United States Department of Labor
Employees' Compensation Appeals Board

E.P., Appellant	)	
and	)	**Docket No. 17-1544**
	)	**Issued: April 10, 2018**
U.S. POSTAL SERVICE, BOWLING GREEN STATION, New York, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On July 6, 2017 appellant, through counsel, file a timely appeal from a January 30, 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 over the merits of this case.

[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.*

ISSUE

The issue is whether appellant has established a back injury causally related to the accepted December 22, 2014 employment incident.

FACTUAL HISTORY

On December 24, 2014 appellant, then a 49-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 22, 2014 he injured his low back when he slipped and fell on steps in the front entrance lobby. He stopped work on December 23, 2014. The employing establishment asserted that appellant's injury resulted from his own willful misconduct, as the area was dry and appellant should not have used that entrance.

By development letter dated January 5, 2015, OWCP requested that appellant submit additional factual and medical information in support of his claim, including a detailed description of the alleged work incident and a reasoned report from his attending physician addressing causal relationship between any diagnosed condition and the identified work incident. It afforded him 30 days within which to submit the requested information.

The record indicates that appellant received treatment at a hospital emergency room on December 22, 2014 for acute back pain.

In a report dated December 26, 2014, received by OWCP on January 12, 2015, Dr. Diara Gross, an osteopath, evaluated appellant for low back pain. She obtained a history of a slip and fall on wet stairs on December 22, 2014. Appellant was transported by ambulance to the hospital. He complained of low back pain radiating into the right lower extremity, weakness in the right lower extremity, and right foot numbness. Dr. Gross noted that appellant had herniated discs in his back 15 years earlier. She diagnosed status post an employment-related slip and fall on December 22, 2014, lumbar strain/sprain, a possible lumbar disc herniation, possible lumbar radiculopathy, and post-traumatic anxiety. Dr. Gross related, "If the above history is correct, then there is a causal relationship between [appellant's] accident on December 22, 2014, and his above complaints." She opined that he was totally disabled from work.[3]

The employing establishment, by letter dated January 12, 2015, controverted the claim. It indicated that appellant told a supervisor that he had injured his back falling down steps on December 22, 2014. Appellant initially advised that he was "okay," but a few minutes later "changed his mind" and management telephoned for an ambulance. The employing establishment noted that appellant had a prior history of a back injury.

In a January 6, 2015 attending physician's report (Form CA-20), Dr. Gross related that appellant experienced low back pain due to an injury while working. She advised that he had a previous back injury from 15 years earlier that had "improved completely prior to [the] current injury." Dr. Gross diagnosed lumbar spine myofascial strain and possible herniated discs and checked a box marked "yes," indicating that the condition was caused or aggravated by

[3] Dr. Gross, in a January 5, 2015 work capacity evaluation (OWCP-5c), found that appellant was totally disabled from work.

employment. She found that appellant was totally disabled from December 22, 2014 to the present.

A magnetic resonance imaging (MRI) scan, obtained on January 23, 2015, revealed a bulging disc at L2-3 with a left foraminal herniation component and impingement upon the exiting L2 root.

Dr. Gross, in a January 23, 2015 disability certificate, found that appellant was totally disabled from work from January 23 to February 23, 2015.

By decision dated February 9, 2015, OWCP denied appellant's traumatic injury claim. It found that he had not factually established the occurrence of the December 22, 2014 employment incident, noting that he had not responded to its January 5, 2015 request for a statement describing in detail the circumstances surrounding the work incident.

Appellant submitted additional medical evidence subsequent to OWCP's February 9, 2015 decision. A December 22, 2014 emergency room report indicated that he received treatment on that date for back pain after he slipped and fell, landing on his back.

In a progress report dated January 23, 2015, received by OWCP on February 13, 2015, Dr. Gross advised that she was treating appellant following a "work-related slip and fall accident on December 22, 2014." She diagnosed status post a December 22, 2014 work-related slip and fall, lumbar strain/sprain, a possible lumbar disc herniation, and possible lumbar radiculopathy. Dr. Gross found that appellant was disabled from employment.

Dr. Paul M. Brisson, a Board-certified orthopedic surgeon, evaluated appellant on January 26, 2015 for low back pain with right leg weakness and numbness of the right foot and calf. He noted that appellant had experienced a December 22, 2014 employment injury when he hit his back after he slipped and fell. Dr. Brisson indicated that he had a history of a prior injury. He interpreted the MRI scan as showing disc height narrowing and desiccation from L2 to S1, canal stenosis and moderate bilateral foraminal stenosis at L2-3, severe spinal stenosis and severe bilateral foraminal stenosis at L3-4, and moderate bilateral foraminal stenosis at L4-5 and L5-S1. Dr. Brisson related, "My assessment of [appellant] is that he injured his lumbar spine in a work-related accident on December 22, 2014. Appellant has multilevel lumbar spondylosis. He has a focal lumbar radiculopathy within the right lower extremity."

Dr. Brisson submitted reports on April 1 and July 13, 2015 containing similar findings and conclusions. He opined in his April 1, 2015 report that appellant could resume modified employment no more than four hours per day. Dr. Brisson advised on July13, 2015 that APPELLANT should continue working with restrictions.

On July 20, 2015 appellant related that he slipped walking down steps on December 22, 2014 and fell on his back. He submitted statements from witnesses who saw him fall.

On January 19, 2016 appellant, through counsel, requested reconsideration. In a January 11, 2016 statement, counsel contended that he had submitted sufficient factual and medical evidence to establish his claim. He maintained that Dr. Bisson's January 26, 2015 report

contained an accurate description of the work incident, examination findings, and a reasoned opinion on causation.

By decision dated January 30, 2017, OWCP modified its February 9, 2015 decision to reflect that appellant had factually established the occurrence of the December 22, 2014 employment incident. However, it denied his claim, finding that the medical evidence of record was insufficient to establish a diagnosed condition causally related to his fall on December 22, 2014.

On appeal counsel contends that he submitted sufficient factual and medical evidence to establish that he sustained a back injury on December 22, 2014.

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 or specific condition for which compensation is claimed is 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]

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. 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.[7] Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[8]

ANALYSIS

Appellant alleged that he sustained an injury to his low back when he slipped and fell on December 22, 2014. He has established that the December 22, 2014 incident occurred at the time, place, and in the manner alleged. The issue, consequently, is whether the medical evidence establishes that he sustained an injury as a result of the accepted employment incident.

[4] 5 U.S.C. § 8101 *et seq.*

[5] *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

[6] *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

[7] *See Bonnie A. Contreras*, 57 ECAB 364 (2006); *Gary J. Watling*, 52 ECAB 278 (2001).

[8] *See T.H.*, 59 ECAB 388 (2008); *Deborah L. Beatty*, 54 ECAB 340 (2003).

The Board finds that appellant has not established that the December 22, 2014 employment incident resulted in an injury. Causal relationship is a medical question that must be established by a probative medical opinion from a physician.[9]

Appellant received treatment for acute low back pain at the emergency room on December 22, 2014. The emergency room report, however, does not contain an opinion by a physician addressing causation and thus, is of diminished probative value.[10]

On December 26, 2014 Dr. Gross related that appellant experienced low back pain with pain and weakness radiating into the right lower extremity after he fell on stairs on December 22, 2014. She noted that he had a history of a back injury more than a decade earlier. Dr. Gross diagnosed status post a December 22, 2014 slip and fall, lumbar strain/sprain, a possible disc herniation, and possible lumbar radiculopathy. She opined that there was a causal relationship between appellant's complaints and the December 22, 2014 employment incident. Dr. Gross did not, however, identify a specific diagnosis as resulting from the work incident. She further did not fortify her general causation finding with medical rationale. A physician must provide a narrative description of the employment incident and a reasoned opinion on whether the employment incident described caused or contributed to a diagnosed medical condition.[11]

In a Form CA-20 dated January 6, 2015, Dr. Gross diagnosed lumbar myofascial strain and possible herniated discs. She checked a box marked "yes," indicating that the condition was caused or aggravated by employment. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking a box marked yes to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.[12]

On January 23, 2015 Dr. Gross noted that she was treating appellant for a slip and fall at work on December 22, 2014. She diagnosed status post a December 22, 2014 slip and fall, lumbar strain/strain, a possible disc herniation, and possible lumbar radiculopathy. Dr. Gross found that appellant was totally disabled from work. While she indicated that she was treating him for a work-related slip and fall, she did not specifically attribute a diagnosed condition to the December 22, 2014 employment incident, and consequently her report is of diminished probative value.[13] Additionally, Dr. Gross did not provide any rationale for her opinion. A well-rationalized report is particularly warranted in this case given appellant's history of a preexisting back condition.[14]

[9] *See C.W.*, Docket No. 17-0399 (issued June 19, 2017).

[10] The issue of causal relationship is a medical one and must be resolved by probative medical evidence. *See Luis M. Villanueva*, 54 ECAB 666 (2003)

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

[12] *See Sedi L. Graham*, 57 ECAB 494 (2006); *Deborah L. Beatty*, *supra* note 8.

[13] *See T.D.*, Docket No. 16-1600 (issued March 23, 2017).

[14] *See T.M.*, Docket No. 08-0975 (issued February 6, 2009).

Dr. Brisson, on January 26, 2015, reviewed the lumbar MRI scan and indicated that it showed disc desiccation from L2 to S1 and bilateral foraminal stenosis at multiple levels. He discussed the December 22, 2014 slip and fall and noted that appellant had a history of a prior injury. Dr. Brisson opined that he sustained an injury to his lumbar spine on December 22, 2014. He indicated that appellant had lumbar spondylosis at multiple levels and right lower extremity focal lumbar radiculopathy. Dr. Brisson submitted substantially similar reports on April 1 and July 13, 2015. While he opined that appellant sustained a lumbar injury on December 22, 2014, he did not attribute any specific diagnosed lumbar condition to the work incident, and thus his report is of diminished probative value.[15] Dr. Brisson further did not provide any rationale for his opinion. Medical reports not containing rationale on causal relationship are of limited probative value.[16] As noted, such rationale is particularly important given appellant's history of a preexisting back condition.[17]

On appeal counsel contends that appellant submitted sufficient evidence to establish his claim. In order to establish causal relationship, however, he must submit an opinion from a physician based on a complete and accurate factual and medical background, finding that the claimed condition is causally related to federal employment and supporting such causation finding with affirmative evidence and medical rationale.[18] Appellant has not submitted a medical report sufficient to show a diagnosed condition causally related to the December 22, 2014 employment incident, and thus has not met 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 established a back injury causally related to the accepted December 22, 2014 employment incident.

[15] *See supra* note 13.

[16] *See Jimmie H. Duckett*, 52 ECAB 332 (2001).

[17] *See K.B.*, Docket No. 17-1363 (issued February 14, 2018).

[18] *See J.W.*, Docket No. 17-0870 (issued July 12, 2017).

ORDER

IT IS HEREBY ORDERED THAT the January 30, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 10, 2018
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