United States Department of Labor
Employees' Compensation Appeals Board

B.M., Appellant	)	
and	)	**Docket No. 17-0796**
	)	**Issued: July 5, 2018**
DEPARTMENT OF THE ARMY, DIRECTORTE OF EMERGENCY SERVICES, Fort Hood, TX, Employer	)	

Appearances:
Sara Kincaid, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 28, 2017 appellant, through counsel, filed a timely appeal from a December 6, 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.

[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 that his cervical, lumbar, and right knee conditions were causally related to an accepted January 24, 2014 employment incident.

FACTUAL HISTORY

On January 25, 2014 appellant, then a 50-year-old lead emergency service dispatcher, filed a traumatic injury claim (Form CA-1) alleging that on January 24, 2014 he injured his mid back, right shoulder, and right knee when he fell on ice while leaving work. The employing establishment controverted the claim.

By development letter dated February 14, 2014, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested that he respond to an attached development questionnaire and provide medical evidence to establish that he sustained a diagnosed condition as a result of the alleged incident. OWCP afforded appellant 30 days to submit the necessary evidence. A similar letter was sent to the employing establishment.

In a January 27, 2014 work excuse note and duty status report (Form CA-17), Dr. Kenechukwu O. Eneli, a Board-certified family practitioner, noted a January 24, 2014 date of injury when appellant was leaving work and slipped on icy pavement. The clinical findings included a dime-sized abrasion of the right knee and tender lumbar and cervical paraspinal muscles. Dr. Eneli diagnosed right knee wound and lumbar and cervical strain. He requested that appellant be excused from work until January 31, 2014.

In a January 28, 2014 statement, K.T., appellant's supervisor, noted that there was a discrepancy in the time that appellant claimed he was injured. He related that appellant noted an injury time of 7:40 a.m., but the surveillance video showed that appellant left the employing establishment at 2:12 a.m. OWCP also received two witness statements, which related that appellant left work around 2:15 a.m. because he was not feeling well.

In progress notes dated January 27 to February 17, 2014, Dr. Eneli related that appellant experienced neck and back pain and injured his right knee after slipping on ice and falling down. Upon initial examination, he observed paraspinal muscle tenderness in appellant's lumbar and cervical spines. Examination of appellant's right lower extremity revealed an open wound and knee pain upon range of motion. Dr. Eneli's assessment included neck, (low) back, shoulder, and knee pain, as well as lower limb open wound.

By decision dated March 20, 2014, OWCP accepted that the January 24, 2014 incident occurred as alleged, but denied the claim because appellant had not established a diagnosis causally related to the accepted employment incident.

OWCP subsequently received March 14, 2014 progress notes from Dr. Eneli who related that appellant still complained of pain following a January 24, 2014 fall at work. Dr. Eneli reviewed appellant's history and provided examination findings. He diagnosed back pain. In the

accompanying Form CA-17, Dr. Eneli diagnosed thoracic sprain/strain and advised that appellant was currently unable to work.

On July 15, 2014 appellant requested reconsideration. He submitted March 31, 2014 cervical and thoracic magnetic resonance imaging (MRI) scans and a July 1, 2014 narrative report from Dr. Eneli. The cervical MRI scan revealed postoperative changes of a C5 to C7 discectomy and anterior fusion. There was also evidence of multi-level spondylosis, greatest at C4-5, with accompanying bilateral neural foraminal stenosis and moderate central canal stenosis. The March 31, 2014 thoracic MRI scan revealed a stable disc bulge at T9-10 without significant central canal or neural foraminal stenosis.

In his July 1, 2014 narrative report, Dr. Eneli noted that on January 24, 2014 appellant slipped and fell at work. He indicated that there was ice on the walkway leading to the parking lot where appellant's car was located. Following the incident, Dr. Eneli first evaluated appellant on January 27, 2014 and treated him for a right knee wound, right arm and shoulder contusion, and low back pain. He described the findings of appellant's March 31, 2014 cervical MRI scan, and noted that he was scheduled for a cervical discectomy in August 2014. Dr. Eneli stated that the definitive diagnoses from appellant's injury included right knee wound, right knee contusion, right shoulder contusion, cervical spine disc bulge with radiculopathy, and lumbar and thoracic spine strains. He opined that appellant's injury and disability was caused, aggravated, and precipitated by the work-related injury. Dr. Eneli explained that appellant had been disabled since his January 24, 2014 injury and this was expected to continue until the recommended neck surgery and rehabilitation.

Appellant underwent cervical spine surgery on August 6, 2014 and lumbar spine surgery on November 25, 2014.

In a December 15, 2014 statement, appellant described the January 24, 2014 slip and fall incident. He explained that he had left work at approximately 2:20 a.m. because he had light stomach pains. Appellant indicated that he was exiting the lobby doors of the workplace, headed to his car in the parking lot, when he took a couple of steps and slipped and fell on the icy walkway. He reported that he landed on his right knee first, which caused an open wound and then his right side hit the ground, as he fell on his right arm and shoulder area. Appellant indicated that he called his supervisor, K.T., at approximately 7:30 a.m. and reported the incident. He further indicated that K.T., confirmed that the slip and fall occurred at 2:20 a.m. because he reviewed security camera footage. Appellant also related that he had a previous surgical intervention to repair a herniated cervical disc in 2010 and provided a December 3, 2010 operative report for anterior cervical discectomy and inter-body fusion.

By decision dated March 9, 2015, OWCP found that appellant established that a medical condition had been diagnosed. However, it denied his traumatic injury claim because the evidence was insufficient to establish that he was in the performance of duty when he fell. OWCP noted that the Form CA-1 indicated that the injury occurred at 7:40 a.m., however, the employing establishment advised that appellant had clocked out and left work at 2:12 a.m. on January 24, 2014.

On June 18, 2015 appellant, through counsel, requested reconsideration. Counsel alleged that the totality of evidence showed that his injuries were a direct result of slipping and falling on the ice while leaving his work premises. She discussed how appellant's claim met all five basic elements under FECA and asserted that Dr. Eneli's new June 16, 2015 narrative report established causal relationship. Appellant provided a sworn affidavit dated March 31, 2015 which related that he slipped and fell at work on January 24, 2014 at around 2:20 a.m. He further noted that K.T., his supervisor, completed the Form CA-1, and incorrectly noted the time of injury as 7:40 a.m., which was actually the time appellant reported the injury to K.T.

In a June 16, 2015 narrative report, Dr. Eneli described the January 24, 2014 employment incident and the medical treatment appellant had received. He noted that diagnostic testing showed disc bulge with slight degeneration at C4-5 so surgery was recommended. Dr. Eneli related that appellant's diagnoses from this injury were right knee wound, right knee and shoulder contusion, cervical spine disc bulge with radiculopathy, and lumbar and thoracic strain. He reiterated his previous opinion that appellant's injury and disability were caused, aggravated, and precipitated by the work-related injury and noted that there were no other precipitating factors.

By decision dated September 16, 2015, OWCP modified the March 9, 2015 denial decision. It accepted that the January 24, 2014 employment incident occurred in the performance of duty, but denied appellant's claim because the medical evidence submitted was insufficient to establish that his diagnosed medical conditions were causally related to the accepted January 24, 2014 employment incident. OWCP noted that Dr. Eneli's June 16, 2015 report lacked medical rationale explaining how the January 24, 2014 slip and fall incident at work caused or aggravated his injuries. It also noted that appellant had a prior claim, accepted for a February 27, 2007 cervical injury under OWCP File No. xxxxxx881.

On January 25, 2016 appellant, through counsel, requested reconsideration. Counsel alleged that he had provided sufficient evidence to establish that appellant's injuries were a direct result of slipping and falling on ice while leaving his work premises. She reiterated that the evidence submitted met all five basic elements under FECA and discussed such evidence. Regarding causal relationship, counsel asserted that a new narrative report from Dr. Michael Thompson, a Board-certified internist, provided medical rationale explaining how appellant's diagnosed conditions resulted from the accepted January 24, 2014 employment incident.

A December 15, 2015 work capacity evaluation form (OWCP-5c) indicated that appellant had medically retired and was unable to perform his usual job.

In a December 28, 2015 narrative report, Dr. Thompson described that on January 24, 2014 appellant slipped and fell on an icy walkway at work, landing on his right side. He noted that appellant underwent cervical surgery in 2010 and indicated that the surgery was "noncontributory" to appellant's present condition. Dr. Thompson provided physical examination findings and diagnosed other spondylosis with myelopathy of the lumbar and cervical region and intervertebral disc stenosis of the neural canal of the cervical region. He explained that, upon reviewing diagnostics and the description of the accident, it was his opinion that appellant suffered from cervical myelopathy, lumbar myelopathy, and stenosis of the cervical region by traumatic work-related injury. Dr. Thompson reported that appellant's conditions developed due to work-related injury from the sudden impact with the ground when he slipped and fell on the ice. He noted that

a "sudden injury, from over-extension of the spine, overexertion, or whiplash can cause stenosis, radiculopathy, or in his case myelopathy."

By decision dated March 29, 2016, OWCP denied modification of its January 25, 2016 decision. It found that Dr. Thompson's December 28, 2015 report was insufficient to establish causal relationship.

On September 8, 2016 appellant, through counsel, requested reconsideration. Counsel discussed how the evidence submitted satisfied all five elements under FECA. She asserted that a new medical report from Dr. Thomas Martens, a family practitioner, clarified how appellant's current symptoms were consistent with a traumatic injury.

In an August 2, 2016 narrative report, Dr. Martens described the January 24, 2014 employment incident. He noted that appellant had a history of cervical disc herniation that was surgically repaired in 2010 and related that appellant's history was noncontributory to his present condition. Dr. Martens explained that although spondylosis and intervertebral disc stenosis were conditions often caused by the aging process, certain things, such as trauma or overuse, could accelerate or aggravate this aging process. He reported that appellant experienced "exactly the type of trauma, over-extension, overexertion, and whiplash, which could accelerate or aggravate the level of degeneration in his spine" and cause stenosis, radiculopathy, or myelopathy. Dr. Martens pointed out that, generally, pain from a degenerative condition begins gradually and increases, but in appellant's case, he experienced immediate excruciating pain that could only be described as consistent with a traumatic injury.

Dr. Martens concluded that appellant suffered from diagnoses of spondylosis with myelopathy of the cervical and lumbar regions and intervertebral disc stenosis of the neural canal of the cervical region due to the accepted January 24, 2014 employment incident. He reported that the mechanism of the traumatic injury supported the diagnoses in that appellant was exiting the lobby doors when he slipped on the icy walkway, causing him to land on his right knee. Dr. Martens reported:

> "Based on [appellant's] age, the level of degeneration shown in his spine, the type of trauma he experienced, and the onset of pain in his neck and back immediately after the trauma, in my medical opinion the combination of these factors show that at the very least, the [January 24, 2014] traumatic injury aggravated the spondylosis in his cervical and lumbar spine."

By decision dated December 6, 2016, OWCP denied modification of its September 8, 2016 decision, finding that the medical evidence submitted was insufficient to establish causal relationship. It noted that Dr. Martens did not provide an unequivocal opinion with a physiological explanation as to how the mechanism of injury caused or contributed to appellant's cervical and lumbar conditions.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 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, explaining the nature of the relationship between the diagnosed condition and the specific employment factor(s).[10]

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[11]

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[3] *Id*.

[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).

[10] *Id.*

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

ANALYSIS

OWCP accepted that the January 24, 2014 employment incident occurred as alleged, and that there was a medical diagnosis in connection with the incident. Thus, appellant established both components of fact of injury. He also established that he was in the performance of duty at the time of injury. However, OWCP denied the claim because the medical evidence of record was insufficient to establish causal relationship between appellant's work-related slip and fall and the diagnosed right knee, right shoulder, cervical spine, and/or lumbar conditions. The Board finds that this case is not in posture for decision.

Appellant received medical treatment from Dr. Martens. In an August 2, 2016 narrative report, Dr. Martens described the January 24, 2014 employment incident and noted that appellant had a preexisting cervical condition that required surgery in 2010. He reported that appellant suffered from diagnoses of other spondylosis with myelopathy of the cervical and lumbar regions and intervertebral disc stenosis of the neural canal of the cervical region due to his January 24, 2014 work-related injury. Dr. Martens reported that appellant experienced "exactly the type of trauma, over-extension, overexertion, and whiplash" when he slipped on an icy walkway, causing him to land on his right knee, that could accelerate or aggravate degeneration in his spine and cause stenosis, radiculopathy, or myelopathy. He concluded that the combination of appellant's age, the level of degeneration in his spine, and the type of trauma he experienced with sudden onset of neck and back pain showed that the January 24, 2014 traumatic injury, at the very least, aggravated the spondylosis in his cervical and lumbar spine.

The Board finds that, while Dr. Martens' report was not completely rationalized, it accurately described the incident and provided an explanation of how this type of traumatic injury would cause or contribute to appellant's diagnosed conditions. Dr. Martens explained that the mechanism of appellant's traumatic injury supports the diagnosis as he was exiting the lobby doors and slipped on the icy walkway causing him to land on his right knee which caused an open wound and then on his right side. He further explained that a sudden injury from over-extension of the spine, over-exertion, or whiplash can cause, in appellant's case, myelopathy. Additionally, Dr. Martens' opinion is not contradicted by any substantial medical or factual evidence of record.[12] On the contrary, his affirmative opinion on causal relationship is supported by additional medical reports in the record.

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. The claimant has the burden of proof to establish entitlement to compensation; however, OWCP shares responsibility in the development of the evidence to see that justice is done.[13]

Thus, the case will be remanded to OWCP for further action consistent with this decision. On remand, after such further development of the case record as OWCP deems necessary, it shall issue a *de novo* decision.

[12] *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

[13] *William J. Cantrell*, 34 ECAB 1223 (1983).

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the December 6, 2016 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further development consistent with this decision.

Issued: July 5, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy 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