. Nees advised that appellant did not have back problems prior to the January 11, 2013 work incident. He opined that appellant suffered a left L5-S1 disc herniation stepping down out of his mail truck on January 11, 2013.

By decision dated August 21, 2015, OWCP denied modification. It found that while Dr. Nees explained in his August 13, 2015 report the physiological changes that occurred in disc herniation/impingement, he did not explain the etiology as to how the employment event caused the diagnosed condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish that 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 was sustained 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.⁶ These are the essential elements of each and every

⁴ *Id.*

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

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. 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.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 The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.¹⁰

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.¹¹

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant’s condition became apparent during a period of employment nor the belief that his condition was caused, precipitated, or aggravated by his employment is sufficient to establish causal relationship.¹² Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS

Appellant initially submitted July 10 and September 6, 2013 reports from Dr. Nees in which he noted appellant’s history of injury, provided diagnoses of appellant’s lumbar conditions, and concluded that appellant’s conditions were caused by the employment incident. These reports, however, only offered a conclusion regarding causal relationship, without supporting medical rationale.¹³

⁷ *Victor J. Woodhams, id.*

⁸ *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *Id.* For a definition of the term “injury,” see 20 C.F.R. § 10.5(a)(14).

¹⁰ *Supra* note 8.

¹¹ *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

¹² *Id.*

¹³ *See R.S.*, Docket No. 15-1364 (issued February 22, 2016). The Board has held that medical evidence consisting solely of conclusory statements without supporting rationale is of little probative value.

OWCP thereafter received an August 13, 2015 report from Dr. Nees which did provide necessary medical rationale explaining causal relationship. Dr. Nees opined that appellant suffered a left L5-S1 disc herniation stepping down out of his mail truck on January 11, 2013. He advised that there was clear evidence of a cause and effect relationship between appellant's stepping down from his mail truck and the onset of his back and left leg pain. Dr. Nees asserted that the force of his body weight coming down on his leg transmitted sufficient force to his L5-S1 disc that some of the interior disc material was forced out through the annulus fibroses, resulting in his nerve impingement and subsequent pain. His report, therefore, related a medical explanation as to how the January 11, 2013 employment incident could have resulted in an injury to appellant's back and left leg. The report from Dr. Nees was based on a proper factual and medical background, and provided a medical explanation explaining the nature of the relationship between the diagnosed condition and the employment incident.¹⁴

The Board finds that Dr. Nees' report, while not fully rationalized, is sufficient, given the absence of any opposing medical evidence, to require further development of the record.¹⁵ It is well established that proceedings under FECA¹⁶ are not adversarial in nature.¹⁷ The case will be remanded to OWCP for such further development of the case record as OWCP deems necessary followed by the issuance of a *de novo* decision.¹⁸

CONCLUSION

The Board finds that this case is not in posture for decision.

¹⁴ *Supra* note 8.

¹⁵ *See Earnest J. Reece, Jr.*, 32 ECAB 1508, 1510 (1981).

¹⁶ 5 U.S.C. § 8101 *et seq.*

¹⁷ *See, e.g., Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769, 770-71 (1956).

¹⁸ *See John J. Carlone, supra* note 8.

ORDER

IT IS HEREBY ORDERED THAT the August 21, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for proceedings consistent with this decision of the Board.

Issued: October 12, 2016
Washington, DC

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

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

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