United States Department of Labor
Employees' Compensation Appeals Board

B.L., Appellant	)	
and	)	**Docket No. 17-0227**
	)	**Issued: July 23, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Westbury, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 9, 2016 appellant, through counsel, filed a timely appeal from a June 28, 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 has met her burden of proof to establish lumbar and additional cervical conditions causally related to the accepted February 6, 2015 employment injury.

[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.*

FACTUAL HISTORY

On February 6, 2015 appellant, then a 54-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that, on February 6, 2015, while in the performance of duty, a dock plate slipped and a postal container fell towards her causing her to hit her head, and fall to her knees. She also indicated that she had a bruise. Appellant stopped work on that date.

In a February 13, 2015 report, Dr. Brett Spain, an osteopath Board-certified in family and sports medicine, noted appellant's chief complaints of neck and lower back pain from a work accident on February 6, 2015. He also advised that she complained of bilateral upper extremity pain and numbness in the right hand. Dr. Spain examined appellant and assessed cervicalgia; cervical radiculopathy; brachial neuritis or radiculitis, not otherwise specified (*nos*); degeneration of cervical intervertebral disc; neck sprain; lumbar sprain, and pain. He diagnosed cervical strain; radiculopathy; degenerative disc disease; possible herniated nucleus pulposus (HNP); and low back pain, nonradicular, lumbosacral sprain.

In a separate report also dated February 13, 2015, entitled "doctor's initial report," Dr. Spain noted that February 6, 2015 was the date of injury, and further noted that based on the claim history it was "work related." He described appellant's complaints of numbness, tingling, pain, and throbbing. Dr. Spain checked a box marked "yes" with regard to whether the incident described by appellant was the cause of the illness. He also checked a box marked "yes" with regard to whether appellant's complaints were consistent with the history of injury and illness and with regard to whether the history of the injury/illness was consistent with objective findings. Dr. Spain advised that appellant was 100 percent disabled and recommended diagnostic testing. He diagnosed cervicalgia, brachial neuritis/radiculitis, neck sprain and strain, and lumbago.

In a March 2, 2015 development letter, OWCP advised appellant that when her claim was received, it appeared to be a minor injury that resulted in minimal or no lost time from work and the employing establishment did not controvert continuation of pay (COP) or challenge the claim and payment of a limited amount of medical expenses was administratively approved. However, the claim was being reopened because appellant had not returned to work in a full-time capacity. OWCP advised her that additional factual and medical evidence was needed. It also requested a physician's opinion explaining how the reported work incident caused or contributed to appellant's condition. OWCP noted that Dr. Spain provided several diagnoses, but failed to provide a well-reasoned opinion based on objective findings as to how the claimed work incident of February 6, 2015 directly caused or aggravated the diagnosed medical conditions. It informed appellant of the type of evidence needed to support her claim and afforded her 30 days to respond.

In an accompanying report, also dated February 13, 2015, Dr. Spain noted that appellant was temporarily totally disabled due to cervicalgia, cervical radiculopathy (brachial neuritis); or radiculitis (*nos*); degeneration of cervical intervertebral disc; and neck sprain, lumbar sprain, and lumbar pain. He advised that appellant was unable to work for three weeks and would be reevaluated. Dr. Spain diagnosed cervical strain, radiculopathy, degenerative disc disease, possible HNP, low back pain, and nonradicular lumbosacral sprain. He completed a duty status report (Form CA-17) of the same date. Dr. Spain reiterated that appellant was unable to work at this time.

OWCP received a February 6, 2015 report entitled "patient care report" and physical therapy notes dating from February 17 to March 17, 2015.

By decision dated April 1, 2015, OWCP denied appellant's claim as she had not established an injury, as alleged. It found that the evidence did not demonstrate a claimed medical condition causally related to established work-related events.

On March 24, 2016 counsel requested reconsideration. He argued that appellant had submitted the requisite medical evidence to establish her claim. Counsel argued that the medical evidence was rationalized and established that she suffered from debilitating conditions.

OWCP received three doctor's progress reports dated February 6, 2015. In a report, Dr. Steven Lev, a Board-certified diagnostic radiologist, diagnosed a headache and history of fall. In another report of even date, Dr. Kathyrn Draves, a Board-certified diagnostic radiologist, diagnosed a headache and acute pain due to trauma. In a third report of the same date, Dr. Grace Ting, an emergency medicine physician, diagnosed: contusion of the face/scalp and neck; cervicalgia headache; and osteoarthritis, localized, *nos* of the shoulder.

OWCP received February 6, 2015 notes from a physician assistant, who diagnosed facial contusion; contusion of other parts of head, degenerative joint disease (DJD) and "furuncle of skin." It also received diagnostic reports dated February 6, 2015. The notes included a computerized tomography (CT) of the head read by Dr. Lev, which revealed that appellant had an unremarkable maxillofacial CT, no acute intracranial pathology. A noncontrast tomography of the cervical spine read by Dr. Lev, which revealed no fracture or dislocation. A noncontrast CT of the head read by Dr. Asim Maher, an osteopath, and Dr. Lev, revealed no acute intracranial pathology. Likewise, the maxillofacial CT read by Drs. Lev and Maher was unremarkable. OWCP received a copy of the February 6, 2015 patient care report.

In April 28, 2015 reports, Dr. Spain advised that appellant was unable to work and diagnosed: cervicalgia; cervical radiculopathy (brachial neuritis or radiculitis *nos*); degeneration of cervical intervertebral disc and displaced intervertebral disc. He checked the box marked "yes" in response to whether the work incident was the cause of the injury or illness.

In a May 13, 2015 report, Dr. Anil Patel, Board-certified in family medicine, noted that on February 6, 2015 appellant was at work when she was hit by a piece of heavy metallic equipment to the left side of the head, above the eye. He related that appellant became dizzy and had blurred vision, and fell on the ground and hit her head, neck, and back. Dr. Patel diagnosed: lumbago; lumbar disc displacement; lumbosacral neuritis; lumbosacral disc degeneration; lumbosacral spondylosis; cervical disc displacement; cervicalgia; cervical disc degeneration; and cervical spondylosis. He opined that as a result of the injury, appellant was suffering from moderate-to-severe neck pain.

In a May 18, 2015 report, Dr. Karen Avanesov, a Board-certified orthopedic surgeon, noted that appellant injured her neck and low back after a piece of equipment fell on her and knocked her on the ground while at work on February 6, 2015. He indicated that appellant had "no prior history of neck or back pain." Dr. Avanesov related that appellant complained of posterior neck pain which radiated down the right arm and intermittently into the hand causing numbness and tingling and complained of low back pain which was localized and did not radiate to her legs. He advised that appellant was unable to work since the accident and diagnosed: cervicalgia; cervical radiculopathy; lumbar sprain; pain in the shoulder and impingement syndrome. Dr. Avanesov also filled out a doctor's initial report form and diagnosed pain in the joint of the shoulder region. He also checked

the box marked "yes" in response to whether he believed the incident was the cause of appellant's diagnosed conditions.

In a May 26, 2015 duty status report (Form CA-17), Dr. Spain noted that a postal container tipped over and hit appellant on the head. He diagnosed right shoulder impingement and cervical degenerative disc disease and advised that appellant was unable to work. In a May 26, 2015 report, Dr. Spain noted that appellant was being evaluated for right shoulder pain. He indicated that she had a prior history of right shoulder pain and explained that she received a corticosteroid injection for a partial thickness rotator cuff tear in December 2014. Dr. Spain noted that she was reinjured in February with her work injury. He diagnosed pain in shoulder and impingement syndrome. Dr. Spain also completed a doctor's progress report on May 26, 2015 and repeated the diagnoses of pain in the shoulder region. He also diagnosed other affections of the shoulder region and checked the box marked "yes" with regard to whether the incident was the cause of the injury or illness.

In a June 3, 2015 report, Dr. Charles Ruotolo, a Board-certified orthopedic surgeon, noted that appellant was seen for chief complaints of right shoulder pain. He indicated that she had initially done well with physical therapy for her partial rotator cuff tear and that she had returned to work. Dr. Ruotolo related that appellant indicated that a rack fell onto her shoulder on February 6, 2015 while at work and that she had pain with elevation of the arm. He diagnosed: impingement syndrome; peripheral enthesopathies and allied syndromes; and partial rotator cuff tear. Dr. Ruotolo opined that "within a reasonable degree of medical certainty the injury of her right shoulder is due to the industrial accident on [February 6, 2015]."

In a June 22, 2015 duty status report (Form CA-17), Dr. Spain diagnosed partial rotator cuff tear due to the injury. He indicated that appellant was unable to work. In a June 23, 2015 disability certificate, Dr. Spain indicated that appellant was temporarily disabled due to right shoulder pain.

By decision dated June 28, 2016, OWCP accepted the claim for contusion of face, scalp, and neck (except eye encounter).

In a separate decision dated June 28, 2016, OWCP affirmed in part and vacated in part the April 1, 2015 decision. It found that the hospital report dated February 6, 2015 contained a diagnosis of contusion of face, and contusion of other parts of head. OWCP explained that it was reasonable to deduce that a piece of equipment hitting her on the face would result in the aforementioned diagnoses. However, it explained that the diagnosis of left shoulder strain was not an accepted condition. OWCP explained that the treating physicians had not submitted a medical report containing rationale explaining how a mail rack hitting appellant on the head and her falling

as a result could either directly cause or aggravate the diagnoses of cervical radiculopathy, degeneration of cervical intervertebral disc, neck sprain, and lumbar sprain.[3]

LEGAL PRECEDENT

A claimant seeking benefits under FECA 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, including that an injury was sustained in the performance of duty, as alleged, and that any specific condition or disability claimed is causally related to the employment injury.[4]

To determine if an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[5] The second component is whether the employment incident caused a personal injury.[6] An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[7]

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.[8] A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[9] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale,

[3] OWCP also explained that the diagnoses of cervicalgia and lumbago referred to neck and back pain, respectively, which was not a valid diagnosis. It explained that, under FECA, it was a symptom of a valid diagnosed medical condition. OWCP also found that the treating physicians had not explained how the work injury of February 26, 2015 could have resulted in the additional conditions to include: lumbar disc displacement; lumbosacral neuritis; lumbosacral disc degeneration; lumbosacral spondylosis; cervical disc displacement; cervical disc degeneration; cervical spondylosis; right shoulder impingement; cervical degenerative disc disease; impingement syndrome; peripheral enthesopathies and allied syndromes; and a partial rotator cuff tear. It further found a discrepancy between the hospital report dated February 6, 2015 and the report from Dr. Patel. OWCP explained that the hospital report revealed that the mail rack fell and hit appellant on the head, and that she fell on her knees. Additionally, appellant complained of pain to the left side, left side forehead, left side neck to shoulder. Alternatively, OWCP noted that the history provided by Dr. Patel indicated that a heavy metallic equipment hit appellant on the left side of the head above the eye, that she got dizzy, had blurred vision, and fell to the ground hitting her head, neck, and back. It concluded that the accounts of the work injury were not consistent; it was unclear if the treating physicians based their opinions upon a complete and accurate history.

[4] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[5] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *John J. Carlone*, 41 ECAB 354 (1989).

[7] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[8] *Robert G. Morris*, 48 ECAB 238 (1996).

[9] *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).[10]

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[11] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[12]

ANALYSIS

The Board finds that the medical evidence of record contains no reasoned explanation of how the specific employment injury on February 6, 2015 caused or aggravated any conditions other than the above noted accepted conditions of contusion of face, scalp, and neck (except eye encounter).

OWCP received a February 6, 2015 patient care report and physical therapy reports dating from February 6 to May 1, 2015. However, healthcare providers such as physical therapists are not considered "physician[s]" as defined under FECA. Their opinions are of no probative value.[13] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[14]

OWCP also received diagnostic reports in support of appellant's claim. In a report dated February 6, 2015, Dr. Lev diagnosed: headache and history of fall. In another report of even date, Dr. Drave diagnosed: headache and acute pain due to trauma. In the third report of that date, Dr. Ting diagnosed: contusion of the face/scalp and neck; cervicalgia headache; and osteoarthritis, localized, *nos* of the shoulder. However, these reports merely reported findings and did not contain an opinion regarding the cause of any reported condition. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship. These reports, therefore, are insufficient to establish appellant's claim.

OWCP received numerous reports from Dr. Spain. They included his February 13, 2015 reports in which he noted appellant's chief complaints of neck and lower back pain from a work accident on February 6, 2015. Dr. Spain diagnosed: cervical strain; radiculopathy; degenerative disc disease; possible HNP; and low back pain, nonradicular, lumbosacral sprain. He indicated that appellant was unable to work at this time. However, other than providing the diagnoses noted, Dr. Spain did not specifically address causal relationship by stating how a specific activity at work on February 6, 2015, caused or aggravated an injury. The mere recitation of patient history does

[10] *Id.*

[11] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[12] *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

[13] *Roy L. Humphrey*, 57 ECAB 238 (2005).

[14] *Supra* note 9.

not suffice for purposes of establishing causal relationship between a diagnosed condition and the employment incident.[15] Without explaining physiologically how the accepted employment incident caused or contributed to the diagnosed conditions, the physician's reports are of limited probative value.[16]

In a separate report also dated February 13, 2015, Dr. Spain noted that February 6, 2015 was the date of injury, and noted that the condition was "work related." He described appellant's complaints of numbness, tingling, pain and throbbing. Dr. Spain checked the box marked "yes" with regard to whether the incident described by appellant was the cause of the illness. He also checked the box marked "yes" with regard to whether appellant's complaints were consistent with the history of injury and illness and with regard to whether the history of the injury/illness was consistent with objective findings. Dr. Spain advised that appellant was 100 percent disabled and diagnosed: cervicalgia; brachial neuritis/radiculitis; neck sprain and strain; and lumbago. However, as the Board has held, the checking of a box "yes" in a form report, without additional explanation or rationale, is insufficient to establish causal relationship.[17]

In an April 28, 2015 report, Dr. Spain diagnosed: cervicalgia; cervical radiculopathy (brachial neuritis or radiculitis *nos*); degeneration of cervical intervertebral disc; and displaced intervertebral disc. He checked a box marked "yes" in response to whether the work incident was the cause of the injury or illness. However, this was insufficient as Dr. Spain provided no reasoned opinion on causal relationship. 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.[18]

In a May 26, 2015 report, Dr. Spain noted that appellant was being evaluated for right shoulder pain. He indicated that she had a prior history of right shoulder pain and explained that she received a corticosteroid injection for a partial thickness rotator cuff tear in December 2014. Dr. Spain noted that she was reinjured in February with her work injury. He diagnosed: pain in shoulder and impingement syndrome. Dr. Spain also completed a doctor's progress report on May 26, 2015 and repeated the diagnoses of pain in the shoulder region. He also diagnosed other affections of the shoulder region and checked the box marked "yes" with regard to whether the incident was the cause of the injury or illness. However, as noted, the checking of a box "yes" in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.[19] This is especially important, as he noted that she had a prior history of a partial thickness rotator cuff tear in December 2014.

In a May 26, 2015 duty status report, Dr. Spain noted that a postal container tipped over and hit appellant on the head. He diagnosed right shoulder impingement and cervical degenerative disc disease and advised that appellant was unable to work. In his June 22 and 23, 2015 reports,

[15] *See J.G.*, Docket No. 17-1382 (issued October 18, 2017).

[16] *See A.B.*, Docket No. 16-1163 (issued September 8, 2017).

[17] *Calvin E. King*, 51 ECAB 394 (2000); *Linda Thompson*, 51 ECAB 694 (2000).

[18] *Deborah L. Beatty*, 54 ECAB 340 (2003).

[19] *Supra* note 17.

Dr. Spain diagnosed partial rotator cuff tear due to the injury and indicated that appellant was unable to work. However, he did not offer any opinion as to the cause of the condition. As noted above, Dr. Spain has not explained how the incident caused the conditions, or aggravated the preexisting conditions. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[20]

In a May 13, 2015 report, Dr. Patel noted that on February 6, 2015 appellant was at work when she was hit by a piece of heavy metallic equipment to the left side of the head, above the eye. He related that appellant became dizzy and had blurred vision, and fell on the ground and hit her head, neck, and back. The Board initially notes that his description of the incident varies slightly from appellant's description of the incident on her claim form. This is the first time her eye is mentioned or that she noted dizziness. Appellant indicated that she was hit on the head, fell to her knees and had a bruise. It is well established that medical reports must be based on a complete and accurate factual and medical background, and medical opinions based on an incomplete or inaccurate history are of little probative value.[21] Additionally, Dr. Patel diagnosed lumbago; lumbar disc displacement; lumbosacral neuritis; lumbosacral disc degeneration; lumbosacral spondylosis; cervical disc displacement; cervicalgia; cervical disc degeneration; and cervical spondylosis. He did not explain how these conditions were caused by the incident on February 6, 2015.

In a May 18, 2015 report, Dr. Avanesov noted that appellant injured her neck and low back after a piece of equipment fell on her and knocked her on the ground while at work on February 6, 2015. He indicated that appellant had "no prior history of neck or back pain." However, this is not accurate as the record reflects degenerative disc disease and a prior history of at least right shoulder pain and a rotator cuff tear in 2014. Dr. Avanesov does not appear to be aware of the prior conditions. He related that appellant complained of posterior neck pain which radiated down the right arm and intermittently into the hand causing numbness and tingling and complained of low back pain which was localized and did not radiate to her legs. Dr. Avanesov advised that she was unable to work since the accident and diagnosed: cervicalgia; cervical radiculopathy; lumbar sprain; pain in the shoulder; and impingement syndrome. He also diagnosed pain in the joint of the shoulder region. Dr. Avanesov checked the box marked "yes" in response to whether he believed the incident was the cause of appellant's diagnosed conditions. However, without an explanation as to how he arrived at his opinion, his report is of little probative value.[22]

In a June 3, 2015 report, Dr. Ruotolo noted that appellant indicated that a rack fell onto her shoulder on February 6, 2015 while at work. He diagnosed: impingement syndrome; peripheral enthesopathies and allied syndromes; and partial rotator cuff tear. Dr. Ruotolo opined that "within a reasonable degree of medical certainty the injury of her right shoulder is due to the industrial accident on [February 6, 2015]." While such terms such as "probably" or "most likely" need not constitute a speculative opinion, depending upon the context of usage, such words may mean that the physician is expressing reasonable certainty, as opposed to absolute certainty.[23] However, he

[20] *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[21] *Douglas M. McQuaid*, 52 ECAB 382 (2001).

[22] *See supra* note 14.

[23] *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

did not explain how he formulated his opinion. A medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.[24]

Because the medical reports submitted by appellant do not address how the February 6, 2015 work injury caused or aggravated additional diagnosed conditions, these reports are of limited probative value[25] and are insufficient to establish appellant's claim.

On appeal counsel for appellant argues that OWCP failed to accept all of the injuries and conditions, which were supported by the medical evidence. The Board notes that the medical reports of record do not address how the February 6, 2015 work injury caused or aggravated any other diagnosed conditions.

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 did not meet her burden of proof to establish lumbar and cervical conditions causally related to the accepted February 6, 2015 employment injury.

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

[25] *See Linda I. Sprague*, 48 ECAB 386, 389-90 (1997).

ORDER

IT IS HEREBY ORDERED THAT the June 28, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 23, 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