

**United States Department of Labor
Employees' Compensation Appeals Board**

D.G., Appellant)	
)	
and)	Docket No. 17-1748
)	Issued: June 6, 2018
DEPARTMENT OF THE AIR FORCE,)	
ELMENDORF AIR FORCE BASE, AK,)	
Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
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 August 9, 2017 appellant, through counsel, filed a timely appeal from a March 6, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the claim.

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 expand the acceptance of his claim to include the additional condition of spinal stenosis as causally related to his February 19, 2015 employment injury.

FACTUAL HISTORY

On September 5, 2012 appellant, then a 58-year-old airfield clearing equipment operator, filed a claim for a traumatic injury (Form CA-1), alleging that he injured his right shoulder as he was cutting a downed tree while in the performance of duty. OWCP assigned the claim File No. xxxxxx338 and, on October 10, 2012, accepted closed fracture of the right scapula.

On May 6, 2013 appellant underwent a lumbar spine magnetic resonance imaging (MRI) scan which demonstrated disc degenerative changes resulting in severe central spinal stenosis at L4-5 as well as mild central spinal stenosis at L3-4 and moderate central spinal stenosis at L5-S1 with lateral recess impingement bilaterally at L5-S1. In a June 28, 2013 report, Dr. Robert J. Hall, a Board-certified orthopedic surgeon, noted appellant's reports of back pain with pain radiating down in his legs and numbness in his feet.

Dr. Mark E. Flanum, a Board-certified orthopedic surgeon, examined appellant on July 3, 2013 for lumbar disc displacement and spinal stenosis with lumbar radiculopathy and weakness. He recommended surgical decompression and two-level fusion. On October 2, 2013 Dr. Flanum noted that appellant sustained a fall from a piece of equipment earlier this year and began having substantial low back pain with numbness and tingling. He diagnosed symptomatic spinal stenosis secondary to facet and ligamentum flavum hypertrophy as well as lumbar disc displacement.

On February 26, 2015 appellant filed a traumatic injury claim (Form CA-1) alleging that he injured his shoulder, back, leg, and head on February 19, 2015 when his foot slipped out of the ladder on a snow removal truck, causing him to fall onto a concrete floor.³ OWCP assigned the claim File No. xxxxxx528, and on April 2 and 7, 2015, accepted complete right rotator cuff rupture and right biceps tendon rupture. On April 7, 2015 appellant underwent right shoulder arthroscopy with open rotator cuff repair and open biceps tenodesis. OWCP authorized compensation benefits.⁴

On July 6, 2015 appellant underwent a lumbar spine MRI scan which demonstrated disc extrusion at L4-S1, moderate facet arthropathy with severe canal stenosis at L3-4, and moderately severe neural foraminal stenosis at L4-S1 and L3-4. In a report dated August 24, 2015, Dr. Flanum reviewed appellant's MRI scan and diagnosed acquired lumbar spondylolisthesis, lumbar spondylosis, rotator cuff rupture, and lumbar spinal stenosis. He recommended lumbar

³ Appellant also has a prior traumatic injury claim under OWCP File No. xxxxxx992, in which he alleged that, on March 28, 2013, he fell from his loader and bruised his right elbow, hip, shoulder, ribs, and back. OWCP denied the claim by decision dated August 7, 2013. File No. xxxxxx992 is not presently before the Board.

⁴ OWCP File Nos. xxxxxx338 and xxxxxx528 have been administratively combined, with the latter serving as the master file.

decompression because of the retrolisthesis of L5 on S1 as well as severe spinal stenosis. Dr. Flanum noted that appellant reported that he had no substantial back symptoms before his claimed March 26, 2013 workplace injury. He noted that appellant had some existing spondylosis, but was asymptomatic until the March 26, 2013 workplace injury.

Appellant's field nurse reported on August 12, 2015 that he also injured his back when he fell on a concrete floor and that appellant would like to have this aspect of his claim addressed. She noted that he had multiple injuries due to falls at work which included a broken scapula in 2012, falling out of loader in 2013, and falling from his truck in 2015.

On November 25, 2015 appellant submitted a report from Dr. Flanum dated October 2, 2013. In this report Dr. Flanum diagnosed spinal stenosis and noted that appellant fell from a piece of equipment at work which resulted in a substantial increase in low back pain and leg symptoms. On December 10, 2015 appellant submitted a report from Dr. Flanum dated October 26, 2015 which indicated that he treated appellant for low back pain and spinal stenosis. He noted, "The patient reports that prior to his workplace injury, he had no substantial back or leg symptoms. Consequentially, I do believe that his workplace injury was the precipitating cause for his current need for surgery."

In a January 12, 2016 letter, OWCP requested that appellant provide additional medical evidence addressing causal relationship between his diagnosed spinal stenosis and his February 19, 2015 employment injury. It afforded him 30 days to respond.

By decision dated February 19, 2016, OWCP denied appellant's request to expand the acceptance of his February 19, 2015 claim to include the additional condition of spinal stenosis. It found that the medical evidence of record did not support a causal relationship between his diagnosed spinal stenosis and his February 19, 2015 employment injury.

Appellant underwent L4-5 and L5-S1 posterior lumbar interbody fusion and decompression on March 5, 2016. In a letter dated May 25, 2016, OWCP informed appellant that his spinal surgery was not authorized.

Dr. Flanum completed a note on May 23, 2016 and reported that appellant sustained an injury on March 28, 2013 at work and that prior to this injury he did not have any complaints of low back pain or radicular symptoms. He noted that while appellant "undoubtedly" has some preexisting spondylosis, this condition was not symptomatic until the March 28, 2013 employment injury. Dr. Flanum concluded, "Consequently it continues to be my medical opinion that the workplace injury on or about March 28, 2013 was the cause of his need for surgical intervention."

In a letter dated January 25, 2017, appellant, through counsel, requested reconsideration of the February 19, 2016 decision. In support of this request, counsel resubmitted appellant's lumbar MRI scans, Dr. Flanum's October 2, 2013, October 26, 2015, and May 23, 2016 reports, and appellant's March 5, 2016 operative report.

By decision dated March 6, 2017, OWCP denied appellant's request to expand the acceptance of his February 19, 2015 claim to include his diagnosed spinal stenosis. It found that the medical evidence submitted was of insufficient probative value to establish his claim and modify the November 25, 2016 decision.

LEGAL PRECEDENT

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁵

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.⁶ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁷

Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁸

ANALYSIS

The Board finds that appellant has not met his burden of proof to expand the acceptance of his claim to include the additional condition of spinal stenosis as causally related to his February 19, 2015 employment injury.

Appellant has two claims for traumatic injury accepted by OWCP, the September 5, 2012 fall in which he fractured his right shoulder, and the February 19, 2015 fall which resulted in complete right rotator cuff rupture and right biceps tendon rupture with resulting surgery. He is currently alleging that, as a result of his February 19, 2015 employment injury, he sustained spinal stenosis requiring surgery.

In support of his claim for spinal stenosis causally related to his February 19, 2015 employment injury, appellant submitted a series of reports from Dr. Flanum. On October 2, 2013 Dr. Flanum attributed appellant's spinal stenosis to a fall from a piece of equipment. This report predates appellant's February 19, 2015 employment injury and attributes his condition to his March 26, 2013 employment incident which was not accepted by OWCP. Therefore, this report is irrelevant to the current issue of causation and is of limited probative value regarding this claim.⁹

In a report dated August 24, 2015, Dr. Flanum noted that appellant had some existing spondylosis, but was asymptomatic until the claimed March 26, 2013 workplace injury. In his

⁵ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁶ *M.S.* Docket No. 17-0105 (issued December 7, 2017); *see* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁷ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁸ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁹ *D.R.*, Docket No. 16-0528 (issued August 24, 2016).

report dated October 26, 2015, he indicated that he treated appellant for low back pain and spinal stenosis. Dr. Flanum noted, “The patient reports that prior to his workplace injury, he had no substantial back or leg symptoms. Consequentially, I do believe that his workplace injury was the precipitating cause for his current need for surgery.” An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant’s own belief that there is a causal relationship between his claimed condition and his employment.¹⁰ As Dr. Flanum does not provide a rationalized opinion regarding causal relationship between appellant’s spinal stenosis condition and the accepted February 19, 2015 employment injury, these reports lack probative value.

Dr. Flanum completed a note on May 23, 2016 and reported that appellant sustained an injury at work on March 28, 2013 and that, prior to that injury, he did not have any complaints of low back pain or radicular symptoms. He noted that while appellant “undoubtedly” had some preexisting spondylosis, this condition was not symptomatic until the claimed March 28, 2013 employment injury. Dr. Flanum concluded, “[c]onsequently it continues to be my medical opinion that the workplace injury on or about March 28, 2013 was the cause of his need for surgical intervention.” As noted previously, OWCP has not accepted that appellant sustained a traumatic injury on March 28, 2013. This report does not address any causal relationship between appellant’s accepted February 19, 2015 employment injury and his diagnosed spinal stenosis. This report is also not relevant to the current issue of causation and is insufficient to establish appellant’s claim for spinal stenosis as a result of his February 19, 2015 employment injury.¹¹

Appellant has submitted no medical evidence addressing the alleged causal relationship between his diagnosed condition of spinal stenosis and his February 19, 2015 employment injury by direct causation, aggravation, or acceleration. Without evidence of causal relationship between his accepted employment injury and his diagnosed condition, he has not met his burden of proof to establish the additional condition of spinal stenosis as due to his February 19, 2015 employment injury.

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 expand the acceptance of his claim to include the additional condition of spinal stenosis causally related to his February 19, 2015 employment injury.

¹⁰ *R. W.*, Docket No. 15-0345 (issued September 20, 2016); *Robert A. Boyle*, 54 ECAB 381 (2003).

¹¹ *Supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the March 6, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 6, 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