United States Department of Labor
Employees' Compensation Appeals Board

A.D., Appellant	)	
and	)	**Docket No. 17-1136**
	)	**Issued: November 9, 2017**
DEPARMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Bronx, NY, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 2, 2017 appellant, through counsel, filed a timely appeal from a March 6, 2017 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 to consider 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 appellant submitted additional evidence following the decision. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1); *Sandra D. Pruitt*, 57 ECAB 126 (2005). Appellant may submit that evidence to OWCP along with a request for reconsideration, pursuant to 5 U.S.C. § 8128(1) and 20 C.F.R. § 10.606(b)(3).

ISSUE

The issue is whether appellant met his burden of proof to establish cervical conditions causally related to the accepted August 24, 2016 employment incident.

FACTUAL HISTORY

On August 30, 2016 appellant, then a 59-year-old laborer, filed a traumatic injury claim (Form CA-1) alleging that on August 24, 2016 he sustained head and neck injuries, a fractured cheek bone, bruised neck spasm, and back spasm when he fell while removing a lawn mower from a large container. He stopped work on August 31, 2016.

OWCP received employing establishment medical reports dated August 24, 2016. Appellant's history of injury was related as "employee walking backwards removing lawn mower from a container, he tripped, fell backwards into a hole and hit his head then hit the right side of his face." Computerized tomography (CT) scans of the cervical spine and maxillofascial area were interpreted by Dr. Gabriel Pivawer, a Board-certified diagnostic radiologist, as showing a mild depressed right zytomatic fracture and no evidence of cervical fracture. Cervical x-rays were interpreted by Dr. Radoslav T. Toshkoff, an osteopathic physician, as showing some reversal of normal cervical lordosis centered at C5, chronic degenerative changes, and no definite evidence of acute fracture.

In a September 8, 2016 report, Dr. Surinder P. Jindal, an examining Board-certified neurologist, diagnosed postconcussion syndrome and cervical myofascial pain. He reported that appellant sustained head and neck injuries on August 24, 2016 when he tripped and fell at work while removing a lawn mower from a metal container. A neurological examination was performed which revealed decreased sensation in the C5-6 distribution, paraspinal cervical muscle tenderness and spasm, 20 degrees right lateral flexion, 30 degrees extension, no muscle hypertrophy or atrophy, no fasciculation, 4/5 left side strength and symmetrical bilateral deep tendon reflexes, and bilateral toe flexor responses. A review of a CT scan showed no cervical fracture. Dr. Jindal completed a work capacity evaluation musculoskeletal (Form OWCP-5c) noting that appellant was disabled from work for four weeks due to cervical, head, and facial trauma.

On a September 8, 2016 prescription note Dr. Jindal wrote that appellant was unable to work for four weeks.

In a September 15, 2016 report, Dr. Jindal noted that appellant was seen for complaints of cervical pain, headaches, and left-side pain. Neurological examination findings were provided with a diagnoses of head and right facial, postconcussion syndrome, and cervical strain with muscle spasms.

By letter dated September 28, 2016, OWCP informed appellant that the evidence of record was insufficient to establish his claim. Appellant was advised regarding the medical and factual evidence to submit and was afforded 30 days to provide this evidence.

In response to OWCP's request, appellant submitted additional evidence.

Dr. Jindal, in reports dated September 23 and 30, 2016, diagnosed postconcussion syndrome with radicular symptoms and history of head trauma. Neurological examination findings were unchanged.

An October 7, 2016 magnetic resonance imaging (MRI) scan of the cervical spine revealed C2-3 and C7 to T1 spondylosis associated with bulging and/or broad-based disc herniations, C3-4 canal stenosis, C3-5 signal abnormality attributable to cord impingement from disc disease and spondylosis, and straightening of cervical spinal cord lordosis due to muscle spasms.

Dr. Jindal, in an October 7, 2016 report, provided physical and neurological examination findings and noted that a September 23, 2016 MRI scan of the brain was unremarkable. He diagnosed a history of head trauma and cervical radiculopathy. In an October 25, 2016 report, Dr. Jindal diagnosed cervical strain with radiculopathy and a history of head trauma. Examination findings were unchanged.

By decision dated November 4, 2016, OWCP denied appellant's claim. It accepted that the August 24, 2016 incident occurred as alleged, but found the evidence of record insufficient to establish causal relationship between the diagnosed conditions and the accepted incident.

OWCP received reports from Dr. Jindal dated November 11 and 28, 2016. In the November 28, 2016 report, Dr. Jindal noted that appellant sustained a work injury on August 24, 2016 and was evaluated for headaches and neck pain. He observed that appellant's symptoms began following his accepted August 24, 2016 work injury. Diagnoses included postconcussion syndrome, head and facial trauma, and cervical myofascial pain, which Dr. Jindal attributed to the accepted August 24, 2016 injury. Dr. Jindal further noted that appellant had been unable to work since August 24, 2016 and had cervical and radicular pain complaints. He found that appellant was disabled from his date-of-injury job, but was able to work with restrictions of no lifting more than 10 pounds.

On December 6, 2016 appellant requested reconsideration of the November 29, 2016 decision.

Dr. Jindal, in reports dated December 2 and 23, 2016, provided appellant's history of injury and examination findings. Diagnoses included headache with cervical strain, radiculopathy, cervical disc disease, and a history of post-traumatic headache with postconcussion syndrome. In the December 2, 2016 report, Dr. Jindal also recommended testing to assess appellant's radiculopathy.

On January 11 and February 1, 2017 Dr. Jindal noted that appellant was seen for post-traumatic headaches, postconcussion syndrome, dizziness, headache, and cervical disease. He attributed appellant's current symptoms to the accepted August 24, 2016 incident in the January 11, 2017 report. A review of the cervical spines MRI scan showed cervical disc disease. Dr. Jindal provided neurological and physical examination findings and diagnosed post-traumatic headache with cervical disc disease and cervical radiculopathy.

In a decision dated March 6, 2017, OWCP found the evidence sufficient to vacate the November 4, 2016 decision. It found that, while the evidence of record was sufficient to support acceptance of appellant's claim for postconcussion syndrome and right zygomatic arch fracture,

it was insufficient to establish that the diagnosed cervical conditions were caused or aggravated by the accepted August 24, 2016 injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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.[5] 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.[6]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[7] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and the compensable employment factors.[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]

ANALYSIS

By decision dated March 6, 2017, OWCP accepted that appellant sustained postconcussion syndrome and right zygomatic arch fracture on August 24, 2016 when he fell while removing a lawn mower from a large container. However, it found the evidence of record insufficient to establish causal relationship between the diagnosed cervical conditions and the accepted August 24, 2016 injury.

The Board finds that appellant has failed to meet his burden of proof to show that the diagnosed cervical conditions were caused or aggravated by his accepted August 24, 2016 injury.

Appellant submitted a series of reports from Dr. Jindal. In a September 8, 2016 report, Dr. Jindal opined that appellant sustained head and neck injuries as a result of the accepted August 24, 2016 injury. In a November 28, 2016 report, he diagnosed postconcussion syndrome, cervical myofascial pain, and head and facial trauma, which he attributed to the accepted

[4] 5 U.S.C. § 8101 *et seq.*

[5] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[6] *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[7] *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

[8] *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

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

August 24, 2016 injury. In a January 11, 2017 report, Dr. Jindal opined that appellant's current symptoms of post-traumatic headaches, cervical disease, dizziness, headache, and postconcussion syndrome were due to the accepted August 24, 2016 injury. His opinion that the diagnosed cervical conditions were due to the accepted August 24, 2016 work incident was, however, unsupported by medical rationale. A mere conclusion without the necessary rationale explaining how the accepted employment incident could result in the diagnosed condition is insufficient to meet appellant's burden of proof.[10] Dr. Jindal's opinion is of limited probative value as it does not contain any medical rationale explaining how appellant's fall while lifting a lawn mower would have physiologically caused the diagnosed cervical conditions.[11] Medical opinions which contain no supporting rationale are of little probative value.[12]

The remaining reports from Dr. Jindal are as well insufficient to support appellant's claim. While the doctor diagnosed conditions including headache with cervical strain, radiculopathy, cervical disease, cervical radicular and myofascial pain, postconcussion syndrome with radicular symptoms, and history of head trauma and postconcussion, he offered no opinion as to the cause of the diagnosed cervical conditions. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[13] In view of the lack of any rationale provided by Dr. Jindal on the issue of causal relationship, the Board finds that his reports fail to establish that appellant's cervical conditions were caused or aggravated by the accepted August 24, 2016 injury.

The record also contains August 24, 2016 CT scans and x-rays showing no cervical fracture; a September 23, 2016 MRI scan of the brain, which was unremarkable, and an October 7, 2016 MRI scan revealing C2-3 and C7 to T1 spondylosis associated with bulging and/or broad-based disc herniations, C3-4 canal stenosis, C3-5 signal abnormality attributable to cord impingement from disc disease and spondylosis, and straightening of cervical spinal cord lordosis due to muscle spasms. As these diagnostic tests do not specifically address whether the diagnosed cervical conditions had been caused or aggravated by the accepted August 24, 2016 injury,[14] they are of limited probative value and insufficient to establish his claim

The record before the Board is without rationalized medical evidence establishing that appellant sustained cervical conditions causally related to the accepted August 24, 2016 injury. OWCP advised appellant that it was his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, history of treatment, and a physician's opinion, with medical reasons, on the cause of his condition. Appellant failed to submit appropriate medical documentation in response to OWCP's request. The Board has held that the

[10] *See Beverly A. Spencer*, 55 ECAB 501 (2004).

[11] *D.P.*, Docket No. 17-0148 (issued May 18, 2017).

[12] *F.T.*, Docket No. 09-0919 (issued December 7, 2009) (medical opinions not fortified by rationale are of diminished probative value); *Sedi L. Graham*, 57 ECAB 494 (2006) (medical form reports and narrative statements merely asserting causal relationship generally do not discharge a claimant's burden of proof).

[13] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[14] *See K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Linda I. Sprague*, 48 ECAB 386 (1997) (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).

mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.[15] An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.[16]

On appeal counsel contends that OWCP's decision was contrary to fact and law. Based on the findings and reasons set forth above, the Board finds that counsel's arguments are not substantiated.

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 cervical conditions causally related to the accepted August 24, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 6, 2017 is affirmed.

Issued: November 9, 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

[15] *L.D.*, Docket No. 09-1503 (issued April 15, 2010); *D.I.*, 59 ECAB 158 (2007); *Daniel O. Vasquez*, 57 ECAB 559 (2006).

[16] *S.S.*, 59 ECAB 315 (2008); *J.M.*, 58 ECAB 303 (2007); *Donald W. Long*, 41 ECAB 142 (1989).