

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

B.Y., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Port Chester, NY, Employer**

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**Docket No. 16-1300
Issued: February 9, 2017**

Appearances:

*Jeffrey P. Zeelander, 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 June 6, 2016 appellant, through counsel, filed a timely appeal from a May 13, 2016 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 the case.

ISSUE

The issue is whether appellant met his burden of proof to establish a left shoulder and/or neck injury causally related to an accepted March 24, 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

Appellant, a 66-year-old letter carrier, filed a traumatic injury claim (Form CA-1), alleging that on March 24, 2015 he experienced severe pain in his left arm and back while in the performance of duty when he slipped and fell on a patch of ice, landing on his left arm and back.

By letter dated May 1, 2015, OWCP advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. It asked him to submit a comprehensive medical report from his treating physician describing his symptoms and the medical reasons for his condition, and an opinion as to whether his claimed condition was causally related to his federal employment. OWCP afforded appellant 30 days to submit the requested information.

In a report dated April 9, 2015, received by OWCP on July 17, 2015, Dr. Erik K. Zitzmann, Board-certified in orthopedic surgery, related that appellant underwent rotator cuff repair of both the left and right shoulders in 2007. He reported that appellant continued to have some left-sided radicular pain since that surgery. Dr. Zitzmann advised, however, that appellant's present condition was much worse, causing him pain in the shoulder and left upper extremity. He asserted that lifting, raising the arm up, and certain positions aggravated appellant's pain. Appellant underwent x-rays of the cervical spine which showed straightening of the usual cervical lordosis at C4-5 without any marked arthritis. Dr. Zitzmann noted cervical spasm and opined that he might have disc protrusion at C4-5 causing a left cervical radiculitis. Appellant also underwent left shoulder x-rays which revealed left acromioclavicular (AC) joint arthritis. Dr. Zitzmann advised that he might have sustained a new injury to his left rotator cuff in addition to adhesive capsulitis. He also noted a normal glenohumeral joint with no significant calcifications. Dr. Zitzmann advised that appellant was interested in trying to return to work and recommended that he take anti-inflammatory medication and to begin physical therapy to improve his left shoulder range of motion. He noted that appellant needed this treatment to avoid further adhesive capsulitis for the shoulder in addition to cervical radiculitis.

In a June 4, 2015 report, Dr. Zitzmann advised that appellant was working, but continued to experience pain, especially in the left side of the neck and down his left arm into the hand. He asserted that appellant also had numbness in the same distribution at night into his left arm and hand. Dr. Zitzmann reported that appellant's shoulders were improved and not as painful. On examination he noted discomfort on lateral deviation in the cervical spine, though appellant otherwise had good flexion and extension. Dr. Zitzmann diagnosed continued left cervical radiculitis, possibly secondary to disc protrusion. He reported that he had ordered a magnetic resonance imaging (MRI) scan of the cervical spine. Dr. Zitzmann also prescribed a course of physical therapy.

In a September 17, 2015 report, Dr. Zitzmann noted that appellant continued to have discomfort in the left side of his neck into the left upper extremity. He reported that appellant had experienced this problem since he fell on ice while at work. Dr. Zitzmann advised that appellant was trying to work, but that he occasionally lost time from work because of his symptoms. He asserted that appellant's pain radiated into the forearm along with some tingling. Dr. Zitzmann reiterated the diagnosis of left cervical radiculitis, which could be secondary to

disc protrusion, as his x-rays only showed spasm and did not show any arthritis. He advised that he requested authorization for a repeat MRI scan and for physical therapy.

By decision dated October 13, 2015, OWCP denied appellant's claim finding that he failed to meet his burden of proof to establish a left shoulder or neck injury causally related to the March 24, 2015 employment incident.

In an October 1, 2015 report, received by OWCP on October 26, 2015, Dr. Zitzmann advised that he was attempting to gain authorization for physical therapy or repeat MRI scan for appellant. He reported that appellant continued to experience discomfort in the left side of his neck and down his left arm with some paresthesias and numbness into the ulnar side of the hand. Dr. Zitzmann asserted that on examination appellant had some pain on rotation and lateral on the left side of his neck; he noted that his shoulders moved well and without pain. He diagnosed left cervical radiculitis, most likely secondary to disc herniation, which appeared to have occurred during his fall on ice in March 2015.

In an October 23, 2015 report, Dr. Zitzmann noted that appellant had sustained a left shoulder injury when he stepped out of a truck, stepped on ice, and landed on his left shoulder and back. He reported that appellant experienced pain radiating from the left side of his neck, down to his left shoulder, and into his fingers. Dr. Zitzmann noted decreased range of motion of the left shoulder and pain on deviation of the cervical spine on examination. He advised that appellant underwent x-rays of his neck and left shoulder because of the pain, and the results of these tests showed arthritis of the left AC joint and arthritic left clavicle. Dr. Zitzmann asserted that his cervical spine continued to be painful and that he had continued to treat appellant from April 9 through October 23, 2015.

Dr. Zitzmann noted that appellant had continued complaints of left-sided neck pain into the arm and into the hand, especially on the ulnar side. He advised that appellant's complaints were definitely those of a cervical radiculitis, which he did not have prior to his accident. Dr. Zitzmann opined that appellant's March 24, 2015 employment incident caused the onset of this condition. He reiterated that he had been requesting authorization for a cervical spine MRI scan which had not been forthcoming.

On November 10 and 20, 2015 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on April 6, 2016.

In a decision dated May 13, 2016, an OWCP hearing representative affirmed the October 13, 2015 decision. He found that none of the medical evidence of record provided a sufficiently rationalized explanation as to how the diagnosed medical conditions were causally related to the claimed March 24, 2015 work incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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

³ *Id.*

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.⁴ 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.⁵

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.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

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁸ 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 employee.⁹ 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 causal relationship.¹⁰

ANALYSIS

It is undisputed that appellant experienced pain in his left shoulder and neck after slipping on ice and falling to the ground on March 24, 2015 while in the performance of duty. The question of whether an employment incident caused a personal injury can only be established by probative medical evidence.¹¹ The Board finds that appellant has not submitted rationalized, probative medical evidence to establish that the March 24, 2015 employment incident caused the claimed injury.

Appellant submitted reports from Dr. Zitzmann. In his April 9, 2015 report, Dr. Zitzmann noted that appellant underwent rotator cuff repair of the left and right shoulders in 2007 and that

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *Id.* For a definition of the term “injury,” see 20 C.F.R. § 10.5(ee).

⁸ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁹ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹⁰ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹¹ *Supra* note 6.

he continued to have some left-sided radicular pain. He asserted that his current condition was much worse, causing him pain in the shoulder and left upper extremity. Dr. Zitzmann advised that lifting, raising the arm, and placing his arm in certain positions worsened appellant's pain. He reported that x-rays of the cervical spine showed straightening of the usual cervical lordosis at C4-5 without any marked arthritis. Dr. Zitzmann opined that appellant might have disc protrusion at C4-5 causing a left cervical radiculitis. He advised that left shoulder x-rays showed left AC joint arthritis and that he might have sustained a new injury to his left rotator cuff as well as adhesive capsulitis. Dr. Zitzmann recommended that appellant take anti-inflammatory medication and to begin physical therapy in order to avoid further adhesive capsulitis for the shoulder in addition to cervical radiculitis. He noted in his June 4, September 17, and October 23, 2015 reports that appellant was working, but continued to have pain and numbness in the left side of the neck and down his left arm into the hand. Dr. Zitzmann asserted that he also had numbness in the same distribution at night into his left arm and hand. He diagnosed continued left cervical radiculitis, maybe secondary to disc protrusion, and ordered a cervical spine MRI scan.

In his October 23, 2015 report, Dr. Zitzmann noted that appellant was experiencing pain radiating from the left side of his neck down to the left shoulder, in the left upper extremity, and into his fingers. He reiterated x-ray findings of his neck and left shoulder which revealed arthritis of the left AC joint and arthritic left clavicle, and advised that appellant's cervical spine had been painful since he began treating him on April 9, 2015. Dr. Zitzmann asserted that his complaints were consistent with cervical radiculitis, which he did not have prior to his accident. He opined that this condition was causally related to the March 24, 2015 employment incident.

The weight of medical opinion evidence is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested, and the medical rationale expressed in support of stated conclusions.¹² While Dr. Zitzmann noted complaints of neck and left shoulder pain which he generally attributed to the March 24, 2015 work incident, and diagnosed cervical radiculitis, his reports do not contain a probative, rationalized opinion regarding whether the March 24, 2015 work incident caused a personal injury. Dr. Zitzmann did not sufficiently explain medically how appellant would have sustained a left shoulder or neck injury due to slipping and falling on ice on March 24, 2015. He did not adequately describe the March 24, 2015 incident or explain how the incident would have caused the claimed conditions. Furthermore, while Dr. Zitzmann opined that appellant's complaints were those of a cervical radiculitis, which he did not have prior to his March 24, 2015 accident, the Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relationship.¹³

OWCP advised appellant of the evidence required to establish his claim. However, appellant failed to submit such evidence. Causal relationship must be established by rationalized medical opinion evidence.¹⁴ Appellant did not provide a medical opinion which describes or

¹² See *Anna C. Leanza*, 48 ECAB 115 (1996).

¹³ *Supra* note 8.

¹⁴ *Supra* note 8.

explains the medical process through which the accepted March 24, 2015 employment incident would have caused the claimed injury. Accordingly, he did not meet his burden of proof to establish a left shoulder or neck injury causally related to the March 24, 2015 employment incident.

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 failed to meet his burden of proof to establish a left shoulder or neck injury causally related to the accepted March 24, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the May 13, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 9, 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