

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

W.H., Appellant

and

**U.S. POSTAL SERVICE, CARRIER ANNEX,
Harwood Heights, IL, Employer**

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**Docket No. 16-1483
Issued: January 30, 2017**

Appearances:

Alan J. Shapiro, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On July 11, 2016 appellant, through counsel, filed a timely appeal from a May 4, 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 over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish an injury causally related to the accepted January 23, 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 February 7, 2015 appellant, then a 53-year-old city carrier, filed a traumatic injury claim (Form CA-1). He alleged that on January 23, 2015 he was unloading his vehicle and pushing materials into the employing establishment. When appellant came through with a gurney, the double doors into the building had been locked by the supervisor and his entire body was thrust forward as he attempted to push through the closed doors. He felt pain in his lower back along with a burning sensation going down both legs. Appellant stopped work on February 2, 2015.

In reports dated February 21 and March 17, 2015, Dr. Richard Rodarte, a physician Board-certified in occupational medicine, noted that appellant complained of pain in his lower back, left knee, and the left side of his neck. Appellant related that on January 23, 2015 he was pushing a gurney loaded with mail, and when he tried to push it through doors, the doors were unknowingly bolted shut, and the impact caused him to fall forward into the gurney. Dr. Rodarte reviewed appellant's x-rays³ and diagnosed osteoarthritis of the bilateral knees, right hip, and lumbar spine. He deferred from signing papers for absences already taken, as he believed that appellant should have been able to work in a light-duty status.

By letter dated March 5, 2015, OWCP informed appellant that, when his claim was received, it appeared to be a minor injury that resulted in minimal or no lost time from work. It noted that as the employing establishment did not controvert the claim, a payment of a limited amount of medical expenses was administratively approved, but the merits of appellant's claim were not addressed. OWCP indicated that the claim had been reopened for consideration, and that further information was necessary to support his claim. Appellant was afforded 30 days to submit the specified information. He submitted medical evidence.

By decision dated April 9, 2015, OWCP denied appellant's claim. It found that the evidence of record was insufficient to establish that his medical condition was causally related to the accepted employment incident.

In an April 30, 2015 report, Melissa Miller, a physician assistant, listed appellant's diagnoses as osteoarthritis of bilateral knees, right hip, and lumbar spine. She restricted appellant from climbing, but noted that he could otherwise perform full duty.

On May 1, 2015 appellant requested an oral hearing before an OWCP hearing representative.

Appellant continued to receive treatment from Dr. Rodarte. In his May 5, 2015 report, Dr. Rodarte found that, based on the mechanism of the injury, appellant was at maximum medical improvement. He noted that appellant was suffering from a preexisting chronic condition which still prevented him from performing his full duties, especially climbing. Dr. Rodarte noted that this restriction was due to appellant's longstanding personal medical condition, not a workers' compensation claim.

³ The x-rays taken on February 10, 2015 were interpreted by Dr. Mary Capelli-Schellpfeffer, a physician Board-certified in public health and general preventive medicine, as showing lumbar spine diffuse moderate spondylosis and facet osteoarthritis.

At the hearing held on August 4, 2015, appellant testified that in 2009 he suffered injuries to his back, knee, and left shoulder. The hearing representative explained to appellant that he needed to submit a report from a qualified physician explaining how the January 23, 2015 employment incident caused or aggravated his diagnosed condition of osteoarthritis, and that he had 30 days to submit the information.

In an August 24, 2015 report Dr. Monica Edwards, a Board-certified internist, noted appellant's history of injury. She opined that appellant's current back pain was directly related to the work injury and that he should start physical therapy immediately.

By decision dated September 17, 2015, the hearing representative affirmed the April 9, 2015 decision denying appellant's claim. She found that the evidence of record was insufficient to establish that appellant sustained an injury causally related to the accepted employment incident.

On February 6, 2016 appellant requested reconsideration. In support thereof, he submitted a November 13, 2015 report wherein Dr. Edwards assessed appellant with midline low back pain with right-sided sciatica and primary localized osteoarthrosis, pelvic region and right thigh. Dr. Edwards also completed a December 10, 2015 attending physician's report (Form CA-20) on which she checked a box marked "yes" that appellant's lumbar spondylosis, lumbar osteoarthritis, midline low back pain, and right-sided sciatica were causally related to appellant's employment incident of February 1, 2015. She noted that appellant had been totally disabled since October 26, 2015. In a January 25, 2016 report, Dr. Edwards noted that appellant was evaluated at the Loyola occupational health facility in February 2015, and that she evaluated appellant on February 17, August 24, and November 3, 2015 for low back and hip pain. She opined that his conditions were causally related to his January 23, 2015 employment injury. Dr. Edwards described the employment incident and concluded that, in her judgement, the force created by the impact with the door jarred appellant's back sufficiently to cause the severe low back pain that he had since been experiencing. She opined that based on appellant's subsequent imaging, the diffuse lumbar spondylosis and osteoarthritis were the cause of this back pain, and that she believed that the work injury directly aggravated the lumbar spondylosis and osteoarthritis leading to back pain. In addition, Dr. Edwards noted that the back pain had altered his gait and caused postural changes that have now worsened his underlying right hip pain. She discussed his x-rays, and diagnosed severe right and moderate left hip osteoarthritis mildly progressed on the right. Dr. Edwards opined that physical therapy would increase his functional capacity and alleviate some of his pain, but that at the present time, appellant was unable to complete any of the duties of his current job. She noted that, if there was a sedentary or mostly sedentary position, this would likely be a feasible alternative.

By decision dated May 4, 2016, OWCP denied modification of its prior decision. It determined that the medical evidence of record failed to establish causal relationship. Specifically, the reports of Dr. Edwards were not sufficiently rationalized as she did not discuss the nature of the underlying condition and whether the underlying condition may have been affected by the January 23, 2015 work injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 caused 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.⁵ 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.⁶

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 he actually experienced the employment incident at the time, place, and in the manner alleged.⁷ 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.⁸

The opinion of the physician must be based on a complete factual and medical background of the employee, 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 The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹⁰

ANALYSIS

OWCP accepted that appellant experienced the employment incident on January 23, 2015, as alleged. The evidence of record also establishes that appellant has been diagnosed with osteoarthritis of his knees, right hip, and lumbar spine. The Board finds, however, that appellant failed to establish that his diagnosed medical conditions were caused or aggravated by his January 23, 2015 employment incident.

Dr. Rodarte's reports are insufficient to establish a causal relationship. He noted that appellant's work restrictions were related to a longstanding personal medical condition and not

⁴ *Id.*

⁵ *Joe D. Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

⁸ *Id.*

⁹ *I.J.*, 59 ECAB 408 (2008); *supra* note 5.

¹⁰ *James Mack*, 43 ECAB 321 (1991).

to his workers' compensation claim. Dr. Rodarte has not specifically indicated that the accepted employment incident caused or aggravated appellant's medical condition. Dr. Capelli-Schellpfeffer read appellant's x-rays as revealing diffuse moderate spondylosis and facet osteoarthritis in appellant's lumbosacral spine. However, she did not address causal relationship. As these physicians did not provide an opinion on causal relationship, their opinions are insufficient to establish causal relationship.¹¹

Appellant also submitted reports by Dr. Edwards in support of his claim. Dr. Edwards assessed appellant with midline low back pain with right-sided sciatica and primary localized osteoarthritis, pelvic region and right thigh. She provided a description of the employment event and opined that the force created by the impact with the door jarred appellant's back sufficiently to cause the severe low back pain. Dr. Edwards also opined that the work injury aggravated the lumbar spondylosis and osteoarthritis leading to the back pain. OWCP found that the opinion of Dr. Edwards was not rationalized as she did not discuss the nature of the underlying condition, including its natural or traditional course, and how it may have been affected by the work injury of January 23, 2015 with reference to the medical records.

The Board finds that appellant failed to meet his burden of proof.

Dr. Edwards focused her opinion regarding causal relationship on aggravation of appellant's pain symptoms. While she also noted that appellant had preexisting lumbar and hip conditions, she did not explain how the accepted incident physiologically exacerbated any preexisting physical condition.¹² A well-rationalized opinion is particularly warranted when there is a history of preexisting condition.¹³ Dr. Edwards provided no history regarding appellant's prior injuries and no discussion of the role appellant's preexisting arthritic conditions may have played in relation to his current diagnoses. Appellant testified at the August 4, 2015 hearing that he had sustained prior injury to his back, knee, and left shoulder in 2009. As such, Dr. Edwards' report is not based on a proper medical history and is not sufficiently rationalized to be of probative medical value.¹⁴

The Board finds the report of Ms. Miller, a physician assistant, is of no probative value as she is not considered a physician under FECA.¹⁵

On appeal counsel argues that the evidence submitted supports that appellant sustained an employment injury on January 23, 2015. Appellant has the burden of proof, however, to submit medical evidence based on a complete and accurate history explaining how the employment incident described caused or contributed to the diagnosed medical condition and supporting that

¹¹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹² *See J.P.*, Docket No. 16-0954 (issued December 13, 2016).

¹³ *M.B.*, Docket No. 16-884 (issued September 8, 2016).

¹⁴ *Id.*

¹⁵ The term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8102(2); *E.K.*, Docket No. 09-1827 (issued April 21, 2010); *A.C.*, Docket No. 15-1892 (issued February 1, 2016).

opinion with medical reasoning to demonstrate that the conclusion reached is sound, logical, and rationale.¹⁶ He did not submit such evidence and thus did not meet his burden of proof.

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 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 an injury causally related to the accepted January 23, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 4, 2016 is affirmed.

Issued: January 30, 2017
Washington, DC

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

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

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

¹⁶ See *John W. Montoya*, 54 ECAB 306 (2003).