United States Department of Labor
Employees' Compensation Appeals Board

C.W., Appellant	)	
and	)	**Docket No. 17-1120**
	)	**Issued: July 20, 2018**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Hartford, CT, 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:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 1, 2017 appellant, through counsel, filed a timely appeal from a February 21, 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 met his burden of proof to establish that his diagnosed cervical condition is causally related to the accepted December 8, 2015 employment incident.

FACTUAL HISTORY

On January 22, 2016 appellant, then a 53-year-old mail handler, filed a traumatic injury claim (Form CA-1) for a neck condition that allegedly arose in the performance of duty on December 8, 2015. While pulling a postal container (post-con) up to a tow-motor, he reportedly felt pain in his neck. Appellant stated that the pain went away, but later it felt like he was having a heart attack. He described his injury as a pinched nerve in his neck. Appellant stopped work on December 14, 2015.

The employing establishment controverted the claim, noting that appellant initially complained of chest pains on December 8, 2015 and was treated in the emergency department. According to his supervisor, P.B., appellant never reported a work-related injury on December 8, 2015. The employing establishment further stated that, on December 14, 2015, appellant filed an occupational disease claim (Form CA-2) for the same alleged pinched nerve, and more than a month later submitted the current Form CA-1 claiming to have injured his neck on December 8, 2015 while hooking up a piece of equipment to a tow-motor.

In a report of work restrictions dated January 28, 2016, Dr. Stanley Glassman, a Board-certified internist, examined appellant and diagnosed him with cervical radiculopathy. He assessed appellant with pain and weakness, greater on the left upper extremity than the right upper extremity, as well as parasthesias. Dr. Glassman recommended work restrictions of no lifting, carrying, climbing, kneeling, bending/stooping, twisting, pulling/pushing, simple grasping, fine manipulation, reaching above the shoulder, driving a vehicle, or operating machinery; and no more than one to two hours of sitting, standing, walking, temperature extremes, high humidity, use of chemicals/solvents, exposure to fumes/dust, and exposure to noise per day. In an accompanying note dated January 28, 2016, he stated that appellant had been incapacitated since December 10, 2015 due to an acute medical condition.

By development letter dated February 12, 2016, OWCP informed appellant that he had not submitted sufficient evidence to support his claim. First, it noted that he had not submitted sufficient evidence to establish that the incident occurred as described, second, that no diagnosis of a condition related to his injury had been provided, third, that the evidence was not sufficient to support that he was injured in the performance of duty, and lastly, that no physician's opinion as to how his claimed injury had resulted in a diagnosed condition had been provided. OWCP also requested additional information regarding how the injury occurred, whether appellant had reported the incident to a supervisor, statements from witnesses, an explanation of the 45-day period between the date of injury and the date of filing of a claim for traumatic injury, whether he sustained any other injuries between the date of injury, the date it was reported to a supervisor or a physician, and a description of his condition between the date of injury and the date he first received medical attention, as well as the nature and frequency of any home treatment.

In an undated response to OWCP's questionnaire, appellant clarified that the injury occurred when he was pulling a post-con of third-class mail to a tow-motor for hookup. When he stood up, his neck was hurting. Appellant stated that his supervisor told him it could be a heart attack. He noted that he had reported the injury on December 8, 2015, but that his supervisors thought it was a heart attack due to the numbness in his left arm. Appellant was taken by ambulance to the hospital. He explained that his delay in submitting his claim for traumatic injury was due to his incorrectly filing a claim for occupational disease first. Appellant noted that he had not sustained any other injuries between the date of injury and the date it was first reported to a supervisor or physician. He stated that he was unable to turn his head and experienced numbness in the left arm all the way to his left hand.

In a December 8, 2015 emergency department visit summary and instructions, Dr. Carol Abbatiello, Board-certified in emergency medicine, diagnosed back pain, chest wall pain, and muscle spasm. She prescribed Robaxin, Ultram, and ibuprofen, and advised appellant to follow-up with occupational medicine.

In an undated attending physician's report (Form CA-20), Dr. Glassman assessed appellant with pain and reduced range of motion (ROM) of the neck. He did not identify a specific date of injury, but reported that appellant developed acute neck pain and left arm numbness. Dr. Glassman checked a box marked "yes" indicating his belief that appellant's condition was caused or aggravated by an employment activity, and explained that he was "pulling a heavy weight." He recommended a course of physical therapy.

By letter dated February 24, 2016, Dr. Glassman stated that per appellant's musculoskeletal examination on December 10, 2015, he noted a decreased ROM of the neck to the left and on extension. He reevaluated appellant on January 28, 2016 and again noted pain on neck ROM along with some weakness of the left upper extremity, greater than the right, on resistance. Dr. Glassman stated that, although he was "unclear how the injury happened," appellant suffered from cervical radiculopathy.

By decision dated March 18, 2016, OWCP denied appellant's claim, finding that he failed to establish fact of injury. It accepted that the employment incident occurred as alleged, but found that appellant had not established a diagnosed medical condition in connection with the employment incident. OWCP explained that pain was a symptom and not a medical diagnosis. It further explained that Dr. Glassman's February 24, 2016 report indicated that it was unclear how appellant's injury occurred.

Appellant timely requested an oral hearing before an OWCP hearing representative.

A March 18, 2016 cervical spine magnetic resonance imaging (MRI) scan interpreted by Dr. Anu Bansal, a radiologist, revealed a focal left paracentral soft disc protrusion at C4-5 deforming the cord contour and leading to mild-to-moderate canal stenosis, as well as additional multilevel degenerative changes, probably worst at C6-7, where there was moderate canal and foraminal stenosis. Dr. Glassman reviewed the cervical MRI scan, diagnosed herniated disc, and referred appellant for pain management.

An April 1, 2016 report from Jason Milbert, a physician assistant, noted an onset of neck pain following a December 8, 2015 work injury "pulling a heavy weight." Appellant's diagnoses included left-sided cervical radiculopathy and myofascial pain syndrome.

The hearing was held on October 11, 2016. Appellant explained that the injury occurred on December 8, 2015, when he was performing his duties as a tow-motor driver and picking up a post-con to be delivered. He grabbed a post-con and it would not move. Appellant struggled in attempting to pull it into an aisle in order to be attached to the tow-motor when he felt a pinch in his neck. He then tried to "walk it off" outside. Appellant saw a supervisor and told her that he had hurt himself on the job. The supervisor then called an emergency response team and appellant was taken to the hospital, where he was checked for a heart attack. Two days later, appellant saw Dr. Glassman, who recommended physical therapy. Appellant stated that he had completed a course of physical therapy, after which he was treated with injections, which did not help to reduce his pain. Dr. Glassman referred appellant to another physician for surgery on his neck, which was performed on September 26, 2016.

During the hearing, counsel argued that there was sufficient medical evidence for the claim to be accepted, referring to the April 1, 2016 report. He further argued that myofascial pain was a diagnosable condition that was a result of weakness in trigger points of muscles. OWCP's hearing representative asked why appellant took over a month to file his claim, and appellant explained that he had incorrectly filed an occupational disease claim first. Appellant noted that OWCP had denied his occupational disease claim -- File No. xxxxxx679 -- a week before it denied the current traumatic injury claim.

Post hearing OWCP received September 19 and 26, 2016 treatment records from Michelle C. Savarese, a physician assistant. Ms. Savarese noted that appellant had recently undergone 2 level cervical fusion, and was currently unable to work. The reported diagnosis was cervical herniated nucleus pulposus (HNP).

In an undated statement, appellant recalled that, on December 8, 2015, he reported to work at 2:30 p.m., picked up his tow-motor, and began to perform his duty of moving post-cons to mail sorting machines. Between 5:00 p.m. and 6:00 p.m., he approached a post-con and struggled to pull it. Appellant felt a pinch in his neck with slight pain. He went outside for fresh air and saw his supervisor. Appellant told his supervisor that he had pain in the neck and chest, who told him something similar had happened to her brother. The fire department and ambulance arrived and attempted to determine if appellant had a heart attack. He was taken to the hospital, where he was monitored. Appellant woke up in pain the next morning and attempted to attend a follow-up appointment, but was told that they did not have paperwork for him and to see his primary care physician. He noted that supervisors had not filled out an accident report as they assumed he was having a heart attack.

By decision dated November 14, 2016, the hearing representative affirmed OWCP's March 18, 2016 decision, finding that appellant had not submitted evidence sufficient to establish a medical diagnosis in connection with his federal employment.

On February 13, 2017 appellant, through counsel, requested reconsideration of the decision dated November 14, 2016.

By letter dated January 31, 2017, Dr. Maritza Holder, Board-certified in occupational medicine, noted that appellant worked as a mail handler and advised that, on December 8, 2015, he was pulling a post-con bin of third-class mail up to a tow-motor when he felt an immediate pinch in the neck, with pain and spasms.[3] The pain radiated to his upper back, chest, and left arm, with numbness in the left arm. Appellant told Dr. Holder that he was urged by a coworker to seek medical attention, because it could be a heart attack. Dr. Holder reported that appellant was taken *via* ambulance to the hospital where cardiac monitoring revealed that he did not have a heart attack, and returned the next day to follow up. However, he could not be treated at the hospital due to an administrative issue. Appellant went to his primary care physician the same day, who referred him to physical therapy and gave him medication. He completed the course of physical therapy. Appellant then followed up with his primary care physician with symptoms of pain and numbness. Dr. Holder referred him to a pain treatment center, where he received multiple cervical spinal injections. An MRI scan revealed C4-5 disc protrusion that deforms the ventral cord, or a cervical herniated disc, and was referred to an orthopedist. The orthopedist performed a cervical discectomy and fusion on September 12, 2016. Dr. Holder wrote, "It is my opinion that [appellant's] symptoms and condition is a direct result from pulling the 200-pound bin of third class mail on December 8, 2015." She explained that disc herniation can develop suddenly or gradually over weeks or months and lifting or twisting can contribute to disc herniation.

By decision dated February 21, 2017, OWCP modified its prior decision to find that appellant has established a diagnosed medical condition, but it denied his claim, finding that he had not submitted rationalized medical opinion evidence explaining how his C4-5 disc protrusion/herniation was caused or aggravated by pulling a postal container on December 8, 2015. It noted that Dr. Holder's opinion was conclusory in nature and did not contain an explanation as to how the incident of December 8, 2015 directly resulted in his diagnosed condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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.[5]

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.[6] The second component is whether the employment incident caused a personal

[3] Dr. Holder noted that as a mail handler appellant pushed approximately 200 pounds of mail per bin depending on the class of mail requiring transport, with third class weighing the heaviest.

[4] *See supra* note 2.

[5] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

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

injury.[7] 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.[8]

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.[9] 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.[10] 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 appellant's specific employment factor(s).[11]

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[12] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[13]

ANALYSIS

OWCP accepted that the December 8, 2015 employment incident occurred as alleged. It also accepted that the medical evidence of record included a diagnosis of C4-5 disc protrusion/herniation. OWCP, however, denied his traumatic injury claim because the medical evidence was insufficient to establish causal relationship between the December 8, 2015 employment incident and his diagnosed cervical condition. The Board finds that appellant has not met his burden of proof to establish causal relationship.

The December 8, 2015 emergency room records, as well as Dr. Glassman's undated attending physician's report (Form CA-20) did not include a specific medical diagnosis.[14] The record also includes several reports authored by physician assistants, which are insufficient to

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

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

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

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

[11] *Id.*

[12] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[13] *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).

[14] Findings of pain or discomfort alone do not satisfy the medical aspect of the fact of injury medical determination. Federal (FECA) Procedure Manual, *id*. at Chapter 2.803.4a(6) (August 2012).

satisfy appellant's burden of proof as physician assistants are not physicians under FECA[15] and, thus, their reports do not constitute competent medical evidence.[16]

When Dr. Glassman examined appellant on January 28, 2016 he diagnosed cervical radiculopathy, but did not offer an opinion regarding the etiology of appellant's diagnosis. Medical evidence offering no opinion about the cause of an employee's condition is of limited probative value on the issue of causal relationship.[17] In his February 24, 2016 note, Dr. Glassman pointed out that when he examined appellant on December 10, 2015 he noticed a decreased ROM of the neck. When he reevaluated appellant on January 28, 2016 he again noticed pain with neck ROM, as well as left upper extremity weakness on resistance. Dr. Glassman again diagnosed cervical radiculopathy, and specifically commented that "[he] was unclear how the injury happened." His uncertainty as to the cause of injury clearly does not support appellant's claim for an employment-related neck injury.

Appellant's March 18, 2016 cervical spine MRI scan revealed a C4-5 disc protrusion, as well as multilevel degenerative changes with moderate canal and foraminal stenosis. Neither Dr. Bansal, the radiologist who initially interpreted the scan, nor Dr. Glassman who reviewed it and diagnosed a herniated disc, offered an opinion regarding the cause of appellant's diagnosed cervical conditions. As noted, medical evidence that does not include an opinion regarding the cause of a diagnosed condition is of limited probative value on the issue of causal relationship.[18]

In her January 31, 2017 report, Dr. Holder reviewed appellant's history of injury, diagnostic testing, and treatment received, including surgery. She noted that a cervical MRI scan revealed C4-5 disc protrusion, and that appellant had undergone a cervical discectomy and fusion on September 12, 2016. Dr. Holder stated that appellant's symptoms and condition were the direct result of pulling the 200-pound bin of 3rd class mail on December 8, 2015. She also stated that disc herniation can develop suddenly or gradually over weeks or months, and lifting or twisting can contribute to disc herniation. However, such generalized statements do not establish causal relationship because they merely repeat appellant's assertions and are unsupported by adequate medical rationale.[19] Dr. Holder's opinion is of limited probative value as it does not contain any medical rationale explaining how the accepted employment incident of December 8, 2015 physiologically caused appellant's condition.[20]

The issue of causal relationship between appellant's claimed conditions and a work-related incident is a medical question that must be established by probative medical opinion from a

[15] *B.L.*, Docket No. 16-1205 (issued November 23, 2016); *Roy L. Humphrey*, 57 ECAB 238 (2005).

[16] *See L.B.*, Docket No. 16-0486 (issued June 28, 2016); *David P. Sawchuk*, *supra* note 13

[17] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

[18] *See supra* note 16.

[19] *See G.O.*, Docket No. 16-0311 (issued June 14, 2016); *K.W.*, Docket No. 10-0098 (issued September 10, 2010).

[20] *See A.D.*, Docket No. 17-1136 (issued November 9, 2017).

physician.[21] The Board finds that the medical evidence submitted is insufficient to establish causal relationship between the accepted work incident and his diagnosed conditions.[22] Accordingly, the Board finds that appellant 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 that his diagnosed cervical condition is causally related to the accepted December 8, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the February 21, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 20, 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

[21] *W.W.*, Docket No. 09-1619 (issued June 2010); *David Apgar*, 57 ECAB 137 (2005).

[22] *See T.C.*, Docket No. 16-0586 (issued August 9, 2016); *Patricia J. Bolleter*, 40 ECAB 373 (1988).