United States Department of Labor
Employees' Compensation Appeals Board

M.L., Appellant	)	
and	)	**Docket No. 16-1808**
	)	**Issued: February 21, 2017**
DEPARTMENT OF ENERGY, HUMAN RESOURCES MANAGEMENT, Washington, DC, 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
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 13, 2016 appellant, through counsel, filed a timely appeal from a July 8, 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 representatives 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 has established an injury causally related to an accepted July 6, 2015 employment incident.

FACTUAL HISTORY

On July 15, 2015 appellant, then a 52-year-old budget analyst, filed a traumatic injury claim (Form CA-1) alleging that she sustained an injury in the performance of duty at 4:00 p.m. on July 6, 2015. She reported that she was in the employing establishment parking garage and, as she opened the door to her car, her foot slid on the ground and she jerked and fell into the car. Appellant indicated that the injury was a low back and neck sprain from the slide into her car. The reverse of the claim form reported that appellant stopped working July 7, 2015 and received medical care on July 10, 2015.

By letter dated July 28, 2015, OWCP requested that appellant submit additional evidence to support the claim for compensation. It requested that she provide a medical report which included the mechanism of injury, results on examination, diagnostic studies, and an opinion supported by medical explanation as to how the claimed incident caused an injury. Appellant was afforded 30 days to submit this additional evidence.

Appellant submitted a July 22, 2015 report from Dr. Eric Dawson, a Board-certified orthopedic surgeon. Dr. Dawson provided a history that appellant had slipped as she grabbed the car door handle, and had a sharp jolting motion. He indicated that appellant had received treatment on July 8 and 14, 2015 with a primary care physician, as well as with an orthopedic surgeon on July 14, 2015. According to Dr. Dawson, Dr. Ian Gordon, Board-certified in orthopedic surgery, had found no major disc or nerve injury, but Dr. Dawson had not received a copy of Dr. Gordon's report. Dr. Dawson indicated that appellant had a history of lumbar and cervical degenerative disc disease. It was noted that appellant had not returned to work. Dr. Dawson provided results on examination and diagnosed cervicodorsal myofascitis, lumbosacral sprain/strain, rotator cuff impingement, and mild C7 impingement.

In a report dated July 29, 2015, Dr. Dawson reported that magnetic resonance imaging (MRI) scans and x-ray films showed no acute fracture, dislocation or disc rupture. He indicated that appellant had significant degenerative changes at C4-5 and C5-6 levels, as well as L4-5 and L5-S1 collapse of disc of the lumbar spine. The diagnoses were: improving rotator cuff tendinitis, cervical sprain with possible low grade discopathy, lumbar sprain/strain pattern of injury, and improving sciatica left side, with mild neurosensory C6 and C7 on the left.

By decision dated August 27, 2015, OWCP denied the claim for compensation. It accepted that the employment incident occurred as alleged. However, the claim was denied as the medical evidence was found to be insufficient to establish causal relationship between the employment incident and a diagnosed injury.

Dr. Dawson, in a report received by OWCP on August 24, 2015, characterized the injury as a slip and fall with a twisting moment of impact. He indicated that appellant was having trouble sitting for any length of time. Dr. Dawson noted that appellant showed initial loss of

motion, particularly external rotation of the left shoulder, as well as pain to the anterior subacromial region. He indicated this had been improving with physical therapy. In addition, Dr. Dawson reported appellant had signs of muscle and tendon irritability of the supportive paraspinous musculature, C6-7 nerve impingement, and left-sided sciatica. Dr. Dawson indicated that electromyogram (EMG) and nerve conduction velocity (NCV) studies should be performed. He concluded that the "mechanism or etiology is clear. Appellant had a torsion or twisting injury to the neck and back area with a wrenching to the shoulder. This did result with mild to modest injuries as described and the treatment regimen discussed above."

On September 2, 2015 appellant requested a review of the written record by an OWCP hearing representative. She submitted a September 1, 2015 report from Dr. Dawson, who provided results on examination. Dr. Dawson diagnosed C7 cervical myelopathy, significant headaches secondary to the cervical myelopathy, possible carpal tunnel syndrome, and ulnar nerve irritability distally.

In a separate report dated September 1, 2015, Dr. Dawson wrote, "The patient had a slip and fall at the workplace in the garage. She slipped with a slight twist, as there was evidently fluid on the ground. [Appellant] had a twist or torsion. She attempted to grab the door handle with her left hand with a sharp jolting motion. Now, this is the mechanism of injury. This is not a mystery and it is such that it can be associated with traction injuries to the nerves and/or disc injuries." Dr. Dawson noted that a major disc injury had been ruled out, but there was a traction injury to the nerve. He reported that appellant had persistently shown signs of C7 impingement, both motor and sensory, even in the examination on September 1, 2015. According to Dr. Dawson, this was not speculative as he had described exactly what the mechanism of injury was in this case. With regards to the sciatic nerve, Dr. Dawson opined that this was a stretch injury, but neurosensory only, and not a disc injury. He wrote, "Again, this would tend to be traction with pull and/or twist, which is termed 'torsion.'" Dr. Dawson concluded that appellant had no preexisting condition in terms of nerve impingement, with no prior signs or symptoms of nerve irritability before.

Appellant submitted continuing treatment reports from Dr. Dawson. In a report dated November 4, 2015, Dr. Dawson diagnosed cervical discopathy with cervical myelopathy, and lumbar sprain/strain pattern of injury. He indicated that appellant would go on light-duty status or telework from home.

By decision dated February 19, 2016, the hearing representative affirmed the August 27, 2015 OWCP decision. She held that Dr. Dawson had failed to provide sufficient medical rationale, as he had merely noted that the twist or torsion injury could be associated with traction injuries to the nerves or discs. The hearing representative also indicated that because an individual is asymptomatic before an incident does not establish causal relationship.

Appellant, through counsel, submitted a reconsideration request on April 11, 2016. Counsel submitted a March 3, 2016 report from Dr. Dawson. Dr. Dawson asserted that he had clearly opined what the mechanism of injury was in this case. He wrote that "with the patient grabbing the door handle and then slipping, there was not only traction or pull, but also a twist. This is enough to stretch the nerve fibers, particularly termed C7, and present to clinical hands-on examination. Later, this was supported by EMG and NCV studies, so this is definitely the

case. That is the mechanism." He opined that a review of the literature definitely will demonstrate and support this point, and he did not know how to be clearer in describing the mechanism of injury. Dr. Dawson indicated that he did not base his opinion on appellant being asymptomatic before the injury. He concluded that there was no doubt regarding his opinion in this case.

By decision dated July 8, 2016, OWCP reviewed the merits of the claim but denied modification, finding the medical evidence of record did not provide adequate medical rationale supporting a causal relationship.

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 filed within the applicable time limitation, that an injury was sustained while 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.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[4]

In order to determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally "fact of injury" in a traumatic injury case consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.[5]

Rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background, of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[6]

ANALYSIS

In the present case, OWCP has accepted that the incident occurred in the performance of duty on July 6, 2015. Appellant indicated that she slipped as she was opening her car door, twisting and jolting her body. The issue is whether the medical evidence of record is sufficient

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

[4] *See Irene St. John,* 50 ECAB 521 (1999); *Michael E. Smith,* 50 ECAB 313 (1999).

[5] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[6] *Jennifer Atkerson,* 55 ECAB 317, 319 (2004).

to establish causal relationship between the accepted employment incident and the diagnosed conditions.

In support of her claim, appellant submitted a number of reports from Dr. Dawson. He treated appellant from July 22, 2015 and provided a history of injury. Dr. Dawson has consistently opined that appellant sustained injuries to her neck, left shoulder and back due to the accepted incident. In his August 15, 2015 report, Dr. Dawson opined the mechanism of injury was clear that appellant had a torsion or twisting injury to the neck and back area with a wrenching to the shoulder. In a September 1, 2015 report, he again noted the twisting or torsion involved in the July 6, 2015 employment incident, and found a C7 impingement and sciatic nerve injury. Dr. Dawson also submitted a March 3, 2016 report, again reported the mechanism of injury was clear, and the traction and twisting stretched the C7 nerve fibers. He found diagnostic studies supported the clinical evidence.

The Board finds that Dr. Dawson's reports support a causal relationship between the July 6, 2015 employment incident and a neck injury. These narrative medical reports from Dr. Dawson provide a history of the employment incident, objective findings, diagnostic studies, and an opinion discussing the mechanism of injury. While these reports are insufficient to meet appellant's burden of proof, as they are not completely rationalized with respect to the diagnosed conditions, they do support causal relationship between a cervical injury and the July 6, 2015 incident and are sufficient to warrant further development.[7]

Proceedings under FECA are not adversarial in nature nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[8] In view of the noted medical evidence, OWCP should have referred the matter to an appropriate medical specialist to determine whether appellant sustained an injury causally related to the July 6, 2015 employment incident.[9]

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 accepted July 6, 2015 work incident caused or contributed to a diagnosed condition to the neck, back, and/or shoulder. After such further development of the case record as OWCP deems necessary, a *de novo* decision shall be issued.

CONCLUSION

The Board finds the case is not in posture for decision.

[7] *See L.T.*, Docket No. 16-0172 (issued July 13, 2016).

[8] *A.A.*, 59 ECAB 726 (2008); *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

[9] *See J.J.*, Docket No. 16-0958 (issued August 29, 2016); *M.M.*, Docket No. 15-1623 (issued April 15, 2016).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 8, 2016 is set aside and the case remanded to OWCP for further action consistent with this decision of the Board.

Issued: February 21, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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