

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

_____)	
E.V., Appellant)	
)	
and)	Docket No. 17-0269
)	Issued: April 4, 2018
DEPARTMENT OF LABOR, MINE SAFETY & HEALTH ADMINISTRATION, Mesa, AZ,)	
Employer)	
_____)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 15, 2016 appellant filed a timely appeal from an October 20, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant has met his burden of proof to establish that his cervical condition was causally related to the accepted February 25, 2016 employment incident.

FACTUAL HISTORY

On May 9, 2016 appellant, then a 58-year-old Mine Safety and Health Inspector, filed a traumatic injury claim (Form CA-1) alleging that on February 25, 2016 he injured his neck as he

¹ 5 USC § 8101 *et seq.*

climbed down the fixed ladder of a Caterpillar haul truck while in the performance of duty. He explained that he experienced a sharp pain in his right shoulder that ran down his right arm and fingers. Appellant stopped work on February 25, 2016 and returned to work on May 4, 2016.

In a May 4, 2016 note, Dr. Naveen Reddy, an anesthesiologist, opined that appellant could return to light-duty work with restrictions. In a May 12, 2015 note, he indicated that appellant was unable to work from February 26 to April 10, 2016 due to injury.

In a July 11, 2016 electromyogram (EMG) and nerve conduction velocity (NCV) study, Dr. Ales Hlubocky, a Board-certified neurologist, noted that appellant had complaints of neck pain and right upper extremity pain, burning, numbness/tingling, and weakness for the past six months. He found EMG results consistent with a chronic active right C7 radiculopathy with signs of ongoing denervation in the corresponding muscles. There was no convincing electrophysiological evidence of upper extremity mononeuropathy or brachial plexopathy to explain appellant's symptoms.

In a July 18, 2016 document titled, "General Discussion of Spinal Surgery," a provider with an illegible signature recommended that appellant undergo a cervical discectomy and fusion at C5-6 and C6-7.

By development letter dated September 19, 2016, OWCP advised appellant that additional factual and medical evidence was needed to establish his claim. Appellant was advised that he should provide a narrative medical report from his physician, which contained a detailed description of findings and diagnoses and the physician's opinion, supported by medical rationale, as to how the reported work incident caused or aggravated a medical condition. He was afforded 30 days to submit the requested information.

In a February 25, 2016 emergency department report, Dr. Michael A. Treiman, an emergency medical specialist, noted appellant's complaints of right upper back and shoulder pain radiating into the neck, chest, and right hand and bilateral feet tingling. He noted that symptoms started three weeks prior and had been constant and became worse since 10:00 a.m. Dr. Treiman provided an impression of right arm pain and possible rotator cuff injury. Copies of diagnostic testing were included.

A March 8, 2016 magnetic resonance imaging (MRI) scan report of the cervical spine was also submitted. This MRI scan noted degenerative changes from C3-C6.

In a May 5, 2016 witness statement, a coworker stated that on February 25, 2015 appellant was performing an inspection of their maintenance shop and started to complain of shoulder and arm pain. He stated that appellant asked for and took some Ibuprofen, continued his inspection in the shop, and then asked if there was an urgent care facility nearby. The coworker indicated that he gave appellant directions to the urgent care facility and appellant stopped his inspection and left.

Treatment records from Dr. William R. Stevens, an orthopedic spine surgeon, dated June 13, July 18, and August 24, 2016 were received. In his June 13, 2016 report, Dr. Stevens reported the history of illness as ongoing cervical radicular pain since February which had progressively worsened. He noted that appellant had three cervical epidural injections and

hydrocodone, Lyrica, and anti-inflammatories without any relief. Dr. Stevens also reported that this problem began after a work injury. In his June 18, 2016 report, he noted that appellant had failed all conservative measures and was considering surgery. Dr. Stevens noted that the EMG ordered at the last visit showed chronic active right C7 radiculopathy. In his August 24, 2016 report, he provided an impression of cervical radiculopathy C5-6 and C6-7 and noted that surgery was scheduled.

In an October 3, 2016 statement, appellant indicated that the injury occurred on February 25, 2016 while he was in the performance of duty. He reported the incident to his supervisor from the mine site, returned to the field office, and then went to the emergency room for treatment. Appellant stated that he did not think it would be a serious injury and thought his accumulated vacation and sick leave would allow him time to recover. However, after the epidural injections failed, he realized that his condition was serious and he filed a claim.

By decision dated October 20, 2016, OWCP denied the claim finding that the evidence of record was insufficient to establish that the diagnosed medical condition was causally related to the accepted employment incident.

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 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.² 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.³

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁴ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁵

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion

² *Joe D. Cameron*, 41 ECAB 153 (1989).

³ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁵ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *see also P.W.*, Docket No. 10-2402 (issued August 5, 2011).

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.⁶

ANALYSIS

OWCP accepted that the February 25, 2016 work incident occurred as alleged. The issue is whether appellant has met his burden of proof to establish that the incident caused or aggravated a cervical condition. The Board finds that he has failed to submit sufficient medical evidence to support a cervical condition causally related to the accepted employment incident.⁷

On the date of injury appellant sought emergency medical treatment with Dr. Treiman. In his February 25 2016 report, Dr. Treiman reported that appellant presented to the emergency department with complaints of right upper back and shoulder pain radiating into the neck, chest and right hand as well as bilateral feet tingling. He noted that the symptoms started three weeks earlier, were constant, but had worsened. Dr. Treiman provided an impression of right arm pain and possible rotator cuff injury. This opinion is not well rationalized. A well-rationalized report is especially important because Dr. Treiman noted a three-week history of symptoms, suggesting appellant had evidence of a preexisting condition.⁸ Dr. Treiman noted a possible rotator cuff injury, but this diagnosis is speculative and equivocal.⁹ He did not explain whether the claimed injury caused or aggravated the diagnosed condition. Neither the fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.¹⁰ A medical opinion should reflect a correct history and offer a medically sound explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions.¹¹ As his reports fail to present the necessary medical rationale, Dr. Treiman's opinion on causal relationship is insufficiently rationalized to establish appellant's claim.¹²

The medical reports from Dr. Stevens noted that appellant had ongoing cervical radicular pain since February. Dr. Stevens presented findings on examination and interpretations of diagnostic studies and provided an impression of cervical radiculopathy at C5-6 and C6-7. This report, however, is of limited probative value as Dr. Stevens failed to note the history of the

⁶ *Solomon Polen*, 51 ECAB 341 (2000).

⁷ *See Robert Broome*, 55 ECAB 339 (2004).

⁸ *See S.D.*, Docket No. 16-0999 (issued October 16, 2017).

⁹ *See T.J.*, Docket No. 15-0248 (issued March 16, 2016).

¹⁰ *J.J.*, Docket No. 09-0027 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

¹¹ *See J.M.*, Docket No. 17-1002 (issued August 22, 2017).

¹² *See D.R.*, Docket No. 17-1584 (issued February 8, 2018).

accepted February 25, 2016 work incident and did not offer any opinion regarding the cause of appellant's condition.¹³

The other medical reports of record, including Dr. Reddy's work restrictions notes, instruction sheets regarding cervical, thoracic, and lumbar epidural steroid injections, the general discussion of spinal surgery document, and postprocedure discharge instructions, are insufficient to support appellant's claim as none of the physicians addressed how appellant's diagnosed conditions were caused or aggravated by the accepted February 25, 2016 employment incident.¹⁴

The diagnostic testing of record is similarly of diminished probative value and is insufficient to establish appellant's claim. Diagnostic test reports are not probative to the issue of causal relationship as they do not offer any opinion regarding the cause of an employee's condition.¹⁵

Accordingly, the medical evidence contained in this case record does not provide a well-rationalized medical opinion establishing that the diagnosed cervical condition was causally related to the accepted February 25, 2016 employment incident. OWCP advised appellant that it was his responsibility to provide a comprehensive medical report explaining how the diagnosed medical condition was caused or aggravated by the accepted employment incident. Appellant failed to submit appropriate medical documentation in response to OWCP's request.¹⁶

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.¹⁷ An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there was a causal relationship between his or her condition and his or her employment.¹⁸ Causal relationship must be based on rationalized medical opinion evidence.¹⁹ As appellant did not submit a rationalized medical opinion supporting that his cervical condition was causally related to the accepted February 25, 2016 employment incident, he did not meet his burden of proof to establish an employment-related traumatic injury.

On appeal appellant contends that his work requirements/activities of a Mine Safety and Health Inspector as well as his previous positions in the mining industry clearly establish the causal relationship of his cervical condition. However, causal relationship is a medical issue and the

¹³ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹⁴ *Id.*

¹⁵ *S.S.*, Docket No. 16-1760 (issued January 23, 2018).

¹⁶ *See D.B.*, Docket No. 16-1219 (issued November 8, 2016); *see also T.H.*, Docket No. 15-0772 (issued May 12, 2016).

¹⁷ *L.D.*, Docket No. 09-1503 (issued April 15, 2010); *D.I.*, 59 ECAB 158 (2007); *Daniel O. Vasquez*, 57 ECAB 559 (2006).

¹⁸ *Patricia J. Glenn*, 53 ECAB 159, 160 (2001).

¹⁹ *M.E.*, Docket No. 14-1064 (issued September 29, 2014).

medical evidence generally required to establish causal relationship is rationalized medical opinion evidence, which was not submitted in this case.²⁰

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 not met his burden of proof to establish that his cervical condition was causally related to the accepted February 25, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 20, 2016 is affirmed.

Issued: April 4, 2018
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

²⁰ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, *supra* note 17.