United States Department of Labor
Employees' Compensation Appeals Board

V.D., Appellant	)	
and	)	**Docket No. 17-1463**
	)	**Issued: December 19, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Clinton, SC, Employer	)	

Appearances:
Alan J. Shapiro, 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 June 20, 2017 appellant, through counsel, filed a timely appeal from an April 25, 2017 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 the case.

ISSUE

The issue is whether appellant established a traumatic injury causally related to the accepted September 15, 2015 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 September 16, 2015 appellant, then a 56-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on September 15, 2015 she was injured in an employment-related automobile accident, which caused headaches, lower back pain, and soreness extending down both legs. She stopped work on September 15, 2015. In support of her claim, appellant submitted a copy of the accident report.

By letter dated September 24, 2015, OWCP informed appellant that additional medical evidence was necessary to support her claim. Appellant was afforded 30 days to submit this evidence.

In response, appellant submitted an October 5, 2015 report, wherein Dr. M.D. Giridhar Gundu, a physiatrist, noted that appellant had complaints of low back pain, with sudden onset following a motor vehicle accident on September 15, 2015. Dr. Gundu noted that appellant's pain had gradually worsened and was aggravated by bending, twisting, lifting, sitting, standing, and walking. He assessed appellant with lumbar radiculitis and right bicipital tendinitis.

In an October 8, 2015 magnetic resonance imaging (MRI) scan, Dr. Frederick W. Dreyer, III, a Board-certified radiologist, found a seven millimeter (mm) subluxation at L3-4 with moderate-to-severe canal stenosis of six mm at the L3-4 level, contributed by posterior element facet ligamentum flavum hypertrophy, L4-5 osseous fusion, and L5-S1 right paracentral and right neuroforminal disc bulge causing neuoroforaminal stenosis and abutment of the exiting nerve root.

In an October 12, 2015 report, Dr. Gundu assessed lumbar radiculitis and right bicipital tendinitis. He reviewed the MRI scan with appellant and planned a transforaminal steroid injection. Appellant also submitted duty status reports (Form CA-17) dated September 23 through October 23, 2015 listing work restrictions.

By letter dated October 19, 2015, the employing establishment controverted the claim contending that appellant had previous severe back pain and that she had undergone surgery in the past. It also noted that appellant had only been employed since April 4, 2015.

By decision dated October 30, 2015, OWCP determined that, although appellant had established that the incident occurred as alleged and that the evidence established a medical diagnosis, she did not establish that the diagnosed condition was causally related to the accepted employment incident.

Appellant continued to submit CA-17 forms dated from November 30, 2015 through February 10, 2016, which noted her continued restrictions due to lumbar radiculitis and spondylolisthesis. The signatures on these reports, as well as the signatures on the earlier duty status reports, are illegible.

On February 24, 2016 appellant appealed from the October 30, 2015 decision, but did not specifically note the method of appeal she was requesting. She noted that she had a previous condition affecting her back and spine, but that after working with a pain specialist, she was released to return to work. Appellant stated that from April 2015 until the automobile accident, she was able to work approximately 16 hours per week. She contended that she was not at fault

in the cause of the automobile accident and that she saw the doctor the day after the accident. Appellant alleged that since the time of the accident she had been in excruciating pain and unable to work.

In a March 24, 2016 affidavit, Dr. Robert LeBlond, a Board-certified physiatrist, indicated that he was aware that appellant had been in a motor vehicle accident on September 15, 2015, that she complained of headaches, pain to her chest and shoulders, and stiffness of her neck and back as a result of that incident. He noted that appellant continued to suffer from pain and discomfort that significantly affected her ability to perform her job duties and the activities of her daily living. Dr. LeBlond opined within a reasonable degree of medical certainty that the injuries and/or symptoms for which he provided treatment were either caused by and/or aggravated by the motor vehicle accident of September 15, 2015 and that these injuries and/or symptoms had prevented appellant from returning to work and would continue to cause disability indefinitely. He also opined that appellant was not at maximum medical improvement and would need additional medical treatment with regard to the injuries that were caused and/or aggravated by the accident on September 15, 2015.

In a May 23, 2016 response to OWCP's questions, Dr. LeBlond diagnosed right shoulder pain and lumbar spondylolisthesis with back sprain status post motor vehicle accident with worsening lumbar radiculopathy. He listed his findings on physical examination as restricted range of motion, pain with rotation, low back spasm in lower lumbar paraspinals, decreased sensation in left lower extremity and lower extremity distribution, decreased sensation in right lower extremity distribution, and positive Faber with leg raising of the right lower extremity. Dr. LeBlond opined that the employment incident was the direct and proximate cause of the diagnosis.

By letter received by OWCP on June 20, 2016, counsel requested reconsideration referencing Dr. LeBlond's reports that were "not previously considered."

By decision dated August 18, 2016, OWCP denied modification of its October 30, 2015 decision noting that the evidence was insufficient to establish a causal relationship between the accepted September 15, 2015 employment incident and the diagnosed conditions.

On April 3, 2017 appellant, through counsel, requested reconsideration before OWCP. In support of the reconsideration request, counsel submitted a February 1, 2017 report from Dr. LeBlond. In the February 1, 2017 report, Dr. LeBlond noted that he had treated appellant for many years for chronic degenerative low back pain. He related that appellant was in a motor vehicle accident while driving a rural mail route on September 15, 2015 when she was struck by a car that crossed the yellow line into her lane. Dr. LeBlond noted that a June 2016 MRI scan revealed a rotator cuff tear that was more than likely due to the trauma of the accident as she had no issues with her shoulder prior to the accident. He opined, to a reasonable medical certainty, that there was a causal relationship between the accident and the worsening of her condition. Dr. LeBlond noted that appellant opted to have surgery on January 9, 2017 for an L3-4 decompression and posterior fusion. He noted that, prior to her accident, there was known instability in her spine, but the stenosis was not severe enough to require surgery. Dr. LeBlond noted that, after the accident, the disc bulge and extrusion into the foramen necessitated decompression.

By decision dated April 25, 2017, OWCP reviewed the most recent report of Dr. LeBlond, but denied modification of the August 18, 2016 decision.

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, that an injury was sustained in the performance of duty as alleged, and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established. 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.[5] 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.[6]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the accepted employment incident. 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 conditions and the employment incident identified by the claimant.[7]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an injury causally related to the accepted employment-related motor vehicle accident of September 15, 2015.

In support of her claim, appellant submitted multiple medical reports by Dr. LeBlond. Dr. LeBlond noted that appellant's rotator cuff tear was more than likely due to the trauma of the accident as she had no issues prior to the accident. The Board finds that Dr. LeBlond's

[3] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[5] *John J. Carlone*, 41 ECAB 354 (1989).

[6] *Id.*

[7] *I.J.*, 59 ECAB 408 (2008); *supra* note 4.

conclusion is speculative. While the opinion supporting causal relationship does not have to reduce the cause or etiology of a condition to an absolute certainty, the opinion must not be speculative or equivocal in nature.[8] The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record, and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.[9] Dr. LeBlond offered no rationalized medical explanation as to how the accepted employment incident caused appellant's rotator cuff tear. As such, his opinion is of limited probative value.[10] The mere fact that a condition arises after an injury and was not present before an injury is insufficient to support causal relationship.[11]

Dr. LeBlond further opined within a reasonable medical certainty that there was causal relationship between the accident and a worsening of appellant's preexisting back condition. He noted that, prior to appellant's motor vehicle accident, appellant had known instability in her spine. However, the preexisting stenosis was not severe enough to require the surgery of January 9, 2017. Dr. LeBlond's opinion is not sufficiently rationalized. He fails to discuss the details of appellant's preexisting condition or to provide a rationalized opinion explaining how the employment incident contributed to appellant's medical conditions necessitating surgery. A rationalized medical opinion is especially necessary in light of appellant's preexisting degenerative condition.[12] He did not provide specific medical rationale to support his conclusions. A medical opinion that is not fortified by medical rationale is of diminished probative value.[13]

The remaining reports are also insufficient to establish causal relationship. Dr. Gundu noted the motor vehicle accident, but failed to provide an opinion on causal relationship. The Board has held that 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.[14]

Dr. Dreyer interpreted appellant's MRI scan. This report is of limited value, however, as he did not address causal relationship.[15] The Board has held that reports of diagnostic tests are of limited probative value as they fail to provide an opinion on the causal relationship between appellant's employment duties and the diagnosed conditions.[16]

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[8] *J.S.*, Docket No. 17-0507 (issued August 11, 2017).

[9] *See Lee R. Haywood*, 48 ECAB 145 (1996).

[10] *See A.B.*, Docket No. 16-1163 (issued September 8, 2017).

[11] *Michael S. Mina*, 57 ECAB 379 (2006).

[12] *See M.D.*, Docket No. 17-0086 (issued August 3, 2017).

[13] *C.H.*, Docket No. 17-0488 (issued September 12, 2017).

[14] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

[15] *G.M.*, Docket No. 14-2057 (issued May 12, 2015).

[16] *See S.G.*, Docket No. 17-1054 (issued September 14, 2017).

The duty status reports of record contain illegible signatures. The Board has held that a report bearing an illegible signature lacks proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.[17]

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.[18] Appellant's honest belief that the September 15, 2017 employment-related motor vehicle accident caused her medical injury, however sincerely held, does not constitute the medical evidence to establish causal relationship.[19]

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 established a traumatic injury causally related to the accepted September 15, 2015 employment incident.

[17] *I.L.*, Docket No. 16-1668 (issued September 8, 2017).

[18] *D.D.*, 57 ECAB 734 (2006).

[19] *H.H.*, Docket No. 16-0897 (issued September 21, 2016).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 25, 2017 is affirmed.

Issued: December 19, 2017
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