United States Department of Labor
Employees' Compensation Appeals Board

L.G., Appellant	)	
and	)	**Docket No. 16-1065**
	)	**Issued: October 13, 2016**
DEPARTMENT OF HOMELAND SECURITY, LONG ISLAND MACARTHUR AIRPORT, Ronkonkoma, NY, Employer	)	

Appearances:
Thomas S. Harkins, Esq., for the appellant[1]
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 April 26, 2016 appellant, through counsel, filed a timely appeal of a February 26, 2016 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 her burden of proof to establish a traumatic injury causally related to a December 24, 2014 employment incident.

FACTUAL HISTORY

On December 31, 2014 appellant, then a 57-year-old supervisory transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that on December 24, 2014 she was working with checked baggage and caught a bag that was rolling off of a "CT-80" machine, injuring her neck, right shoulder, and right arm. The employing establishment checked the box marked "yes" in response to whether appellant was injured in the performance of duty and in response to whether the knowledge of the facts about the injury agreed with the statements of the employee. Appellant stopped work on December 28, 2014.

On December 31, 2014 the employing establishment completed an authorization for examination or treatment (Form CA-16) for a period of 60 days.

In January 5 and 12, 2015 reports, Dr. Ronald Fagan, a Board-certified internist, advised that the date of injury was December 24, 2014 and occurred while appellant was working in checked baggage, loading baggage onto the belt. He indicated that she pulled her back and right arm catching a piece of luggage at work and diagnosed cervical lordosis, cervical degenerative disc disease, cervical muscle spasm, lumbar sacral spasm and strain and radiculopathy of the right leg. OWCP received doctor's progress reports on State of New York Workers' Compensation Board Forms C-4.2 dated January 12 and 30, 2015 from Dr. Fagan who diagnosed L5 and C-S spondylosis and exacerbation of degenerative disc disease.

In a January 5, 2015 treatment note, Dr. Stuart Horowitz, an osteopath, Board-certified in family medicine, advised that appellant was under treatment for workers' compensation which prevented a return to work. In a January 12, 2015 disability certificate and a physician work capacity statement of the same date, he advised that appellant was being treated for exacerbation of degenerative disc disease and traumatic injury. Dr. Horowitz noted that the "prognosis was unknown."

Dr. Fagan saw appellant on February 20, 2015 for follow up and recommended physical therapy and keeping appellant off work for an additional three weeks. On March 13, 2015 he recommended additional therapy and referral to an orthopedist.

In a March 19, 2015 report, Dr. Brett Spain, an osteopath, Board-certified in orthopedics and sports medicine, noted that appellant reported an injury at work on December 24, 2014. He advised that appellant related that her coworker tossed a suitcase on the conveyor belt which rolled off and she tried to catch it. Appellant indicated that it caused a forceful pulling of the right arm/shoulder and neck. Dr. Spain related that appellant indicated that her pain was mostly in the neck into the right shoulder and she was currently not working.

OWCP received several physical therapy notes and prescriptions.

In a letter dated April 1, 2015, OWCP noted that appellant's claim initially appeared to be a minor injury that resulted in minimal or no lost time from work and because the employing establishment did not controvert continuation of pay or challenge the merits of the case, appellant's claim was administratively handled to allow a limited amount of medical expenses. However, appellant's claim was now being reopened because a claim for wage loss was received. OWCP informed appellant of the type of evidence needed to support her claim and afforded her 30 days to submit such evidence.

Dr. Spain provided attending physician's reports (Form CA-20) dated April 7 and 8, 2015. He indicated that appellant had back and right arm neck pain. Dr. Spain diagnosed cervical lordosis, exacerbation of cervical disc disease, and L5 and C-S spondylosis. He checked the box marked "yes" in response to whether he believed the condition was caused or aggravated by an employment activity and filled in that appellant pulled her back and cervical spine with luggage. Regarding appellant's ability to work, Dr. Spain indicated that appellant saw an orthopedist and would decide disability. OWCP also received additional physical therapy reports.

On April 7, 2015 OWCP received a statement from appellant. Appellant explained that she was in checked baggage loading bags when her injury occurred. She noted that a coworker lifted a heavy bag and dropped it on the belt, but it rolled toward her and she instinctively caught the bag. Appellant explained that the momentum pulled her right arm, neck, and lower back, and she immediately felt pain. In a separate April 7, 2015 statement, she noted that the employing establishment had a video of the injury and that she requested a copy, but her request was denied. Appellant denied having any similar injuries.

By decision dated May 11, 2015, OWCP denied appellant's claim as she had not established a claimed medical condition causally related to the established work-related event.

A May 19, 2015 magnetic resonance imaging (MRI) scan read by Dr. Katya Shpilberg, a Board-certified diagnostic radiologist, revealed multilevel degenerative disc disease with mild spinal canal stenosis at C3-4 and C6-7 and up to moderate foraminal stenosis at C5-6 on the right with no cord compression.

On September 22 and 30, 2015 counsel for appellant requested reconsideration. He argued that the medical evidence of record established that appellant's condition was causally related to the December 24, 2014 work incident. Counsel also submitted new medical evidence.

In a May 28, 2015 report, Dr. Luis Alejo, a Board-certified physiatrist, noted that appellant related being injured at work on December 24, 2014, when her coworker tossed a suitcase on the conveyor belt and she tried to catch it. He advised that she pulled her right arm/shoulder and neck. Dr. Alejo indicated that appellant was currently not working. He examined her and diagnosed cervical radiculopathy (brachial neuritis or radiculitis). In a separate May 28, 2015 report, Dr. Alejo checked a box marked "yes" in response to whether the incident appellant described was the competent cause of the injury or illness. He also checked a box marked "yes" in response to whether appellant's complaints were consistent with the history of the injury/illness and with the objective findings. Dr. Alejo indicated that appellant was 100 percent totally disabled. He saw appellant again on August 18, 2015 and repeated the history of

injury. Dr. Alejo examined appellant and noted that MRI scans revealed herniated nucleus pulposus at C5-6 and C6-7 with multiple bulges. He diagnosed cervical radiculopathy (brachial neuritis or radiculitis). Dr. Alejo opined "[i]n my opinion the accident is causally related to her current painful condition."

Dr. Horowitz, in a June 29, 2015 report, noted appellant's history of injury on December 24, 2014, where she caught a large bag that was falling off of the conveyor belt and pulled her right arm, neck, and back. He related that appellant reported the incident and attempted to keep working, but the pain increased and major headaches developed. Dr. Horowitz advised that she was seen on January 5, 2015 and taken off work. He explained that objective findings included spasm, tenderness, range of motion (ROM) loss, muscle guarding, and some upper extremity weakness. Dr. Horowitz diagnosed cervical and lumbar pain with spasm and signs of radiculopathy. He indicated that appellant underwent physical therapy. Dr. Horowitz advised that appellant subsequently had a cervical spine MRI scan and the results showed degenerative disc disease and stenosis affecting the right greater than the left. An EMG was pending. Dr. Horowitz noted that appellant had a prior history of umbilical hernia, with surgical repair and mesh in 2011. He opined that appellant had no history of prior injury to those areas and it was "more than reasonable to find these current injuries as causally related to the work incident" and "to conclude that the incident described above was the proximate cause of the described medical condition." Dr. Horowitz advised that appellant had a good, but guarded recovery and she remained on full temporary disability.

OWCP also received a July 9, 2015 report from Dr. Aristide Burducea, Board-certified in anesthesiology and pain medicine, who noted seeing appellant for evaluation of the cervical spine. Dr. Burducea noted that the locale of the injury was in the workplace. He examined appellant and diagnosed cervical radiculopathy. OWCP continued to receive physical therapy reports.

By decision dated February 26, 2016, OWCP denied modification of the May 11, 2015 decision. It explained that appellant's treating physicians did not provide a sufficiently rationalized medical opinion on how catching a falling bag caused or aggravated the diagnosed neck and arm condition. OWCP noted that there were no objective findings or an explanation to show how the event caused, contributed to, or aggravated the diagnosed conditions. Furthermore, there was no differentiation from symptoms of any preexisting neck condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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,[3] and that an injury was sustained in the performance

[3] *Joe D. Cameron*, 41 ECAB 153 (1989).

of duty.[4] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. 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.[6] 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.[7]

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.[8]

ANALYSIS

In this case, appellant alleged that she sustained injuries to her neck, right shoulder, and right arm on December 24, 2014 while catching a bag that was rolling off the conveyor belt while in the performance of duty. There is no dispute that the claimed event occurred, as alleged.

The Board finds that, while the medical evidence is insufficiently rationalized to establish that appellant sustained a work-related condition, the medical reports from Dr. Horowitz and Dr. Alejo are supportive of causal relationship and sufficient to require further development of the case record by OWCP.[9] The most relevant report is the June 29, 2015 report from Dr. Horowitz. The Board notes that he documented appellant's history of injury on December 24, 2014, where she caught a large bag that was falling off the conveyor belt and pulled her right arm, neck, and back. Dr. Horowitz related that she reported the incident and attempted to keep working, but her symptoms increased. He noted diagnostic test results provided examination findings which included spasm, tenderness, ROM loss, muscle guarding, and some upper extremity weakness. Dr. Horowitz diagnosed cervical and lumbar pain with spasm with signs of radiculopathy. He opined that appellant had no prior history of injury in those areas and it was "more than reasonable to find these current injuries as causally related to

[4] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *Julie B. Hawkins*, 38 ECAB 393, 396 (1987).

[7] *Id.* For a definition of the term "traumatic injury," see 20 C.F.R. § 10.5(ee).

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

[9] *See John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

the work incident" and "to conclude that the incident described above was the proximate cause of the described medical condition."

Dr. Alejo also provided May 28 and August 18, 2015 reports which noted the history of the December 24, 2014 work incident and diagnosed cervical radiculopathy. He opined in these reports that the work incident caused appellant's condition and that she was totally disabled.

The Board finds that these reports support that appellant's condition was caused or aggravated by the December 24, 2014 work incident. While these reports are not completely rationalized, the physicians are consistent in indicating that appellant sustained an employment-related condition. The Board further notes that the employing establishment has not controverted the claim and there is no contradictory medical evidence.

Proceedings under FECA are not adversarial in nature nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.[10]

On remand, OWCP should refer appellant, the case record, and a statement of accepted facts to an appropriate Board-certified specialist for an evaluation and a rationalized medical opinion regarding whether the December 24, 2014 work incident caused or contributed to appellant's diagnosed conditions. After such further development of the case record as OWCP deems necessary, a *de novo* decision shall be issued.

The Board also notes that the employing establishment issued an authorization for medical treatment (Form CA-16) on December 31, 2014. Where an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim.[11] The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP.[12] In this case, it is unclear whether OWCP paid for the cost of appellant's examinations. On return of the case record, OWCP should further address this matter as appropriate.

CONCLUSION

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

[10] *William J. Cantrell*, 34 ECAB 1223 (1983).

[11] *A.B.*, Docket No. 15-1002 (issued August 14, 2015); *Tracey P. Spillane*, 54 ECAB 608 (2003).

[12] 20 C.F.R. § 10.300(c).

ORDER

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

Issued: October 13, 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