United States Department of Labor
Employees' Compensation Appeals Board

P.C., Appellant	)	
	)	**Docket No. 17-0880**
and	)	**Issued: October 13, 2017**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Bethpage, NY, Employer	)	

Appearances:
Thomas S. Harkins, 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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On March 16, 2017 appellant, through counsel, filed a timely appeal from a September 23, 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 met his burden of proof to establish left ring finger, right wrist, and head injuries causally related to the May 1, 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.*

On appeal counsel contends that appellant sustained disabling injuries and conditions causally related to the accepted work incident.

FACTUAL HISTORY

On May 1, 2015 appellant, then a 40-year-old forklift driver, filed a traumatic injury claim (Form CA-1) alleging that on that day he sustained left ring finger, right wrist, and head injuries when his left ring finger became caught in a postal container (hereinafter referred to as postcon) and when he pulled it back, he fell backwards. He stopped work on the date of injury. In a May 1, 2015 statement, appellant noted helping a coworker build postcons in a trailer when unbuilt postcons began to fall and his left ring finger became caught in one of them. He was able to pull his finger free as the postcons were falling, but he fell on his back and head. Appellant asserted that he felt light-headed and woozy.

Appellant submitted a May 1, 2015 attending physician's report (Form CA-20) from Dr. Shermil M. Daniel, an emergency medicine specialist. Dr. Daniel noted that on May 1, 2015 appellant's hand became caught on a canister and he fell and hit the back of his head. She checked the box marked "yes" when asked if the condition was caused or aggravated by the employment incident. Dr. Daniel advised that appellant could return to work on May 6, 2015. In an after-visit summary report dated May 1, 2015, she diagnosed a hand injury and minor head injury without loss of consciousness, initial encounter. Dr. Daniel provided discharge instructions regarding appellant's hand and head injuries.

By letter dated May 19, 2015, OWCP advised appellant of the deficiencies of his claim. It requested that he submit additional factual and medical evidence, including a detailed report from his physician explaining how the reported work incident caused or aggravated his claimed injury.

Duty status reports (Form CA-17) dated May 7 and 26, 2015, noted a history of injury that on May 1, 2015 appellant was inside a truck when a metal container fell on him, that he fell on his back and hit his head, right wrist, and fingers, and his right shoulder. Dr. Michael Hearns, Board-certified in occupational medicine, described clinical findings and diagnosed pain in the neck, back, right shoulder, and right arm. He advised that appellant could not resume his regular work and listed his physical restrictions.

Unsigned letters dated May 7 and 26, 2015 from Central Medical Services of Westrock indicated that appellant was totally and temporarily disabled and set forth restrictions. The letters noted that appellant was unable to return to work due to a work-related condition sustained on May 1, 2015 and that he had postconcussive headaches, neck, mid-back, low back, head, right wrist, left fourth digit, and right shoulder diagnoses.

In a hospital report dated May 1, 2015, Dr. Daniel restated appellant's history of injury. She noted a history of his family, social, and medical background, listed examination findings and diagnostic and laboratory test results, and diagnosed a mild head injury and a hand injury.

Appellant submitted several diagnostic reports from Dr. Robert Schepp, a Board-certified radiologist. In a May 18, 2015 brain magnetic resonance imaging (MRI) scan report, Dr. Schepp

provided an impression of an unremarkable noncontrast MRI scan of the head. He also provided an impression of no abnormal soft tissue masses, no areas of abnormal signal intensity, no areas of abnormal vascular structures, and no evidence of parenchymal hemorrhage or extra-axial fluid collections. In a May 26, 2015 right shoulder x-ray report, Dr. Schepp found no acute fracture, slight joint space narrowing, and slight hypertrophic changes of the acromioclavicular joint. In a cervical spine x-ray report of the same date, he found slight diffuse disc space narrowing, minimal facet hypertrophy at C3-4 through C6-7 without evidence of significant bony foraminal narrowing, and straightening of the cervical curvature. Also, on the same date, Dr. Schepp reported that a lumbar spine x-ray revealed disc space narrowing at L5-S1 and to a lesser extent at L3-4 and L4-5 disc interspace levels, facet hypertrophy at L5-S1 and to a lesser extent at L3-4 and L4-5 without significant bony neural foraminal narrowing, and limited motion on flexion. A thoracic spine x-ray showed a dextroscoliosis thoracic spine apex at T9.

By decision dated June 30, 2015, OWCP denied appellant's traumatic injury claim because the medical evidence of record failed to provide a medical diagnosis in connection with the accepted May 1, 2015 employment incident.

OWCP received a May 26, 2015 prescription note from John P. Mullin, a physician assistant, which ordered physical therapy to treat appellant's cervical, thoracic, and lumbar spine and to evaluate his right shoulder function. In another prescription dated May 26, 2015, he ordered a cervical spine MRI scan of the cervical spine.

In reports dated June 2, 2015, a physical therapist noted a date of injury of May 1, 2015 and appellant's complaints of headaches and muscle spasms. The physical therapist discussed examination findings, provided an illegible diagnosis from Dr. Hearns, and addressed appellant's treatment plan. A June 9, 2015 letter from Central Medical Services of Westrock with an illegible signature noted appellant's restrictions. The letter stated that he was totally and temporarily disabled due to a work-related condition sustained on May 1, 2015.

A June 9, 2015 Form CA-17 report completed by Dr. Hearns restated appellant's history of injury and described clinical findings. He indicated that appellant's condition was due to his injury and listed his restrictions.

An unsigned report dated May 18, 2015 from Middle Village Radiology noted that appellant had neck, mid-back, low back, head, wrist, and left finger diagnoses. The report also noted that Dr. Hearns had referred him to undergo several diagnostic tests.

In an appeal request form, received by OWCP on August 4, 2015, appellant requested a telephone hearing before an OWCP hearing representative.

In May 7, 2015 to February 19, 2016 reports and a letter, Dr. Hearns examined appellant and reviewed diagnostic test results. He maintained that appellant had sustained a work-related injury on May 1, 2015. Dr. Hearns listed his work restrictions and advised that his prognosis was fair. He reiterated his prior opinion that appellant was totally disabled from work.

In a June 20, 2015 medical report, Dr. Morton Finkel, a Board-certified neurologist, noted a history of the May 1, 2015 employment incident, reviewed diagnostic test results, and

provided findings on physical examination. He diagnosed cerebral concussion and cervical radiculopathy.

In a May 26, 2015 narrative report, Mr. Mullin provided appellant's history of injury, examination findings, and physical restrictions. He advised that appellant's prognosis was guarded and that appellant was temporarily totally disabled from work. On September 15, 2015 Mr. Mullin reported that appellant's prognosis was fair, he had no restrictions, and he had a mild partial disability.

By letter dated March 7, 2016, appellant withdrew his request for a telephone hearing and instead requested reconsideration of OWCP's June 30, 2015 decision. In letters dated June 21 and 22, 2016, counsel contended that the medical evidence of record was sufficient to establish that appellant's injuries and disability were causally related to the accepted May 1, 2015 employment incident.

In a September 23, 2016 decision, OWCP affirmed the June 30, 2015 decision as modifier. It found that appellant had failed to provide a rationalized medical opinion to establish that his diagnosed medical conditions were causally related to the accepted May 1, 2015 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence[4] including that he or she sustained an injury in the performance of duty and that any specific condition or disability from work for which he or she claims compensation is causally related to that employment injury.[5]

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.[6] There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.[7]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[8] The evidence required to establish

[3] *Id.*

[4] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[5] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[7] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[8] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing causal relationship between the claimed condition and the identified factors.[9] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish causal relationship.[10]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a traumatic injury caused or aggravated by the accepted May 1, 2015 employment incident. Appellant failed to submit sufficient medical evidence to establish left ring finger, right wrist, and head conditions causally related to the accepted employment incident.

Dr. Daniel's May 1, 2015 Form CA-20 report noted a history of the May 1, 2015 employment incident and found that appellant had a hand condition. She checked the box marked "yes" when asked if the condition was caused or aggravated by the employment incident. Dr. Daniel did not provide a firm diagnosis of a particular medical condition.[11] Moreover, the Board has held that a report that addresses causal relationship with a checkmark on a form report is of diminished probative value and insufficient to establish causal relationship.[12] Dr. Daniel did not provide a reasoned opinion on whether the accepted employment incident caused or contributed to the diagnosed medical condition.[13] In her hospital report, and after-visit summary report dated May 1, 2015, Dr. Daniel restated that appellant had a hand injury and found that he also had a minor head injury without loss of consciousness, initial encounter. Again, she did not provide a firm diagnosis of a particular medical condition.[14] In addition, Dr. Daniel did not offer a specific opinion as to whether the accepted work incident caused or aggravated appellant's condition.[15] Thus, the Board finds that her reports are of limited probative value.

Similarly, Dr. Hearns' Form CA-17 reports are of limited probative value. He indicated that appellant was involved in a work-related incident on May 1, 2015, diagnosed neck, back, right shoulder, and right arm pain, and found that appellant could not resume his regular work. However, it is not possible to establish the cause of a medical condition if the physician has not

[9] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[10] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

[11] *See Deborah L. Beatty*, 54 ECAB 340 (2003) (where the Board found that, in the absence of a medical report providing a diagnosed condition and a reasoned opinion on causal relationship with the employment incident, appellant did not meet her burden of proof).

[12] *See Calvin E. King, Jr.*, 51 ECAB 394 (2000); *see also Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

[13] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[14] *Supra* note 10.

[15] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

provided a diagnosis, but only notes pain.[16] The Board has consistently held that pain is a symptom and not a compensable medical diagnosis.[17] Further, Dr. Hearns did not explain how appellant's injury and resultant disability were caused or aggravated by the accepted employment incident.[18] His remaining reports noted findings on physical examination and his review of diagnostic test results, found that appellant sustained a work-related injury on May 1, 2015, and addressed his disability for work. However, Dr. Hearns did not explain how appellant's conditions and resultant disability were causally related to the accepted employment incident.[19] The Board therefore finds that his reports are insufficient to meet appellant's burden of proof.

While the June 20, 2015 report from Dr. Finkel and diagnostic test results from Dr. Schepp addressed appellant's head, cervical and lumbar spine, and right shoulder conditions, neither physician offered an opinion addressing whether these conditions were caused or aggravated by the May 1, 2015 employment incident.[20] Further, Dr. Schepp's remaining diagnostic test results did not diagnose a brain condition causally related to the accepted work incident.[21]

Appellant submitted evidence from a physician assistant and a physical therapist. This evidence does not constitute competent medical evidence because neither a physician assistant nor a physical therapist is considered a physician as defined under FECA.[22] As such, this evidence is also insufficient to meet appellant's burden of proof.

The unsigned letters and a report which contained an illegible signature from Central Medical Services of Westrock and Middle Village Radiology, respectively, are insufficient to meet appellant's burden of proof. A report that is unsigned or bears an illegible signature lacks proper identification and cannot be considered probative medical evidence.[23]

Appellant's belief that an employment incident caused or aggravated his condition is insufficient, by itself, to establish causal relationship.[24] The issue of causal relationship is a medical one and must be resolved by probative medical opinion from a physician. The Board

[16] *See A.C.*, Docket No. 16-1587 (issued December 27, 2016).

[17] *B.P.*, Docket No. 12-1345 (issued November 13, 2012); *C.F.*, Docket No. 08-1102 (issued October 2008).

[18] *See George Randolph Taylor*, *supra* note 12.

[19] *Id.*

[20] *Supra* note 14.

[21] *Supra* notes 10 and 14.

[22] 5 U.S.C. § 8101(2); *Sean O'Connell*, 56 ECAB 195 (2004) (physician assistants); *Jennifer L. Sharp*, 48 ECAB 209 (1996) (physical therapists). *See also Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

[23] *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

[24] 20 C.F.R. § 10.115(e); *Phillip L. Barnes*, 55 ECAB 426, 440 (2004).

finds that there is insufficient medical evidence of record to establish left ring finger, right wrist, and head injuries causally related to the May 1, 2015 employment incident. Appellant, therefore, did not meet his burden of proof.

On appeal counsel contends that appellant sustained disabling injuries and conditions causally related to the accepted work incident. For the reasons set forth above, the Board finds that the weight of the medical evidence does not establish that appellant sustained left ring finger, right wrist, and head conditions causally related to the accepted May 1, 2015 employment incident.

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 left ring finger, right wrist, and head injuries causally related to the May 1, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the September 23, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 13, 2017
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board