United States Department of Labor
Employees' Compensation Appeals Board

D.H., Appellant	)	
and	)	**Docket No. 17-1146**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, New York, NY, Employer	)	**Issued: October 20, 2017**

Appearances:
Appellant, pro se
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 May 2, 2017 appellant filed a timely appeal from a March 23, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant met his burden of proof to establish a traumatic injury causally related to an accepted September 19, 2016 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant submitted new evidence with his appeal following the March 23, 2017 decision. However, 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).

FACTUAL HISTORY

On September 26, 2016 appellant, then a 60-year-old cook, filed a traumatic injury claim (Form CA-1) alleging that on September 19, 2016 he aggravated a mid-lower back condition while putting together a pump station. He stopped work on the date of injury.

The employing establishment controverted appellant's claim and alleged that there was no medical evidence to support a work-related injury. It asserted that appellant was previously hospitalized for two weeks, reported to work on September 19, 2016, and called out sick for the rest of the week.

In a September 19, 2016 duty status report (Form CA-17) a physician with an illegible signature described a history of injury of back pain when lifting and pulling at work. He noted a diagnosis of spinal herniation. Appellant was advised to resume work with restrictions.

Appellant was treated by Dr. Eddy Manuchian, an internist. In progress notes dated September 22 and 26, 2016, Dr. Manuchian related that on September 19, 2016 appellant experienced excruciating back pain when he tried to pull a pump station at work. He noted that appellant needed more time to heal.

By letter dated October 5, 2016, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested that he respond to an attached development questionnaire in order to substantiate that the September 19, 2016 incident occurred as alleged and that he provide additional medical evidence to establish a diagnosed condition causally related to the alleged employment incident. Appellant was afforded 30 days to submit additional evidence.

Appellant also received medical treatment from Dr. Osafradu Opam, a neurologist. In an October 3, 2016 neurological report, he related that appellant worked as a cook for the employing establishment. Dr. Opam noted a date of accident of September 19, 2016 and described that appellant was working on the pump station in the kitchen and felt acute back pain. He reviewed appellant's history and conducted an examination. Dr. Opam reported limited range of motion of the lumbosacral spine and tenderness, pain, and muscle spasm of the lumbosacral paraspinous muscles. Straight leg raise testing was positive on the right to 30 degrees and on the left to 40 degrees. Dr. Opam indicated that neurological and motor strength examinations were normal. Deep tendon reflexes were abnormal and reduced in both quads. Dr. Opam diagnosed lumbosacral sprain, lumbosacral radiculopathy, herniated lumbosacral disc and bulging disc, and spinal thoracicalgia. He opined that the September 19, 2016 injury was a competent, provocative cause of the impairment and disability, and he opined that there is a causal relationship. Dr. Opam provided a handwritten disability certificate and Form CA-17, which noted that appellant was totally incapacitated from October 3 to 30, 2016 and unable to resume work.

An October 8, 2016 electrodiagnostic examination report noted an abnormal examination suggestive of conduction defect above the cauda equine.

OWCP denied appellant's claim in a decision dated November 10, 2016. It accepted that the September 19, 2016 employment incident occurred as alleged and that appellant was diagnosed with a back condition, but it denied appellant's claim because the medical evidence of record failed to establish causal relationship between the diagnosed medical condition and the September 19, 2016 employment incident.

OWCP received a magnetic resonance imaging (MRI) scan report from Dr. Howard J. Gelber, a diagnostic radiologist. In a November 23, 2016 report, he noted L1-L2 disc bulge, L2-L3 disc herniation, L3-L4 broad-based subligamentous disc herniation, L4-L5 disc bulge, and L5-S1 disc bulges of the lumbar spine. Dr. Gelber further reported no evidence of disc protrusion and no foraminal compromise of appellant's thoracic spine.

In a December 3, 2016 work capacity evaluation form (OWCP-5c), Dr. Opam reported a diagnosis of lumbosacral disc syndrome with radiculopathy. He noted that appellant was unable to work due to active lower back pain and stiffness with radicular symptoms.

On December 12, 2016 OWCP received an updated October 3, 2016 report from Dr. Opam. He described the September 19, 2016 employment incident and appellant's continued complaints of lower back pain radiating into both legs. Dr. Opam reported examination findings of limited range of motion of appellant's lumbar spine and guarding and protective spasms. Dr. Opam noted that the Kemp's test was positive, which indicated the presence of a disc protrusion, nerve root impingement, or disc herniation in the lumbar spine. Straight leg raise testing was positive bilaterally at 40 degrees. Dr. Opam indicated that he reviewed the recent MRI scan reports dated November 23, 2016. He related that it had been over two months since the accident and that appellant continued to experience active symptoms. Dr. Opam explained that the absence of prior trauma to appellant's spine and extremities suggested that the disc pathologies, nerve, and joint injuries did not preexist the above-noted accident. He opined that, "the lifting accident of September 19, 2016 [was] the competent producing cause of the injuries sustained by the patient." Dr. Opam noted that appellant's conditions were chronic, permanent, and totally disabling.

Dr. Opam provided a December 19, 2016 impairment rating report. He noted a date of injury of September 19, 2016 and diagnoses of lumbosacral radiculopathy, low back pain, and unspecified dorsalgia. Dr. Opam opined that, according to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment,*[3] appellant had 15 percent whole percent impairment.

On December 23, 2016 appellant requested reconsideration. He submitted pain disability questionnaires dated November 30, 2016 and January 23, 2017. Appellant also provided physical therapy treatment notes dated December 16, 2016 to February 28, 2017.

In a February 7, 2017 progress report, Dr. Opam noted a date of injury of September 19, 2016 and diagnoses of low back pain and lumbosacral radiculopathy. He recommended that appellant continue physical therapy three times a week. Dr. Opam checked a box marked "yes"

[3] 6th ed. 2009.

indicating that the incident described was the competent medical cause of the patient's injury or illness. He further related that appellant was 100 percent impaired and unable to work.

By decision dated March 23, 2017, OWCP denied modification of the November 10, 2016 denial decision. It found that the medical evidence of record did not contain a well-rationalized medical opinion from a physician explaining how appellant's lumbar condition resulted from the September 19, 2016 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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[5] including that he or she sustained an injury in the performance of duty and that any specific condition or disability from work for which compensation is claimed is causally related to that employment injury.[6]

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.[7] There are two components involved in establishing 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.[8] Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[9] An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability or condition relates to the employment incident.[10]

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.[11] 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.[12] The weight of the medical evidence is determined by its reliability, its probative

---

[4] *Supra* note 1.

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

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

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

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

[9] *David Apgar,* 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

[10] *T.H.,* 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi,* 57 ECAB 418 (2006).

[11] *See J.Z.,* 58 ECAB 529 (2007); *Paul E. Thams,* 56 ECAB 503 (2005).

[12] *I.J.,* 59 ECAB 408 (2008); *Victor J. Woodhams,* 41 ECAB 465 (2005).

value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[13]

ANALYSIS

Appellant alleged that on September 19, 2016 he felt acute back pain while putting together a pump station at work. OWCP accepted that the September 19, 2016 employment incident occurred as alleged and that he was diagnosed with a lumbar condition. However, it denied appellant's claim, finding the medical evidence of record insufficient to establish that his diagnosed lumbar condition was causally related to the accepted employment incident.

The Board finds that appellant failed to meet his burden of proof to establish a traumatic injury on September 19, 2016 causally related to the accepted incident.

Dr. Manuchian initially treated appellant. In progress notes dated September 22 and 26, 2016, he related that on September 19, 2016 appellant experienced excruciating back pain at work. Dr. Manuchian, however, did not provide any medical diagnosis other than back pain. The Board therefore finds that these progress notes failed to establish appellant's claim because Dr. Manuchian did not provide a firm medical diagnosis, or any explanation as to the cause of appellant's back pain.[14]

Appellant also submitted medical reports by Dr. Opam dated October 3, 2016 to February 7, 2017. In an October 3, 2016 report, he described that on September 19, 2016 appellant worked the pump station at work as a cook when he felt acute back pain. Upon physical examination, Dr. Opam reported limited range of motion of the lumbosacral spine and tenderness, pain, and muscle spasms of the lumbosacral paraspinous muscles. Examination of appellant's bilateral lower extremities revealed normal neurological and motor strength and abnormal deep tendon reflexes. Dr. Opam diagnosed lumbosacral sprain, lumbosacral radiculopathy, herniated lumbosacral disc and bulging disc, and spinal thoracicalgia. He opined that the injury of September 19, 2016 was a competent, provocative cause of the impairment and disability, and he opined there was causal relationship. Dr. Opam indicated that appellant was unable to resume work.

The Board finds that although Dr. Opam provided an affirmative opinion which supported causal relationship, he did not offer any rationalized medical explanation to support his opinion. Medical evidence that states a conclusion, but does not offer any rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[15] Dr. Opam's October 8, 2016 report of an abnormal electrodiagnostic examination demonstrated conduction defect above the cauda equine.

---

[13] *James Mack,* 43 ECAB 321 (1991).

[14] *Roy L. Humphrey,* 57 ECAB 238, 242 (2005); *Michael E. Smith,* 50 ECAB 313 (1999).

[15] *J.F.,* Docket No. 09-1061 (issued November 17, 2009); *A.D.,* 58 ECAB 149 (2006).

However, as it failed to address causal relationship, it is of little probative value.[16] In a February 7, 2017 progress report, Dr. Opam also checked a box marked "yes," indicating that the incident described was the competent medical cause of the patient's injury or illness. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a question on a form report, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.[17] Dr. Opam failed to provide a reasoned opinion explaining how the September 19, 2016 employment incident caused or contributed to appellant's lumbar condition.[18] Therefore, his reports fail to establish appellant's claim.

The MRI scan reports by Dr. Gelber's dated November 23, 2016 are also insufficient to establish appellant's claim. Although the reports established that appellant sustained an L1-L2 disc bulge, L2-L3 disc herniation, L3-L4 broad-based subligamentous disc herniation, L4-L5 disc bulge, and L5-S1 disc bulges of the lumbar spine, none of them contained any opinion or explanation on whether the September 19, 2016 employment incident caused appellant's back condition. The Board has held that diagnostic reports that do not offer any opinion regarding the cause of an employee's condition are of limited probative value on the issue of causal relationship.[19] These reports, therefore, are insufficient to establish appellant's claim.

The September 19, 2016 duty status report from a physician with an illegible signature is likewise insufficient to establish appellant's claim. Reports that are unsigned or that bear illegible signatures cannot be considered as probative medical evidence because they lack proper identification.[20]

In order to obtain benefits under FECA an employee 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.[21] Because appellant has failed to provide such evidence demonstrating that his lumbar condition was causally related to the September 19, 2016 employment incident, he has failed to meet his burden of proof to establish his claim.

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.

---

[16] *See J.S.,* Docket No. 17-0507 (issued August 11, 2017) (diagnostic studies that do not address whether a claimant's employment duties caused the diagnosed condition are of limited probative value).

[17] *D.D.,* 57 ECAB 734, 738 (2006); *Deborah L. Beatty,* 54 ECAB 340 (2003).

[18] *John W. Montoya,* 54 ECAB 306 (2003).

[19] *See A.B.,* Docket No. 17-0301 (issued May 19, 2017).

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

[21] *Supra* note 4.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a traumatic injury causally related to the accepted September 19, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the March 23, 2017 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 20, 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