United States Department of Labor
Employees' Compensation Appeals Board

M.W., Appellant	)	
and	)	**Docket No. 17-0186**
	)	**Issued: March 13, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Lemont, IL, Employer	)	

Appearances:
Capp P. Taylor, 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 November 3, 2016 appellant, through counsel, filed a timely appeal from a September 12, 2016 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.

ISSUE

The issue is whether appellant has established that he sustained a cervical spine condition in the performance of duty on or about December 6, 2012.

[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.*

FACTUAL HISTORY

This case has previously been before the Board. The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are set forth below.

On June 16, 2013 appellant, then a retired letter carrier, claimed an occupational disease (Form CA-2) alleging that he developed cervical radiculopathy on or before December 6, 2012 while performing his federal employment duties. He retired from federal employment on April 1, 2013. Appellant attributed the claimed condition to repetitive neck and upper body motion while delivering mail. In support of his claim, he submitted a March 6, 2013 report from Dr. John Panozzo, an attending Board-certified family practitioner, diagnosing severe nerve impingement at C4 and C6, with right-sided radicular pain and weakness.

OWCP informed appellant on August 19, 2013 that Dr. Panozzo's opinion was insufficient to meet his burden of proof to establish his claim. Appellant then submitted March and April 2013 treatment notes from Dr. Asad A. Cheema, an attending Board-certified anesthesiologist, diagnosing cervicalgia, degenerative cervical disc disease, and right C6 radiculopathy. Appellant also submitted additional reports from Dr. Panozzo and Dr. M. Kamran Khan, an osteopath, opining that repetitive motions on the job exacerbated appellant's cervical degenerative disc disease and increased his symptoms.

By decision dated October 4, 2013, OWCP denied appellants claim. It accepted that his job duties required repetitive upper extremity and neck motions as alleged, but found that the medical evidence of record was insufficient to establish causal relationship between those factors and the claimed cervical condition. Appellant, through counsel, filed a request for a hearing on October 24, 2013.

Following the hearing, held on March 31, 2014, appellant provided additional reports from Dr. Khan and Dr. Panozzo, generally supporting his contention that repetitive neck and upper extremity motions at work aggravated his cervical degenerative disc disease. By decision dated May 9, 2014, a representative of OWCP's Branch of Hearings and Review affirmed OWCP's October 4, 2013 decision denying the claim, finding that the additional medical evidence submitted into the record failed to establish a causal relationship between his diagnosed cervical condition and the accepted employment factors.

On June 2, 2014 appellant, through counsel, requested reconsideration and submitted a May 19, 2014 report from Dr. Cheema, which noted that appellant "probably" had underlying cervical disc disease. He opined that constant upper extremity motions on the job, as well as twisting and turning his neck, aggravated underlying cervical degenerative disc disease to the point of producing foraminal stenosis.

By decision dated September 3, 2014, OWCP reviewed the merits of the claim, but denied modification of the hearing representative's May 9, 2014 decision. Appellant then appealed to the Board.

By decision dated March 9, 2015,[3] the Board affirmed OWCP's September 3, 2014 decision, finding that the medical evidence of record was insufficiently rationalized to establish causal relationship between the diagnosed cervical degenerative disc disease and the implicated factors of his federal employment. The Board noted that Dr. Cheema's May 19, 2014 report was speculative, as he opined that appellant "probably" had underlying cervical degenerative disc disease.

On March 9, 2016 counsel requested reconsideration and submitted a February 23, 2016 report from Dr. Cheema. He asserted that this new report presented sufficient medical rationale to establish causal relationship between accepted employment factors and the claimed cervical spine condition.

In his report Dr. Cheema diagnosed "cervical degenerative disc disease with foraminal stenosis causing radicular symptoms in the right upper extremity." He explained that because appellant's cervical stenosis was "beyond the normal aging process," it was "most likely caused by repetitive movements (overuse) of the right upper extremity and neck." Dr. Cheema added that repetitive motion at work definitely contributed to appellant's cervical degenerative disc disease, but may not have caused it. He emphasized that overuse of the right arm and constant turning or twisting of the neck caused appellant's C5-6 disc bulge with osteophytes, producing "foraminal stenosis impinging the right C6 nerve root which produces the radiculopathy."

By decision dated September 12, 2016, OWCP considered the merits of appellant's claim, but denied modification as Dr. Cheema's February 23, 2016 report did not cite objective medical findings supporting his opinion. It found that Dr. Cheema did not provide sufficient medical rationale explaining how and why the accepted work factors would be sufficient to cause the diagnosed C5-6 disc bulge with osteophytes.

LEGAL PRECEDENT

A claimant 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 establish that an injury was sustained in the performance of duty, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition

[3] Docket No. 15-0082 (issued March 9, 2015).

[4] *Supra* note 2.

[5] 20 C.F.R. § 10.115(e),(f); *see Jacquelyn L. Oliver*, 48 ECAB 232 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345 (1989). 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 factors. *Id.*

for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.[6]

Where there is medical evidence of a preexisting condition involving the same part of the body as the claimed employment injury, the issue of causal relationship invariably requires inquiry into whether there was employment-related aggravation, acceleration, or precipitation of the underlying condition.[7] Accordingly, the physician must provide a rationalized medical opinion which differentiates between the effects of the work-related injury or disease and the preexisting condition.[8] Such evidence will permit the proper kind of acceptance, such as whether the employment-related aggravation was temporary or permanent.[9]

ANALYSIS

Appellant alleged that he developed cervical radiculopathy causally related to accepted factors of his federal employment. In support of his claim, he submitted medical evidence including a February 23, 2016 report from Dr. Cheema, an attending Board-certified anesthesiologist. OWCP denied the claim by decision issued September 12, 2016, finding that Dr. Cheema's report was insufficient to establish causal relationship.

Dr. Cheema opined that repetitive upper extremity and neck motion at work caused a C5-6 disc bulge and foraminal stenosis impinging the right C6 nerve root, and contributed to cervical degenerative disc disease. However, he did not explain the medical reasoning supporting this conclusion. Dr. Cheema did not identify specific clinical findings, test results, or imaging studies that supported a pathophysiological causal relationship between the implicated work factors and cervical radiculopathy. Similarly, he opined that repetitive motion "most likely" caused cervical stenosis because it was "beyond the normal aging process." Dr. Cheema did not explain the objective findings that demonstrated an acceleration of a disease process. In the absence of such rationale, his opinion is insufficient to meet appellant's burden of proof to establish causal relationship.[10] The probative value of Dr. Cheema's opinion is further diminished by its speculative tone, as he commented that work factors "most likely" caused cervical stenosis.[11] Therefore, OWCP's September 12, 2016 decision denying the claim was appropriate under the circumstances of the case.

On appeal counsel contends that Dr. Cheema's February 23, 2016 report is sufficiently accurate and well rationalized to meet appellant's burden of proof, citing to the Board's holding

[6] *Victor J. Woodhams, id.*

[7] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

[8] *Id.*

[9] *Id.*

[10] *Deborah L. Beatty*, 54 ECAB 340 (2003).

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

in *James Mack*.[12] However, Dr. Cheema did not explain the pathophysiologic relationship between repetitive upper extremity and neck motion and cervical radiculopathy. His opinion was not well rationalized. Additionally, counsel notes the well-established principle that an appellant is not required to provide evidence eliminating all doubt regarding causal relationship, only evidence necessary to draw a rational, logical conclusion. He cites to the Board's holdings in *Elizabeth Maypother*,[13] *Kenneth J. Deerman*,[14] *Robert P. Bourgeois*,[15] and *Mary E. Balderston*[16] in support of this doctrine. As explained above, Dr. Cheema's opinion was speculative and conclusory in nature. It is not the type of positive, persuasive evidence needed to formulate a rational conclusion.

Finally, counsel contends that Dr. Cheema's opinion is uncontroverted in the record and of sufficient quality to require additional development. He cites to *Kimper Lee*[17] and the FECA procedure manual[18] in support of this argument. Counsel is correct that there is no medical evidence of record contrary to Dr. Cheema's opinion. However, the mere lack of controversion does not obligate OWCP to develop a medical opinion. Rather, the medical evidence must be sufficiently accurate, detailed, and rationalized to warrant additional development. As explained above, Dr. Cheema's February 23, 2016 report was speculative and insufficiently rationalized. Therefore, OWCP properly denied the claim without additional development of his opinion.

CONCLUSION

The Board finds that appellant has not established that he sustained a cervical spine condition in the performance of duty on or about December 6, 2012.

[12] 43 ECAB 321 (1991).

[13] 5 ECAB 604 (1953).

[14] 34 ECAB 641 (1983).

[15] 45 ECAB 745 (1994).

[16] Docket No. 98-1396 (issued March 7, 2000).

[17] 45 ECAB 565 (1994).

[18] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.5 (January 2013).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 12, 2016 is affirmed.

Issued: March 13, 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