United States Department of Labor
Employees' Compensation Appeals Board

R.H., Appellant	)	
and	)	**Docket No. 16-1802**
	)	**Issued: February 1, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Richmond, VA, 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:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 9, 2016 appellant, through counsel, filed a timely appeal from a July 13, 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish that he sustained right shoulder, right arm, and cervical injuries causally related to a November 8, 2013 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 November 12, 2013 appellant, then a 53-year-old city carrier, filed a traumatic injury claim (Form CA-1), alleging that, on November 8, 2013, while lifting a bucket of mail, he felt a pull in his shoulder and weakness in his right arm. He did not stop work.

Appellant was treated by Dr. Joseph J. Andriano, a Board-certified internist with a specialty in occupational medicine, on November 12, 2013, for insidious onset of cervical pain. Dr. Andriano reported no injury or trauma which may have caused his symptoms. Appellant noted that, on November 8, 2013, while at work, he picked up a bucket full of mail and felt a sudden onset of pain in the right cervical paraspinals and right arm. He continued working his shift but noticed weakness in his right arm and shoulder. Dr. Andriano noted findings on examination of weakness of the lateral deltoid and weakness in his biceps. He diagnosed multilevel degenerative disc disease with herniated nucleus pulposus at C3-4, C4-5, C5-6, and C5-7 without lesion, and cord edema from C3-5. Dr. Andriano recommended a consultation with a neurosurgeon and returned appellant to modified duty. In an attending physician's report (Form CA-20) dated November 12, 2013, he diagnosed multilevel degenerative disc disease, herniated nucleus pulposus and weakness. Dr. Andriano checked a box marked "yes," indicating that appellant's condition was caused or aggravated by an employment activity and returned appellant to work with restrictions. In a November 12, 2013 duty status report (Form CA-17), he diagnosed profound weakness at C5 and multiple level degenerative disc disease of the cervical spine. Dr. Andriano noted appellant's work restrictions.

A November 12, 2013 cervical spine magnetic resonance imaging (MRI) scan revealed disc herniation at C3-4 with abutment of the cord, disc herniation's at C4-5 with cord compression and edema, discus protrusion at C5-6, and disc herniation at C6-7 abutting the ventral cord.

By letter dated November 22, 2013, OWCP advised appellant of the type of evidence needed to establish his claim, particularly requesting that appellant submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors. It afforded her 30 days to provide this information.

Appellant was treated by Dr. Mathew T. Mayr, a Board-certified neurosurgeon, on November 27, 2013, for right arm weakness. He reported working as a mail carrier and on November 8, 2013 he picked up a large bucket of mail and felt pain in his neck and a pop in his arm. Appellant indicated that his right arm became weak and he had difficulty lifting it. Dr. Mayr noted findings of muscle weakness of the right deltoid and biceps with no right deltoid reflex. X-rays revealed significant degenerative disc disease at C3-4 and C4-5 with large osteophytes. Dr. Mayr diagnosed cervical stenosis of the spine, C5 radiculopathy and C3-4 and C4-5 herniated discs. He recommended anterior cervical discectomy and fusion at C3-4 and C4-5. On December 9, 2013 Dr. Mayr noted appellant's symptoms were worsening with progressive weakness. He recommended surgery. On December 11, 2013 Dr. Mayr performed an anterior cervical discectomy at C3-4, C4-5 and fusion at C3-4 and C4-5.

In a November 29, 2013 statement, appellant indicated that, since his November 8, 2013 injury, he experienced weakness in his shoulder and arm. He noted that he did not have any other disability or symptoms prior to this injury.

In a December 24, 2013 decision, OWCP denied appellant's claim, finding that he failed to establish an injury or medical condition causally related to the accepted November 8, 2013 work incident.

On January 16, 2014 appellant requested an oral hearing, before an OWCP hearing representative which was held on July 16, 2014.

In a decision dated September 30, 2014, OWCP's hearing representative affirmed the decision dated December 24, 2013.

On February 12, 2015 appellant requested reconsideration. He submitted a report dated January 12, 2015 in which Dr. Mayr indicated that on November 8, 2013 appellant was lifting a bucket when he suffered severe pain followed by weakness in his right arm. Dr. Mayr noted that appellant was diagnosed with cervical radiculopathy and had an MRI scan which revealed disc herniations at C3-4 and C4-5. He opined to a reasonable degree of medical certainty that the lifting of the bucket was the causal factor to appellant's injury. Dr. Mayr noted that, although appellant had underlying degeneration, he thought the stress on his arm and neck from lifting caused pressure on the disc space causing the herniation, subsequent severe nerve injury, pain, and weakness.

In a decision dated May 7, 2015, OWCP denied modification of the September 30, 2014 decision.

On April 18, 2016 appellant again requested reconsideration. He submitted an April 7, 2016 report from Dr. Mayr who noted that, although appellant had underlying degeneration, the stress on his arm and neck from lifting caused pressure on the disc space, which caused the disc herniation and subsequent severe nerve pain and severe nerve injury resulting in pain and weakness. Dr. Mayr opined that to a reasonable degree of medical certainty the lifting of the bucket was the proximate cause of appellant's injury.

Also submitted was a December 15, 2014 electromyogram (EMG) that showed significant right C5 motor radiculopathy. A December 12, 2014 report from a physician assistant was also submitted.

In a decision dated July 13, 2016, OWCP denied modification of the decision dated May 7, 2015.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 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 is causally related to the

employment injury. 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.[3]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. 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. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[4]

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.[5]

ANALYSIS

It is not disputed that on November 8, 2013 appellant was injured when lifting a bucket of mail at his case. However, the Board finds that appellant has not submitted sufficient medical evidence to establish that this work incident caused or aggravated his diagnosed conditions.

Appellant submitted reports from Dr. Mayr dated January 12, 2015 and April 7, 2016 who indicated that on November 8, 2013 appellant was lifting a bucket when he suffered severe pain followed by weakness in his right arm. Dr. Mayr diagnosed cervical radiculopathy and disc herniations at C3-4 and C4-5. He opined that the lifting of the bucket was the causal factor to appellant's injury. Dr. Mayr noted that, although appellant had underlying degeneration, he thought the stress on his arm and neck from lifting caused pressure on the disc space which caused the herniation and subsequent severe nerve injury with resulting pain and weakness. The Board finds that, although Dr. Mayr supported causal relationship, he did not provide medical rationale explaining the basis of his opinion.[6] For example, Dr. Mayr did not explain the process by which lifting a bucket of mail would cause the diagnosed condition and why such condition would not be due to any nonwork factors such as age-related degenerative changes.[7] Therefore, this report is insufficient to meet appellant's burden of proof.

Other reports from Dr. Mayr dated November 27 and December 9, 2013 noted that appellant worked as a mail carrier and on November 8, 2013 he picked up a large bucket of mail

[3] *Gary J. Watling*, 52 ECAB 357 (2001).

[4] *T.H.*, 59 ECAB 388 (2008).

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

[6] *See T.M.*, Docket No. 08-975 (issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

[7] *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

and felt pain in his neck and weakness in his right arm. He diagnosed cervical stenosis of the spine, C5 radiculopathy and C3-4 and C4-5 herniated discs. The Board finds that these records are insufficient to establish the claim as Dr. Mayr did not clearly explain how the work incident of picking up a bucket of mail caused or aggravated any diagnosed medical condition.[8]

Appellant submitted a November 12, 2013 report from Dr. Andriano who noted that appellant reported picking up a bucket of mail at work on November 8, 2013 and felt a sudden onset of pain in the right cervical paraspinals and right arm. Dr. Andriano diagnosed multilevel degenerative disc disease with herniated cervical discs. This report is insufficient to meet appellant's burden of proof as Dr. Andriano did not provide his own opinion regarding whether appellant's condition was work related. Rather, he was merely repeating the history as related by appellant. Dr. Andriano also failed to provide a rationalized opinion regarding the causal relationship between appellant's cervical condition the factors of employment believed to have caused or contributed to such condition.[9] His November 12, 2013 duty status report is also insufficient to establish the claim as he did not address the cause of appellant's claimed condition. A November 12, 2013 attending physician's report from Dr. Andriano diagnosed multilevel degenerative disc disease, herniated nucleus pulposus and weakness. He noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. The Board has held that when a physician's opinion on causal relationship consists only of checking a box marked "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.[10]

Appellant was also treated by a physician assistant on December 12, 2014. However, the Board has held that documents signed by a physician assistant are not considered medical evidence as a physician assistant is not a physician under FECA.[11] Thus, the treatment records from the physician assistant are of no probative medical value in establishing appellant's claim.

The remainder of the medical evidence, including an MRI scan of the cervical spine and an EMG, is of limited probative value as it fails to provide an opinion on the causal relationship between appellant's job and his diagnosed cervical condition.[12] For this reason, this evidence is insufficient to meet appellant's burden of proof.

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. Causal relationships must be established by

[8] *Id.*

[9] *Supra* note 7.

[10] *Sedi L. Graham*, 57 ECAB 494 (2006); *D.D.*, 57 ECAB 734 (2006).

[11] *See David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

[12] *See S.E.*, Docket No. 08-2214 (issued May 6, 2009) (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).

rationalized medical opinion evidence.[13] Appellant failed to submit such evidence, and OWCP therefore properly denied appellant's claim for compensation.

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 right shoulder, right arm, and cervical injuries causally related to the November 8, 2013 employment incident.

ORDER

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

Issued: February 1, 2017
Washington, DC

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

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

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

[13] *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).