United States Department of Labor
Employees' Compensation Appeals Board

J.C., Appellant	)	
and	)	**Docket No. 17-0219**
	)	**Issued: February 1, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Teaneck, NJ, Employer	)	

Appearances:
James D. Muirhead, 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 November 7, 2016 appellant, through counsel, filed a timely appeal from a May 31, 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.[3]

[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.*

[3] The Board notes that counsel submitted additional evidence to the Board that was not of record when OWCP issued its May 31, 2016 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 501.2(c)(1).

ISSUE

The issue is whether appellant met his burden of proof to establish a left inguinal hernia causally related to a December 31, 2014 employment incident.

FACTUAL HISTORY

On January 2, 2015 appellant, then a 45-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) for a groin injury that allegedly occurred on December 31, 2014. He indicated that he felt a sharp pain "while casing mail." The injury allegedly occurred at 7:30 a.m. Appellant indicated that he advised one of the supervisors the morning of the injury. He also stopped work at 7:45 a.m. on the same date. The employing establishment controverted the claim noting that when appellant left work on December 31, 2014, he stated that he felt ill and was holding his stomach. However, appellant never reported any groin pain or an injury from lifting.

Appellant submitted a December 31, 2014 note from the Riverside Medical Group that indicated that he was disabled from December 31, 2014 to January 7, 2015. No diagnosis was provided. The author's signature is illegible. The note also indicated "No heavy lifting until evaluated by a surgeon."

In a letter dated January 14, 2015, OWCP requested that appellant submit additional factual and medical evidence in support of his claim. In another letter dated January 14, 2015, it requested additional information from the employing establishment.

Appellant submitted a January 9, 2015 duty status report (Form CA-17) from Dr. John Poole, a general surgeon. The report listed December 31, 2014 as the date of injury, but did not include a history of injury. Dr. Poole noted "umbilical hernia" under the heading "diagnosis due to injury." He noted that appellant needed surgery and advised that he could resume work only if light duty was available. Dr. Poole noted that appellant could not lift more than 15 pounds.

In a January 15, 2015 Form CA-17, an unidentified nurse practitioner ("NP") diagnosed hernia. The report did not identify a date of injury.

In an "initial visit" form report dated January 20, 2015, Dr. Luningning Gatchalian, an attending Board-certified family practitioner from the Riverside Medical Group, indicated that appellant reported that on December 31, 2014 he felt sharp groin pain (left side) when lifting a heavy mail tray. She diagnosed left inguinal hernia and indicated that appellant should be referred to a surgeon.

In a Form CA-17, completed on January 20, 2015, Dr. Gatchalian did not list a date of injury or mechanism of injury but identified the "diagnosis due to injury" as left inguinal hernia. She recommended various work restrictions including no lifting more than 10 pounds.

In an attending physician's report (Form CA-20), completed on January 20, 2015, Dr. Gatchalian listed the date of injury as December 31, 2014 and the mechanism of injury as "[left] groin pain after lifting heavy tray." She diagnosed left inguinal hernia and checked a box

marked "Yes" indicating that the diagnosed condition was caused or aggravated by an employment activity.

In a January 23, 2015 letter addressed to appellant, an employee of the Riverside Medical Group, A. Natalie Gutierrez, indicated that appellant was initially seen on December 31, 2014 "shortly after [his] symptoms started." Ms. Gutierrez described appellant as an employing establishment "driver who lifts a lot of weight while on his shift." She further noted that based on "the physical examination the doctor [believed] that [appellant] might have an inguinal hernia caused by the weight that [he had] been lifting during his shift." Lastly, Ms. Gutierrez noted that appellant had been referred to a general surgeon who would be the one to determine the probable cause of appellant's inguinal hernia.

In a decision dated February 20, 2015, OWCP denied appellant's claim for a work-related inguinal hernia. It found that appellant had not established the factual component of his claim, *i.e.*, the fact of injury. OWCP determined that appellant did not adequately identify the specific work duties that he believed caused an inguinal hernia on December 31, 2014 and that he did not respond to OWCP's factual questions so as to establish the factual portion of your claim.

Appellant submitted additional evidence in support of his claim. In a February 11, 2015 report, Dr. Adam Rosenstock, an attending Board-certified orthopedic surgeon, indicated that appellant reported that he felt left groin pain while working on December 31, 2014 and that he had no symptoms prior to this episode. Since then, appellant had daily pain and a bulge in the left groin. Dr. Rosenstock diagnosed inguinal hernia, without mention of obstruction or gangrene, and recommended laparoscopic left inguinal hernia repair.

On February 24, 2015 Dr. Rosenstock performed laparoscopic extra-peritoneal repair surgery of appellant's left inguinal hernia. The surgery was not authorized by OWCP.

Appellant, through counsel, expressed his disagreement with OWCP's February 20, 2015 decision and requested a telephone hearing with an OWCP hearing representative. During the hearing held on October 7, 2015, appellant testified regarding the work duties he performed on December 31, 2014 and discussed the medical treatment he received for his inguinal hernia condition. He indicated that he was casing mail on the morning of December 31, 2014 and that, after he lifted a heavy tray of mail and turned to load it into a truck, he felt a sharp pain in his groin area. Appellant noted that he then lifted another tray of mail and felt a worse pain in his groin area.

In a decision dated December 15, 2015, the hearing representative denied appellant's claim for a work-related inguinal hernia. He modified OWCP's February 20, 2015 decision to reflect that appellant had established the factual aspect of his claim in that he identified work factors on December 31, 2014, including casing mail and loading trays of mail into his postal vehicle. The hearing representative further determined, however, that appellant failed to submit rationalized medical evidence establishing an inguinal hernia due to these work factors.

On March 2, 2016 counsel requested reconsideration. He resubmitted copies of documents previously submitted to OWCP. Counsel also submitted an October 22, 2015 letter in

which Dr. Rosenstock described the office visit on February 11, 2015. Dr. Rosenstock noted that, upon examination, he found that appellant had a left inguinal hernia and he reported that he later performed a laparoscopic repair on February 24, 2015. Dr. Rosenstock indicated, "As far as whether this was work related I can only go by what [appellant] told me regarding when this injury occurred," but he definitely had a left inguinal hernia when I examined him.

By decision dated May 31, 2016, OWCP denied modification of the hearing representative's December 15, 2015 decision denying appellant's claim for a work-related inguinal hernia. It found that appellant had established work factors of casing mail and lifting trays on December 15, 2015, but that he failed to submit rationalized medical evidence establishing an inguinal hernia due to these work factors.

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, 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 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 he actually experienced the employment incident at the time, place, and in the manner alleged.[6] Second, the employee must submit evidence, 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 generally required to establish causal relationship is rationalized medical opinion evidence. 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 claimant.[8]

[4] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989). A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift. 20 C.F.R. § 10.5(q), (ee); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

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

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

[8] *See I.J.*, 59 ECAB 408 (2008); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

ANALYSIS

On January 2, 2015, appellant filed a Form CA-1 alleging that on December 31, 2014 he sustained a groin injury. He noted that he felt a sharp pain while casing mail. OWCP initially denied the claim because appellant failed to establish the alleged December 31, 2014 employment incident. However, the hearing representative subsequently accepted work factors of casing mail, lifting heavy mail trays, and loading the trays into a truck on December 31, 2014. Although the evidence of record supported that the December 31, 2014 incident occurred as alleged, and appellant was diagnosed with a left inguinal hernia, OWCP found that appellant failed to submit rationalized medical evidence establishing a work-related inguinal hernia.

The Board finds that appellant failed to meet his burden of proof to establish a work-related inguinal hernia on December 31, 2014, as he failed to submit sufficient medical evidence to establish such an injury on December 31, 2014 due to the accepted work factors.

In a Form CA-20, completed on January 20, 2015, Dr. Gatchalian, an attending physician, listed the date of injury as December 31, 2014 and the mechanism of injury as "[left] groin pain after lifting heavy tray." She diagnosed left inguinal hernia and checked a box marked "Yes" indicating that the diagnosed 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 "Yes" to a form question, without more by the way of medical rationale, that opinion has little probative value and is insufficient to establish causal relationship. Appellant's burden includes the necessity of furnishing an affirmative opinion from a physician who supports his or her conclusion with sound medical reasoning.[9] As Dr. Gatchalian did no more than check "Yes" to a form question, her opinion on causal relationship is of little probative value and is insufficient to discharge appellant's burden of proof. She did not discuss appellant's work factors in any detail or explain the medical process through which they could have caused an inguinal hernia. In addition, Dr. Gatchalian did not discuss appellant's factual and medical history in any detail and, therefore, it cannot be said that her opinion was based on a complete factual and medical history.[10]

In another January 20, 2015 form report, Dr. Gatchalian listed December 31, 2014 as the date of injury and noted that the "diagnosis due to injury" was inguinal hernia. However, this report does not contain a rationalized medical opinion relating the diagnosed condition to the accepted work factors. The Board has held that 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.[11]

In a January 23, 2015 letter addressed to appellant, an employee of the Riverside Medical Group indicated that appellant was initially seen by the office on December 31, 2014 and that "the doctor believes that the patient might have an inguinal hernia caused by the weight that the

[9] *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

[10] *See supra* note 8.

[11] *C.M.*, Docket No. 14-88 (issued April 18, 2014).

patient has been lifting during his shift." However, this letter does not have probative value on the issue of medical causation because there is no indication that it was produced by a physician. Rather, it appears to have been produced by a nonphysician employee of the Riverside Medical Group.[12]

In an October 22, 2015 letter, Dr. Rosenstock, an attending physician, noted that he found that appellant had a left inguinal hernia and he reported that he performed a laparoscopic repair on February 24, 2015. He indicated, "As far as whether this was work related I can only go by what [appellant] told me regarding when this injury occurred but he definitely had a left inguinal hernia when I examined him." The submission of this report would not establish appellant's claim for a work-related inguinal hernia because Dr. Rosenstock did not provide a clear, unequivocal medical opinion regarding the cause of appellant's hernia. Rather, Dr. Rosenstock simply repeated appellant's belief regarding the cause of the hernia. The Board has held that an opinion which is equivocal or speculative is of limited probative value regarding the issue of causal relationship.[13]

Thus the Board finds that appellant failed to meet his burden of proof to establish a work-related inguinal hernia on December 31, 2014.[14]

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 did not meet his burden of proof to establish a left inguinal hernia causally related to a December 31, 2014 employment incident.

[12] Under FECA, the report of a nonphysician does not constitute probative medical evidence. *See L.L.*, Docket No. 13-829 (issued August 20, 2013).

[13] *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956).

[14] The record contains a form entitled "Authorization for Examination and/or Treatment" (Form CA-16), which was completed on February 3, 2015. The Board notes that 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. *See Tracy P. Spillane*, 54 ECAB 608 (2003). 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. *See* 20 C.F.R. § 10.300(c). The record is silent as to whether OWCP paid for the cost of appellant's examination or treatment for the period noted on the form. Upon return of the case record, OWCP should address this issue.

ORDER

IT IS HEREBY ORDERED THAT the May 31, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 1, 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