United States Department of Labor
Employees' Compensation Appeals Board

V.T., Appellant	)	
and	)	**Docket No. 17-1642**
	)	**Issued: January 17, 2018**
U.S. POSTAL SERVICE, MIDDLE VILLAGE POST OFFICE, Staten Island, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 24, 2017 appellant, through counsel, filed a timely appeal from a May 25, 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 met his burden of proof to establish a recurrence of disability on March 20, 2016 causally related to the accepted November 12, 2015 employment injury.

FACTUAL HISTORY

On November 12, 2015 appellant, then a 54-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on that date, he tripped over a postal container and sustained an injury to his right side, including injuries to his shoulder, elbow, knee, and hand. He stopped work on November 13, 2015. On December 15, 2015 OWCP accepted appellant's claim for sprain of the right middle finger and contusion of the right knee. Appellant received continuation of pay benefits and returned to full-duty work on December 10, 2015.

Appellant submitted an unsigned note dated March 7, 2016 indicating that he was diagnosed with lumbar radiculopathy/spinal stenosis and would be able to return to work full-duty without restrictions on March 14, 2016. A March 14, 2016 unsigned note indicated that appellant could return to work on March 21, 2016.

In reports dated March 7 and 22, and April 19, 2016, Dr. Vasilios Kountis, a Board-certified physiatrist, diagnosed radiculopathy and spinal stenosis of the lumbar region. He treated appellant with a right lumbar epidural steroid injection.

In a March 28, 2016 report, Dr. Yakov Perper, a Board-certified anesthesiologist and pain management physician, diagnosed radiculopathy in appellant's lumbar region and spondylosis without myelopathy or radiculopathy, lumbosacral region.

Appellant filed an occupational disease claim (Form CA-2) on April 4, 2016, alleging that his lumbar disc bulge from L2-4 and disc herniation from L5-S1 were causally related to factors of his federal employment.[3]

On June 22, 2016 appellant filed a claim (Form CA-2a) alleging a recurrence of the November 12, 2015 employment injury. He indicated that he stopped work on March 20, 2016.

In support of his claim, appellant submitted medical reports from the office of Dr. Nancy Lavine, a Board-certified internist, dated from March 7 through April 19, 2016, discussing treatment for low back pain. In the March 7, 2016 note, Dr. Lavine indicated that appellant had fallen at work in November 2015 and injured his whole right side, that he was initially evaluated for his right knee, and that some of the pain subsided except for the lower back. Her treatment of appellant included an L4-5 transforaminal epidural steroid injection given on April 29, 2015.

By letter dated August 18, 2016, OWCP informed appellant that further information was necessary to support his recurrence claim. Appellant was afforded 30 days to submit this information.

[3] OWCP has not issued a decision regarding this occupational disease claim.

In response, appellant submitted continuing claims for compensation (Form CA-7). He also submitted responses to questions propounded by OWCP and discussed the history of his injury and medical treatment. Finally, appellant submitted a note by Dr. Kountis wherein he advised that appellant had lumbar radiculopathy and was currently out of work.

By decision dated November 28, 2016, OWCP denied appellant's claim for a recurrence. It determined that appellant did not establish a spontaneous change or worsening of his accepted conditions.

On January 4, 2017 appellant requested a review of the written record by an OWCP hearing representative.

In a February 5, 2016 electromyogram/nerve conduction velocity (EMG/NCV) study report, Dr. Florence Shum, an osteopath, found electrophysiologic evidence of a subacute bilateral L5 and S1 radiculopathy, worse on the left side.

In a February 19, 2016 report of a magnetic resonance imaging (MRI) scan of the lumbar spine, Dr. Ronald Wagner, a Board-certified radiologist, found L1-2 posterior central left paracentral disc herniation; L2-3 and L3-4 grade 1 retrolisthesis an L4-5 posterior annular bulge; L5-S1 posterior disc herniation; and scoliotic curvature of the lumbar spine convex to the left.

On April 19, 2016 Dr. Kountis noted that he administered a transforaminal epidural steroid injection on April 14, 2016, that appellant reported that he felt significantly better immediately after the procedure for the next two days, but that numbness in his right leg had returned along with the pain and numbness in his lower back.

In May 16 and August 23, 2016 reports, Dr. Kountis diagnosed lumbar region radiculopathy and lumbar region spinal stenosis. He administered multiple lumbar epidural steroid injections from May 16 to August 23, 2016.

In a December 23, 2016 report, Dr. Daniel Savarino, an osteopath, diagnosed radiculopathy, lumbar region and spinal stenosis, lumbar region. He noted that appellant was complaining of a lot of pain in his lower back. Dr. Savarino noted that appellant had stated that the steroid injections only provided relief for about one week at a time.

In an April 5, 2017 discharge note, Dr. John A. Bendo, a Board-certified orthopedic surgeon, noted that on April 3, 2017 appellant underwent an L4-5 laminectomy. He indicated that appellant was evaluated by physical and occupational therapy and his pain was controlled. Dr. Bendo noted that appellant gave a history of a trip and fall on the job, that he initially had right leg numbness that progressively worsened, and that in February 2016 his symptoms worsened to include lower back pain.

By decision dated May 25, 2017, the hearing representative determined that appellant had not met his burden of proof to establish a recurrence of disability due to his November 12, 2015 employment injury.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition resulting from a previous injury or illness, without an intervening cause or a new exposure to the work environment that caused the illness. It can also mean an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.[4]

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he or she can perform the limited-duty position, the employee has the burden of proof to establish, by the weight of the reliable, probative, and substantial evidence, a recurrence of total disability and an inability to perform such limited-duty work. As part of its burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.[5] To establish a change in the nature and extent of the injury-related condition, there must be a probative medical opinion, based on a complete and accurate factual and medical history, as well as supported by sound medical reasoning, that the disabling condition is causally related to employment factors.[6] In the absence of rationale, the medical evidence is of diminished probative value.[7] While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, it must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.[8]

ANALYSIS

OWCP accepted that as a result of a November 12, 2015 employment injury, appellant sustained a sprain of the right middle finger and a contusion of the right knee.

On June 22, 2016 appellant filed a claim alleging a recurrence of the November 12, 2015 employment injury commencing March 20, 2016 when he had stopped work.

The Board finds that appellant has not established a recurrence of disability commencing March 20, 2016 causally related to his November 12, 2015 employment injury.

[4] *J.F.*, 58 ECAB 124 (2006).

[5] *M.C.*, Docket No. 15-1762 (issued August 26, 2016).

[6] *Mary A. Ceglia*, 55 ECAB 626, 629 (2004).

[7] *Id.*, *Robert H. St. Onge*, 43 ECAB 1169 (1992).

[8] *Ricky S. Storms*, 52 ECAB 349 (2001).

The Board has found that, when a claimant stops work for reasons unrelated to the accepted employment injury, there is no disability within the meaning of FECA.[9]

The evidence appellant submitted to support a recurrence is found to discuss diagnoses relative to appellant's back. However, the Board notes that appellant did not mention any injury to his back in his original claim form. Furthermore, appellant returned to full-duty work on December 10, 2015.

The first notation of an injury to appellant's back is a February 5, 2016 EMG/NCV report, wherein Dr. Shum found subacute bilateral L5 and S1 radiculopathy, worse on the left side. This was followed by a lumbar scan conducted on February 19, 2016, wherein Dr. Wagner found L1-2 posterior central-left paracentral disc herniation, L2-3 and L3-4 grade 1 retrolisthesis, an L4-5 annual bulge, and L5-S1 posterior disc herniation and scoliotic curvature of the lumbar spine convex to the left. These diagnostic studies are of limited probative value. Although these opinions establish a medical diagnosis, they do not address any relationship between these diagnoses and appellant's accepted injury of November 12, 2015.[10] The issue of whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to his or her employment injury and supports that conclusion with sound medical reasoning.[11] As these reports fail to meet that standard, they are insufficient to establish appellant's claim.

None of the other physicians of record provided support for a recurrence of disability related to appellant's November 12, 2015 accepted employment injury. Although Dr. Kountis reported that appellant fell at work in November 2015, he never provided a rationalized medical opinion linking this fall to his diagnoses of radiculopathy and spinal stenosis of the lumbar region.[12]

Similarly, Dr. Lavine, although briefly mentioning the November 15, 2015 employment injury, does not link appellant's low back pain to the accepted employment injury. Dr. Bendo also briefly notes the employment injury, but fails to discuss causation. Drs. Perper and Savarino do not discuss appellant's employment injury at all. The Board has found that any medical evidence that does not offer an opinion regarding the cause of the employee's condition is of limited value on the issue of causal relationship.[13]

[9] *A.M.*, Docket No. 09-1895 (issued April 23, 2010).

[10] *See G.M.*, Docket No. 14-2057 (issued May 12, 2015).

[11] *See L.M.*, Docket No. 17-0159 (issued September 27, 2017).

[12] *Id*.

[13] *L.L.*, Docket No. 17-0908 (issued September 11, 2017).

OWCP also received an unsigned report discussing appellant's lumbar condition. The Board, however, has found that unsigned reports are insufficient to meet appellant's burden of proof because they lack identification and cannot be considered probative medical evidence.[14]

To establish that a claimed recurrence of a condition was caused by the accepted employment injury, medical evidence of bridging symptoms between the present condition and the accepted injury must support a physician's conclusion of causal relationship.[15] Appellant submitted no such evidence in this case and has, therefore, failed to meet 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(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 a recurrence of disability on March 20, 2016 causally related to the accepted November 12, 2015 employment injury.

[14] *P.C.*, Docket No. 17-0880 (issued October 13, 2017).

[15] *H.D.*, Docket No. 17-1165 (issued September 8, 2017).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 25, 2017 is affirmed.

Issued: January 17, 2018
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