United States Department of Labor
Employees' Compensation Appeals Board

E.F., Appellant	)	
and	)	**Docket No. 17-2005**
	)	**Issued: June 15, 2018**
U.S. POSTAL SERVICE, VOORHEES POST OFFICE, Voorhees, NJ, Employer	)	

Appearances:
Thomas R. Uliase, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 27, 2017 appellant, through counsel, filed a timely appeal from an August 11, 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 to consider 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 a left elbow or lumbar injury causally related to the accepted April 7, 2016 employment incident.

FACTUAL HISTORY

On April 28, 2016 appellant, then a 44-year-old postal clerk, filed a traumatic injury claim (Form CA-1) alleging that he injured his left elbow and lower back on April 7, 2016 while pushing a wire container through the employing establishment building. The wire container slowed due to faulty wheels and his body struck the wire container, injuring his left elbow and back. Appellant returned to light-duty work on May 11, 2016.

In a development letter dated May 16, 2016, OWCP requested that appellant provide additional factual and medical evidence in support of his traumatic injury claim. It afforded him 30 days to respond.

On May 22, 2016 appellant provided a narrative statement further explaining his claim. He repeated that he injured his back and left elbow on April 7, 2016 when the wire cage he was pushing suddenly slowed due to faulty wheels. Appellant hit the cage and his body lurched forward resulting in sharp pains in his elbow and back. The pain subsided for a few minutes, but recurred when he lifted a priority medium flat-rate box from a mail container. Appellant reported that his back pain continued to increase, but that he worked on April 8, 9, and 11, 2016. He sought medical treatment on April 12, 2016.

Dr. Vedat Obuz, an internist, examined appellant on April 12, 2016 and diagnosed back pain. He ordered diagnostic testing and indicated that appellant was totally disabled from work. On May 23, 2016 appellant submitted a magnetic resonance imaging (MRI) scan of his lumbar spine dated April 19, 2016. This test demonstrated bilateral spondylolysis at L3 and broad-based posterior disc protrusion at L3-4. Appellant also provided a May 3, 2016 duty status report (Form CA-17) from Dr. Obuz diagnosing herniated disc, mechanical low back pain, and elbow tenderness. Dr. Obuz noted that appellant injured his back on April 7, 2016 pushing a container of mail and provided work restrictions. He referred appellant to a neurosurgeon. On May 29, 2016 Dr. Obuz completed an additional form report, but diagnosed chronic lumbar sprain. He provided an undated note which indicated that appellant injured his low back at work and diagnosed lumbar radiculopathy with spasm and tenderness.

On June 7, 2016 Dr. Laura E. Ross, an osteopath, and a Board-certified orthopedic surgeon, completed a Form CA-17 duty status report, which listed appellant's history of injury while pushing a mail container on April 7, 2016 and diagnosed L3-4 herniated disc.

By decision dated June 22, 2016, OWCP denied appellant's traumatic injury claim, finding that he failed to submit medical evidence demonstrating causal relationship between his diagnosed conditions and his accepted April 7, 2016 employment incident.

In a narrative report dated June 7, 2016, Dr. Ross described appellant's history of pushing a wire cage at the employing establishment on April 7, 2016 and falling against the cage when it

suddenly stopped. Appellant experienced low back and left elbow pain. The back pain returned again on April 7, 2016 when he lifted a medium flat-rate box from a mail container. Dr. Ross noted that appellant had no history of similar complaints. On physical examination she found swelling in the left elbow with limited range of motion. She also found decreased sensation along the ulnar nerve distribution in the left hand and positive Tinel's sign and Phalen's tests in the left elbow. Appellant's back examination demonstrated paravertebral muscle spasms and tenderness with decreased sensation in the L5 and S1 distributions of the left leg. Dr. Ross found that appellant's MRI scan demonstrated a large disc herniation at the L4-5 level with stenosis.

Appellant underwent nerve conduction velocity and electromyogram testing on June 14, 2016 which demonstrated electrical evidence of ongoing right and left L3-4 radiculopathy. Dr. Brad Tinkelman, a Board-certified neurologist, opined that this condition was "likely related to the patient's work injury of April, 2016."

In a report dated June 22, 2016, Dr. R. Todd Rinnier, an osteopath, related appellant's history of injury on April 7, 2016 pushing a mail container which suddenly stopped and appellant fell towards the container. Appellant reported lower back and left elbow pain as a result of the April 7, 2016 incident. He denied a motor vehicle accident, work-related injury, or any type of injury previously. On physical examination, Dr. Rinnier found that appellant's left elbow range of motion was limited due to pain. He also found loss of range of motion in appellant's lumbar spine with tenderness in the lumbosacral paraspinal muscles with trigger points and muscle spasm. Dr. Rinnier reported reduced reflexes in the right lower extremity with reduced motor strength in appellant's quadriceps, plantar flexion, toe extension, and dorsiflexion. He reviewed appellant's April 19, 2016 MRI scan and found L3-4 disc protrusion, spondylolysis, and facet arthropathy. Dr. Rinnier diagnosed post-traumatic lumbago, lumbar facet syndrome, disc herniation at L3-4, lumbar radiculopathy, muscle spasm, myofascial pain syndrome, and left elbow pain.

On June 24, 2016 appellant underwent a lumbar computerized tomography (CT) scan which demonstrated disc bulging at L2 through L5. He underwent a lumbar MRI scan on June 25, 2016 which demonstrated bilateral spondylolysis at L3, broad disc herniation at L3-4 encroaching the L3 nerve roots, and disc bulging or protrusion at L4-5. On June 27, 2016 appellant underwent a L3-4 laminectomy and facetectomy.[3]

The employing establishment provided appellant with a Form CA-16 authorization for examination or treatment on July 26, 2016.

On August 11, 2016 appellant underwent a left elbow MRI scan which demonstrated partial thickness interstitial tear of the common extensor tendon at its humeral attachment. This study also demonstrated thickening of the proximal lateral ulnar collateral ligament and thickening and hyperintensity of the ulnar nerve. Dr. Ross completed a report on September 8, 2016 and found tenderness to palpation of over the lateral aspect of the left elbow. She reviewed appellant's

[3] On June 30, 2016 appellant filed an additional traumatic injury claim (Form CA-1) alleging that, on June 24, 2016, he was hospitalized due to an April 24, 2016 employment injury. Appellant's supervisor noted on the claim form that appellant related that he was experiencing back pain, as well as numbness and weakness in his legs from the April 7, 2016 incident.

elbow MRI scan and noted that he injured his left elbow in the work-related injury that occurred on April 7, 2016.

In a note dated September 12, 2016, Dr. Robert M. Greenleaf, an orthopedic surgeon, described appellant's history as mild intermittent low back pain until April … when he suffered an acute exacerbation at work…." He diagnosed low back pain, lumbosacral disc disease, and lumbar stenosis.

On November 21, 2016 appellant, through counsel, requested reconsideration of the June 22, 2016 decision. Counsel submitted a November 10, 2016 report from Dr. Greenleaf describing appellant's employment incident of April 7, 2016 as pushing a wire cage of mail when the cart stopped suddenly due to faulty wheels. Appellant collided with the cart and fell over the top of the cart with a violent lurch forward. He experienced pain in his elbow and lower back. Appellant sought medical treatment on April 12, 2016. Dr. Greenleaf first examined appellant on June 24, 2016 and on June 27, 2016 performed lumbar spine surgery. He reviewed appellant's CT scan and found grade 1 isthmic spondylolisthesis at the L3-4 level with bilateral fractures of the pars elements of L3. Dr. Greenleaf explained:

> "[Appellant] has a condition in his spine with the L3-4 isthmic spondylolisthesis which has most likely been present for the majority of his adult life. These fractures usually occur during childhood and adolescent age periods. Less than 10 percent of patients with this injury experience significant amounts of pain until there is progression of instability with these injuries…. However, the incident on April 7, 2016 caused an exacerbation of [appellant's] problem and caused an injury to disc level which compromised the stability at the L3-4 level. This caused his herniation as well as the stenosis impinging of the bilateral nerve roots…. Therefore, with a reasonable degree of medical certainty [appellant's] injury of April 7, 2016 caused an exacerbation of his problem and left him with the associated low back pain as well as radiating pain and paresthesia's into his legs."

By decision dated March 24, 2017, OWCP denied modification of its June 22, 2016 decision, finding that appellant had not submitted sufficient medical evidence explaining how his April 7, 2016 employment incident caused or aggravated his diagnosed elbow and lumbar conditions.[4]

On May 15, 2017 appellant, through counsel, requested reconsideration of the March 24, 2017 decision. Counsel submitted an additional report from Dr. Greenleaf. On May 2, 2017 Dr. Greenleaf explained how appellant's employment incident resulted in his diagnosed back conditions. He reported that, a deceleration injury while walking, as appellant described his April 7, 2016 employment injury, "causes a sudden flexion injury across the disc space. The body's core musculature does not have time to fire and stabilize across the discs. This leads to excess micromotion and stretching/tearing/weakening of fibers in the annulus. The nucleus pulposus then pushes into this weakened structure causing a worsening disc bulge and collapse

[4] Counsel appealed the March 24, 2017 decision to the Board on May 3, 2017. He withdrew this appeal request on May 4, 2017. The Board issued an Order Dismissing Appeal on May 24, 2017. Docket No. 17-1148 (issued May 24, 2017).

vertically of the disc. This collapse causes more loading of the facet joints and narrowing of the neural foramen which contributes to back pain and nerve impingement." Dr. Greenleaf attributed appellant's condition to pushing the wire cage which stopped suddenly on April 7, 2016.

By decision dated August 11, 2017, OWCP denied modification finding that appellant had not established causal relationship between the diagnosed conditions and the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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 the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[6]

OWCP defines a traumatic injury as, "[A] condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time, place of occurrence, and member or function of the body affected."[7] In order to determine whether an employee actually sustained an 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 which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[8] The second component is whether the employment incident caused a personal injury.[9] 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.[10]

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.[11] 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

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[5] *Supra* note 2.

[6] *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

[7] 20 C.F.R. § 10.5(ee).

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

[9] *Id.; M.P.,* Docket No. 17-1221 (issued August 21, 2017).

[10] *Shirley A. Temple,* 48 ECAB 404, 407 (1997); *M.P., id.*

[11] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

relationship between the diagnosed condition and the specific employment factors identified by the employee.[12] 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.[13]

ANALYSIS

The Board finds that appellant has not established a left elbow condition causally related to the accepted employment injury. The Board also finds that this case is not in posture for a decision regarding appellant's alleged lumbar condition.

Appellant alleged that he sustained left elbow and lower back conditions as a result of the accepted April 7, 2016 work incident. OWCP denied his claim finding that he had not established an injury causally related to the accepted April 7, 2016 employment incident.

Regarding appellant's left elbow condition, in a report dated June 7, 2016 Dr. Ross noted his history of injury, and physical examination findings. She noted that he had swelling in the elbow, limited range of motion, decreased sensation along the ulnar nerve distribution, and positive Tinel's and Phalen's signs. This report is of limited probative value with respect to establishing causal relationship between appellant's left elbow condition and the April 7, 2017 employment incident because Dr. Ross did not provide a diagnosis or discuss the cause of the condition.[14] The Board has held that medical evidence which does not offer a clear opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[15]

In her September 8, 2016 report, Dr. Ross noted that appellant had tenderness over the lateral aspect of the left elbow. She reviewed his left elbow MRI scan dated August 11, 2016, which demonstrated partial thickness interstitial tear of the common extensor tendon at the humeral attachment, thickening of the proximal lateral ulnar collateral ligament and thickening and hyperintensity of the ulnar nerve and concluded that he injured his left elbow during the April 7, 2016 employment incident. The diagnostic testing of record, including the left elbow MRI scan, is not probative to the issue of causal relationship as it does not offer any opinion regarding the cause of an employee's condition.[16] Regarding the conclusion drawn by Dr. Ross that appellant's April 7, 2016 employment incident caused the left elbow conditions seen on MRI scan, the Board has held that 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.[17] She did not explain the medical process through which the employment incident would have

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

[13] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[14] *See C.H.,* Docket No. 17-1568 (issued October 26, 2012).

[15] *See Charles H. Tomaszewski,* 39 ECAB 461 (1988).

[16] *S.S.*, Docket No. 16-1760 (issued January 23, 2018).

[17] *C.M.,* Docket No. 14-0088 (issued April 18, 2014).

caused his left elbow condition. Dr. Ross did not explain how specific objective findings on physical examination and diagnostic testing supported her opinion on causal relationship.[18]

Dr. Rainer in his June 22, 2016 report related appellant's history of injury, left elbow pain complaints, and physical examination findings. He diagnosed left elbow pain. The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis.[19]

Consequently, the Board finds that appellant has not met his burden of proof to establish with a rationalized medical opinion that his left elbow condition was causally related to the accepted April 7, 2016 employment incident.

Regarding appellant's alleged lumbar condition, appellant submitted reports from Dr. Greenleaf dated November 10, 2016 and May 2, 2017 which included opinions that appellant's diagnosed back conditions and resulting surgeries were the result of the April 7, 2016 pushing incident. Dr. Greenleaf diagnosed lumbosacral disc disease and lumbar stenosis. He provided a clear description of the April 7, 2016 pushing incident. Dr. Greenleaf explained how appellant's preexisting condition of L3-4 isthmic spondylolisthesis which has most likely been present for the majority of his adult life, and that the incident on April 7, 2016 caused an exacerbation of this condition through injury to disc level which compromised the stability at the L3-4 level. He concluded that this compromised stability caused appellant's disc herniation as well as the stenosis impinging the bilateral nerve roots. In his May 2, 2017 report, Dr. Greenleaf provided biomechanical explanations of how appellant's deceleration injury weakened the annulus and caused a disc bugle and vertical collapse of the disc further causing loading of the facet joints and narrowing of the neural foramen which resulted in back pain and nerve impingement.

The Board finds that, although Dr. Greenleaf's opinion is not completely rationalized to meet appellant's burden of proof on causal relationship, it is of sufficient probative value to warrant additional development.[20] Dr. Greenleaf provided a biomechanical explanation as to how appellant's deceleration incident caused his lumbar condition. However, OWCP did not undertake further development of the medical record, such as referring appellant for a second opinion examination.[21]

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.[22] This case is remanded to OWCP for preparation of a statement of accepted facts

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[18] *See M.M.*, Docket No. 17-1071 (issued November 1, 2017).

[19] *See P.S.*, Docket No. 12-1601 (issued January 2, 2013).

[20] *R.M.,* Docket No. 17-1652 (issued January 5, 2018); *M.K.,* Docket No. 17-1140 (issued October 18, 2017); *John J. Carlone,* 41 ECAB 354 (1989); *Horace Langhorne,* 29 ECAB 280 (1978); *see also E.J.,* Docket No. 09-1481 (issued February 19, 2010).

[21] *Id.*

[22] *D.G.,* Docket No. 15-0702 (issued August 27, 2015); *Donald R. Gervasi,* 57 ECAB 281, 286 (2005); *William J. Cantrell,* 34 ECAB 1233, 1237 (1983).

and further development of the medical evidence. Following this and any other development deemed necessary, OWCP shall issue a *de novo* decision in the case.[23]

CONCLUSION

The Board finds that appellant has not established that his left elbow condition was causally related to the accepted employment incident. The Board also finds that this case is not in posture for decision as to whether his diagnosed lumbar condition is causally related to the accepted April 7, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the August 11, 2017 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further development consistent with this opinion.

Issued: June 15, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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[23] The Board notes that the employing establishment issued a Form CA-16 Authorization for Medical Treatment on July 7, 2016. A properly completed CA-16 form authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *Tracy P. Spillane,* 54 ECAB 608 (2003). On return of the case, OWCP shall also determine whether the CA-16 form of record in this case properly authorized any medical treatment.