United States Department of Labor
Employees' Compensation Appeals Board

J.D., Appellant	)	
and	)	**Docket No. 18-0189**
	)	**Issued: June 1, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Islip, NY, 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:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 3, 2017 appellant, through counsel, filed a timely appeal from a September 13, 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 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 establish an injury causally related to the accepted January 9, 2017 employment incident.

On appeal counsel contends that there was a conflict in the medical evidence which was not resolved in accordance with recognized principles of law, that OWCP failed to adjudicate the claim in accordance with the standard of causation, and that OWCP failed to give due deference to the opinion of the attending physician. He further requested that the Board identify any deficiencies in any medical report that it finds contains insufficient rationale.

FACTUAL HISTORY

On January 25, 2017 appellant, then a 42-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 9, 2017, while in the performance of duty, he slipped on black ice and injured his head and the middle of his back. He stated that his neck started hurting later. Appellant stopped work on January 25, 2017.

On January 23, 2017 the employing establishment issued an authorization for examination and/or treatment (Form CA-16). In a January 26, 2017 attending physician's report (Form CA-16), a retina ophthalmologist with an illegible signature with Long Island Surgical Care, P.C., reported that appellant had suffered a retinal detachment. He noted that appellant fell at work and hit his head. The ophthalmologist related that it was unknown if appellant had this condition prior to his accident and therefore it was impossible to state for certain what caused the condition.

In a January 26, 2017 letter, the employing establishment controverted the claim. In a supporting statement, the postmaster indicated that appellant claimed that on January 9, 2017 he slipped and fell on black ice, hitting the right side and back of his head. She noted that he waived medical attention and continued to complete his assignment for the day. However, the following three days he called in sick and stated that his back was bothering him. The postmaster stated that on Wednesday, January 25, 2017 appellant stated that he needed to go to an ophthalmology appointment, but stated nothing about the appointment being related to the fall. She stated that she was challenging the claim because at no time had appellant stated to his supervisor that he was having issues with vision. The postmaster also noted that appellant had medical issues with his eyes previously in 2015/2016.

In a January 25, 2017 attending ophthalmologist report, Dr. Richard J. Nattis, a Board-certified ophthalmologist, noted that appellant had a vitreous detachment in both eyes and right retinal detachment. He noted that appellant stated that he slipped on ice and fell and hit his head and back and noticed that his right eye was getting blurry. Dr. Nattis recommended surgery as soon as possible.

By development letter dated February 3, 2017, OWCP informed appellant that the employing establishment was controverting his claim. It asked him to respond to the employing establishment's controversion. OWCP also informed appellant that further medical evidence establishing causal relationship was necessary to support his claim, and afforded him 30 days to submit this information.

Appellant was seen by Dr. Paul Berger, an internist, at the Long Island Ambulatory Surgery Center on January 26, 2017. Dr. Berger noted lumbago, cervicalgia, and that appellant complained of blurred vision in his right eye. In a February 18, 2017 duty status report (Form CA-17), he noted that appellant was unable to work due to neck and back pain.

In a March 2, 2017 statement, appellant responded to the employing establishment's controversion of his claim. He noted that he slipped on ice on January 9, 2017 and fell on his back and hit his head. Appellant indicated that his neck and back were sore from the fall and that he did not return to work for several days. He related that he returned to work on Friday, January 13, 2017. Appellant noted that he was still not feeling well and wished to see a doctor and he asked for the necessary paperwork, but the paperwork was delayed. He noted that on or about January 23, 2017 his right eye vision was getting blurry, and that he scheduled a doctor's appointment for January 27, 2017. However, appellant was told that if he had blurry vision, he should seek treatment immediately, so he saw an ophthalmologist on January 25, 2017 who informed him that he had detached his retina, and scheduled surgery for January 27, 2017. He also noted that he had prior cataract surgery on his right eye on October 9, 2015 and on his left eye on October 23, 2015.

By decision dated March 10, 2017, OWCP denied appellant's claim. It determined that the evidence submitted was insufficient to establish that the diagnosed medical condition was causally related to the accepted employment incident.

On May 16, 2017 appellant requested reconsideration. In a supporting letter dated May 9, 2017, he stated that he had an injury to his neck and middle back and that he had also put in a claim for a detached retina. Appellant noted that before he fell, he did not have any trouble with his right eye.

In a March 8, 2017 report, Dr. Sathish Subbaiah, a neurosurgeon, noted that appellant was a new patient who presented for an evaluation of neck pain and mid-back pain sustained as a result of a work injury that occurred when he slipped on ice, landed on his back, and shook his head. He diagnosed cervicalgia. Dr. Subbaiah noted that four cervical x-rays revealed evidence of levoscoliosis and evidence of current degenerative disc disease at the C4-C5 and C5-C6 level. He noted no fractures or dislocations, and no abnormal motion of flexion -- extension. Dr. Subbaiah noted that he would like to obtain a magnetic resonance imaging (MRI) scan of the cervical spine to evaluate for any disc disease or nerve impingement.

Appellant was treated by Dr. Edward I. Marcus, a Board-certified ophthalmologist, at Long Island Eye Surgical Care. In a January 25, 2017 report, Dr. Marcus noted that appellant experienced a new onset of flashing lights in his right eye. He noted that appellant stated that he had fallen and hit his head at work on January 9, 2017. Dr. Marcus noted that appellant's vision started to decrease in the right eye about a week after his accident. He indicated that appellant stated that he was reading a book two days ago and that was when he discovered that he could not see out of his right eye. Dr. Marcus diagnosed pseudophakia, retinal detachment right eye, and retinal whole right eye. Appellant had vitreous/retinal surgery on January 27, 2017. The treatment notes indicate that appellant was seen on multiple occasions by Dr. Marcus for follow-up appointments from January 28 through July 15, 2017. Dr. Marcus noted that appellant's vision may not return to normal. Appellant experienced further issues with his right eye, and on

February 1, 2017 Dr. Marcus conducted a paracentesis of a gas bubble. On March 28, 2017 a subretinal air bubble causing superior detachment was noted. In a July 15, 2017 follow up, Dr. Marcus noted a retinal detachment in the right eye, a retinal hole in the right eye, and cystoid macular edema in the right eye. On April 15, 2017 Dr. Marcus noted that appellant's vision was blurry and worsening.

By decision dated September 13, 2017, OWCP reviewed the case on the merits, but denied modification of its prior decision. It noted that the medical evidence of record did not establish that the accepted employment incident caused appellant's cervical strain and retinal detachment.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed are causally related to the employment injury.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[5]

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.[6] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[7] An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability or condition relates to the employment incident.[8]

Whether an employee sustained an injury requires the submission of rationalized medical opinion evidence.[9] The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical evidence explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[10] The weight of the medical evidence

[3] *Id.*

[4] *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

[5] *Michael E. Smith*, 50 ECAB 313 (1999).

[6] *Elaine Pendleton, supra* note 4.

[7] *J.L.*, Docket No. 17-1712 (issued February 12, 2018).

[8] *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

[9] *See J.Z.*, 58 ECAB 388 (2008); *see also M.H.*, Docket No. 15-0849 (issued July 22, 2016).

[10] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[11]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that either his cervical strain or retinal detachment resulted from the accepted January 9, 2017 employment incident.

With regard to appellant's cervical condition, appellant was seen by Dr. Berger on January 26, 2017, and he opined that appellant had lumbago and cervicalgia. In a February 18, 2017 report, Dr. Berger noted that appellant was unable to work because of neck and back pain. However, his opinions do not provide a rationalized medical opinion indicating that appellant's back conditions were causally related to the January 9, 2017 work incident. Similarly, Dr. Subbaiah noted in his March 8, 3017 report that appellant had cervicalgia. He also noted that appellant had x-rays which revealed levoscoliosis and degenerative disc disease. However, Dr. Subbaiah also did not provide any opinion addressing causation. The Board has held that in a traumatic injury claim a physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant's diagnosed medical condition.[12] Because neither Dr. Berger nor Dr. Subbaiah provided a reasoned opinion on causal relationship in this case, their reports are insufficient to establish the claim.

Appellant received treatment for his eyes from Dr. Nattis and Dr. Marcus at Long Island Surgical Care. Neither physician indicated that appellant's diagnosed retinal detachment was causally related to the January 9, 2017 employment incident. The Board notes that appellant did not notice issues with his right eye until on or about January 23, 2017, approximately two weeks after his fall. Without a physician's rationalized medical opinion stating that appellant's eye injury was caused by the fall, appellant has not met his burden of proof.[13]

Appellant notes that he did not have any issues with his eye before the fall. However, his belief that the January 9, 2017 employment incident caused his medical condition, however, sincerely held, does not constitute medical evidence to establish causal relationship.[14] An award of compensation may not be based on surmise, conjecture, speculation, or the employee's own belief of causal relation.[15]

[11] *James Mack*, 43 ECAB 321 (1991).

[12] *M.H.*, Docket No. 15-0849 (issued July 22, 2016).

[13] *Id.*

[14] *G.E.*, Docket No. 17-1719 (issued February 6, 2018).

[15] *D.D.*, 57 ECAB 734 (2006).

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 established an injury causally related to the accepted January 9, 2017 employment incident.[16]

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 13, 2017 is affirmed.

Issued: June 1, 2018
Washington, DC

Christopher J. Godfrey, 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

[16] The Board notes that a Form CA-16, authorization for examination and/or treatment, was issued by the employing establishment on January 23, 2017. When the employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 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. 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. Upon return of the case record, OWCP should address this issue.