United States Department of Labor
Employees' Compensation Appeals Board

M.S., Appellant	)	
and	)	**Docket No. 18-0052**
	)	**Issued: June 21, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Pleasantville, NY, 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:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 6, 2017 appellant, through counsel, filed a timely appeal from a June 16, 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 injury due to an accepted September 11, 2015 employment incident.

FACTUAL HISTORY

On September 11, 2015 appellant, then a 54-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging injury while at work on September 11, 2015 when he turned around and fell. He claimed that he sustained a bruise on his shin. On the reverse side of the Form CA-1, appellant's immediate supervisor checked a box marked "Yes" to indicate that appellant was injured in the performance of duty.[3] Appellant stopped work on September 11, 2015.[4]

In an August 19, 2015 letter, the employing establishment controverted appellant's claim for a September 11, 2015 employment injury, indicating that he had not identified a cause for his alleged fall.

Appellant submitted documents from his September 11, 2015 visit to the emergency room at Northern Westchester Hospital. September 11, 2015 x-rays of his chest and thoracic spine contained impressions of no acute evidence of fracture or dislocation.

In a September 16, 2015 report, Dr. Eugene Tolunsky, an attending Board-certified neurologist, indicated that appellant had a history of fusion/decompression surgery three years prior for lumbar spinal stenosis. He noted that appellant reported that four days prior he fell while delivering mail, but was not sure how he fell. Appellant reported that he did not feel dizzy or lose consciousness and that he was not sure whether he tripped over an object. He also reported that he sustained a bruise over his back and scraping of his right anterior shin. Dr. Tolunsky detailed the findings of his physical examination, noting a positive straight leg test for the left leg, 4/5 anterior tibialis muscle weakness in the left leg, and a healing linear scratch over the right anterior shin. He indicated that the most likely diagnosis was left L5 radiculopathy with resulting left foot drop.

In a September 16, 2015 authorization for examination and/or treatment report (Form CA-16), Dr. Tolunsky listed the history of injury on September 11, 2015 as "fall on pavement while at work," diagnosed foot drop, and checked a box marked "Yes" indicating that the diagnosed condition was caused or aggravated by the described employment activity. Dr. Tolunsky found that appellant was totally disabled from September 11, 2015 until an unknown date.

In a September 30, 2015 report, Ellen Giorgadze, an attending family nurse practitioner, indicated that appellant reported falling backwards at work on September 11, 2015. She noted that

[3] In an accompanying September 11, 2015 statement, appellant indicated that, on that date, he turned and fell backwards. In an e-mail also dated September 11, 2015, a coworker noted that appellant advised him that, on that date, he fell outside the back of his truck and that he reported his right leg and back hurt.

[4] Appellant received continuation of pay through late-October 2015 and filed a claim for compensation (Form CA-7) claiming wage-loss compensation for the period October 27 to November 6, 2015.

appellant had a history of gout and that his left foot currently showed symptoms of gout. Ms. Giorgadze diagnosed left foot swelling.

In an October 14, 2015 development letter, OWCP requested that appellant submit additional evidence in support of his claim, including a physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated a medical condition. It requested that appellant complete and return an attached questionnaire which posed various questions regarding his claimed fall at work on September 11, 2015.

In an October 18, 2015 statement, appellant indicated that on September 11, 2015 he was going to put mail into a mailbox when he turned and fell on his back, thereby scraping his leg on the road. Appellant noted that the cause of his fall was unknown and he reported that he first hit his back on the ground without striking any object on the way down to the ground.

Appellant submitted a September 11, 2015 report in which Dr. Lisa J. Geller, an attending Board-certified emergency medicine physician, indicated that he reported sustaining an injury after opening the back of his postal truck, reaching upward, and falling backwards. Dr. Geller discussed the findings of diagnostic testing and diagnosed a syncopal fall.

In a September 24, 2015 report, Dr. Robert A. Wolfson, an attending Board-certified internist, indicated that appellant reported that on September 11, 2015 he sustained injury due to a fall which occurred while unloading his truck. He noted that appellant appeared to have foot drop which was likely due to a pinched nerve.[5]

On October 6, 2015 Dr. Tolunsky diagnosed left L5 radiculopathy due to large L4-5 lateral recess disc herniation with impingement of the L5 nerve root which resulted in left-sided foot drop. On October 16, 2015 he noted that appellant reported that he developed left leg pain and weakness while he was at work. Dr. Tolunsky provided a diagnosis of severe left lumbar radiculopathy.

In an October 9, 2015 report, Dr. Deborah L. Benzil, an attending Board-certified neurosurgeon, indicated that appellant reported developing back and left leg pain after suffering a fall at work on September 11, 2015. She detailed the findings of her physical examination, including altered sensation associated with the left L4-5 nerve root, and she diagnosed herniation of the left side of the L4-5 disc.

In an October 27, 2015 attending physician's report (Form CA-20), Dr. Benzil described the history of injury as a fall at work on September 11, 2015 while delivering mail. She diagnosed herniation of the left side of the L4 disc and checked a box marked "Yes" indicating that the diagnosed condition was caused or aggravated by the described employment activity. Dr. Benzil found that appellant was disabled for an unknown period. In an October 27, 2015 duty status report (Form CA-17), she provided various work restrictions.

[5] An October 5, 2015 magnetic resonance imaging (MRI) scan of appellant's low back showed a large left lateral recess herniated disc at L4-5 with spinal canal stenosis and left L5 impingement/compression which accounted for his left L5 radiculopathy.

In an October 31, 2015 report, Dr. Tolunsky indicated that appellant reported that he immediately developed back and left leg pain after his September 11, 2015 fall at work. He noted that he evaluated appellant shortly after the fall and found him to have left foot drop and sensory loss in the left leg. Dr. Tolunsky advised that an MRI scan of the lumbar spine revealed a large lower lumbar disc herniation with compression of the spinal root that led to left leg weakness and sensory loss. He noted, "There is no doubt that the patient's symptoms which developed immediately after the fall are related to the fall." Dr. Tolunsky indicated that appellant required surgery to address the large left L4-5 herniated disc with significant nerve root compression and resulting neurological deficits.

By decision dated December 8, 2015, OWCP denied appellant's claim, finding that appellant had not established the factual aspect of the fact of injury because the cause of his claimed injury was unclear. It also found that the submitted medical reports were insufficient to establish that appellant sustained an injury in connection with the reported incident because the reports did not provide any history of injury or diagnosis.

On November 23, 2016 appellant, through counsel, requested reconsideration of OWCP's December 8, 2015 decision. Counsel argued that the medical evidence established that appellant sustained injury due to an employment incident in the form of a fall which occurred while delivering mail.

In a December 28, 2015 report, Dr. Benzil indicated that she performed left L4-5 laminectomy and microdissection on appellant on that date. The surgery was not authorized by OWCP.

In an October 26, 2016 report, Dr. Benzil indicated that appellant was well known to her as a patient who previously underwent lumbar fusion surgery, from which he made an excellent recovery. Appellant returned to her care in October 2015 as a result of a September 11, 2015 fall while delivering mail. Dr. Benzil indicated that appellant reported that he was unaware of any significant injury at the time, but that he had a bruise on his back and a scrape on his right shin. She indicated that in October 2015 she noted appellant's prior history of a lumbar fusion and right leg and hip pain which had resolved prior to the September 11, 2015 fall. Appellant developed back and left leg pain after the September 11, 2015 fall which was "new to him." Dr. Benzil noted the MRI scan findings which showed a large herniated disc on the left at L4-5 with nerve root compression along with significant foot drop. She indicated that appellant's diagnosis was a herniated lumbar disc and opined that, within a clear degree of medical certainty, the herniated disc developed after his September 11, 2015 fall and was causally related as were the subsequent neurologic findings of foot drop and numbness. Dr. Benzil advised that this opinion was based on the fact that, although appellant had preexisting back problems, he never had back problems associated with the L4-5 nerve root. She indicated that a recent MRI scan showed no herniated disc at L4-5[6] and noted that appellant was completely asymptomatic at L4-5 until after the September 11, 2015 fall. Dr. Benzil advised that appellant's symptoms began shortly after the September 11, 2015 fall and noted that a fall is a known precipitator of a herniated disc. She indicated that there were no significant concurrent medical conditions that were unrelated to the

[6] Dr. Benzil did not identify the date of such diagnostic testing or otherwise describe the findings of the testing.

injury that impacted appellant's care or intervention. Dr. Benzil noted that appellant was totally disabled from work for several weeks after his December 28, 2015 surgery and then was able to increase his activity.

By decision dated February 15, 2017, OWCP modified its December 8, 2015 decision to reflect that appellant had submitted medical evidence which provided a diagnosis in connection with the reported September 11, 2015 employment incident. However, the claim remained denied as appellant's September 11, 2015 fall was not covered under FECA because he suffered an idiopathic fall on that date, *i.e.*, a fall caused by a personal, nonoccupational pathology which caused him to collapse and suffer injury upon striking the immediate supporting surface (the ground) without intervention or contribution by any hazard or special condition of employment.[7] OWCP indicated that a report of Dr. Tolunksy showed that the September 11, 2015 fall (directly to the immediate supporting surface) was caused by a personal, nonoccupational pathology and, therefore, constituted a noncompensable idiopathic fall. It noted that Dr. Tolunksy indicated that appellant reported that he was having issues with his legs prior to the September 11, 2015 work incident.

On March 30, 2017 appellant, through counsel, requested reconsideration of OWCP's February 15, 2017 decision. In a March 16, 2017 letter, he noted that, on September 11, 2015, appellant pulled mail out of his postal truck, the turned around and fell. Counsel argued that this fall had a work-related cause and was not an idiopathic fall.

In a March 12, 2017 statement, appellant indicated that on September 11, 2015 he was on his route delivering mail and that he stopped and got out of his postal truck. He noted that he walked to the back of his postal truck, opened the door, and got mail out to bring to his next delivery stops. Appellant reported that he twisted and turned to go, lost his balance, and then fell backwards, landing on his back.

By June 16, 2017 decision, OWCP modified its February 15, 2017 decision to reflect that appellant had established a September 11, 2015 employment incident which occurred while he was in the performance of duty.[8] However, it further determined that he failed to submit medical evidence sufficient to establish a diagnosed medical condition causally related to the accepted September 11, 2015 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[9] has the burden of proof to establish the essential elements of his or her claim 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

[7] *Amrit P. Kaur*, 40 ECAB 848, 853 (1989).

[8] OWCP referred to appellant's March 12, 2017 statement in which he indicated that on September 11, 2015 he twisted and turned to go, lost his balance, and fell while delivering mail on his route.

[9] *See supra* note 2.

to the employment injury.[10] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[11]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.[12] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[13]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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.[14]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish injury due to the accepted September 11, 2015 employment incident. The Board notes that OWCP properly found that he established the occurrence of a September 11, 2015 employment incident in the form of turning around and falling backwards to the ground onto his back.[15] However, appellant failed to submit medical evidence sufficient to establish a diagnosed medical condition causally related to the accepted September 11, 2015 employment incident.

In a September 16, 2015 authorization for examination and/or treatment report (Form CA-16), Dr. Tolunsky listed the history of injury on September 11, 2015 as "fall on pavement while at work," diagnosed foot drop, and checked a box marked "Yes" indicating that the diagnosed condition was caused or aggravated by the described employment activity.

[10] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[11] *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989). A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift. 20 C.F.R. §§ 10.5(q), (ee); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

[12] *Julie B. Hawkins*, 38 ECAB 393 (1987).

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

[14] *See I.J.*, 59 ECAB 408 (2008); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

[15] In its February 15, 2017 decision, OWCP found that appellant's September 11, 2015 fall was not covered because it was an idiopathic fall, *i.e.*, a fall caused by a personal, nonoccupational pathology which caused him to collapse and suffer injury upon striking the immediate supporting surface without intervention or contribution by any hazard or special condition of employment. *See supra* note 7. However, in its June 16, 2017 decision, OWCP found that appellant established an employment incident on September 11, 2015 in that his fall occurred when he lost his footing in the course of delivering mail.

Dr. Tolunsky found that appellant was totally disabled from work from September 11, 2015 until an unknown date.

The Board has held that when a physician's opinion on causal relationship consists only of checking a box marked "Yes" to a form question, without more by the way of medical rationale, that opinion has diminished probative value and is insufficient to establish causal relationship. Appellant's burden of proof includes the necessity of furnishing an affirmative opinion from a physician who supports his or her conclusion with sound medical reasoning.[16] As Dr. Tolunsky did no more than check "Yes" to a form question, his opinion on causal relationship is of diminished probative value and is insufficient to discharge appellant's burden of proof. He did not describe the September 11, 2015 employment incident in any detail or explain how it would have been competent to cause the diagnosed condition.

In an October 31, 2015 report, Dr. Tolunsky advised that an MRI scan of the lumbar spine revealed a large lower lumbar disc herniation with compression of the spinal root that led to left leg weakness and sensory loss. He noted, "There is no doubt that the patient's symptoms which developed immediately after the fall are related to the fall." Dr. Tolunsky indicated that appellant required surgery to address the large left L4-5 herniated disc with significant nerve root compression and resulting neurological deficits. This report does not establish appellant's claim for a September 11, 2015 work injury because Dr. Tolunsky did not provide medical rationale explaining his opinion on causal relationship. 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] Dr. Tolunsky's opinion constitutes a mere conclusory opinion lacking the necessary rationale explaining how and why the September 11, 2015 employment incident was sufficient to result in the diagnosed medical condition. The Board has held that such mere conclusory opinions on causal relationship are insufficient to meet a claimant's burden of proof to establish a claim.[18]

In an October 27, 2015 Form CA-20, Dr. Benzil described the history of injury as a fall at work on September 11, 2015 while delivering mail. She diagnosed herniation of the left side of the L4 disc and checked a box marked "Yes" indicating that the diagnosed condition was caused or aggravated by the described employment activity. This report is insufficient to establish appellant's claim because, as noted above, the Board has held that when a physician's opinion on causal relationship consists only of checking "Yes" to a form question, without more by the way of medical rationale, that opinion has little probative value and is insufficient to establish causal relationship.[19] As Dr. Benzil did no more than check "Yes" to a form question, her opinion on causal relationship is of little probative value and is insufficient to discharge appellant's burden of proof.

In an October 26, 2016 report, Dr. Benzil indicated that appellant was well known to her as a patient who previously underwent lumbar fusion surgery, from which he made an excellent

[16] *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

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

[18] *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

[19] *See supra* note 17.

recovery. Appellant returned to her care in October 2015 as a result of a September 11, 2015 fall while delivering mail. Dr. Benzil indicated that appellant developed back and left leg pain after the September 11, 2015 fall which was "new to him." She indicated that appellant's diagnosis was a herniated lumbar disc[20] and opined that, within a clear degree of medical certainty, the herniated disc developed after his September 11, 2015 fall and was causally related as were the subsequent neurologic findings of foot drop and numbness. Dr. Benzil advised that this opinion was based on the fact that, although appellant had preexisting back problems, he never had back problems associated with the L4-5 nerve root. She indicated that appellant was completely asymptomatic at L4-5 until after the September 11, 2015 fall. Dr. Benzil advised that appellant's symptoms began shortly after the fall and noted that a fall is a known precipitator of a herniated disc. She indicated that appellant was totally disabled for several weeks after undergoing December 28, 2015 back surgery and that he was able to increase his activity thereafter.

The Board finds that this report is insufficient to establish appellant's claim for a September 11, 2015 employment injury because Dr. Benzil did not provide adequate medical rationale in support of her opinion on causal relationship. Dr. Benzil did not describe the circumstances surrounding the September 11, 2015 employment incident in any detail or explain the medical process through which it could have caused the diagnosed low back conditions. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.[21] Dr. Benzil indicated that appellant did not have back and leg symptoms until after the September 11, 2015 fall. The Board has held that the mere fact that a condition manifests itself or worsens during a period of employment,[22] or that work activities produce symptoms revelatory of an underlying condition,[23] does not raise an inference of causal relationship between a claimed condition and employment factors. Dr. Benzil's opinion on causal relationship is of limited probative value for the further reason that it is not based on a complete and accurate factual and medical history. The Board has held that an opinion on a given medical question is of limited probative value if it is not based on a complete and accurate factual and medical history.[24] Dr. Benzil indicated that appellant did not have any prior problems associated with his L4-5 nerve root, but she did not provide sufficient discussion of appellant's extensive prior back problems (including the need for low back surgery prior to the September 11, 2015 fall) to adequately support this statement. She did not adequately explain why appellant's back and leg problems after the September 11, 2015 fall were not solely due to a preexisting, nonwork-related condition.

On appeal counsel argues that the medical evidence submitted by appellant shows that the September 11, 2015 fall at work aggravated appellant's preexisting back condition. As explained

[20] Dr. Benzil noted the October 2015 MRI scan findings which showed a large herniated disc on the left at L4-5 with nerve root compression along with significant foot drop.

[21] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[22] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[23] *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

[24] *E.R.*, Docket No. 15-1046 (issued November 12, 2015).

above, the medical evidence of record is insufficient to establish appellant's claim for a September 11, 2015 employment injury.[25]

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 injury due to a September 11, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the June 16, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 21, 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

[25] Where an employing establishment properly executes a Form CA-16 authorizing medical treatment related to a claim for a work injury, the form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination/treatment regardless of the action taken on the claim. *See Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c).