

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

_____)	
J.T., Appellant)	
)	
and)	Docket No. 19-0044
)	Issued: April 24, 2019
DEPARTMENT OF THE NAVY,)	
COMMANDER NAVY INSTALLATIONS)	
COMMAND, San Diego, CA, 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 October 8, 2018 appellant, through counsel, filed a timely appeal from a July 18, 2018 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 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 her burden of proof to establish cervical, lumbar, right shoulder, and left knee conditions causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On June 7, 2017 appellant, then a 53-year-old engineer, filed an occupational disease claim (Form CA-2) alleging that she injured her back due to daily traversing of shipyard makeshift structures. She indicated that she first became aware of her claimed condition on December 19, 2015, and related it to factors of her federal employment on May 11, 2017. On the reverse side of the claim form, the employing establishment noted that appellant first received medical care and reported the condition to her supervisor on January 14, 2016, and that she was last exposed to the factors alleged to have caused her condition on April 4, 2016.

In a development letter dated June 22, 2017, OWCP advised appellant of the factual and medical deficiencies of her claim. It provided a questionnaire for her completion to establish the employment factors alleged to have caused or contributed to her medical condition and requested a medical report from her attending physician explaining how and why her federal work activities caused, contributed to, or aggravated her medical condition. OWCP afforded appellant 30 days to submit the necessary evidence.

In a report dated July 14, 2017, Dr. John Doeyoung Kim, Board-certified in internal medicine, indicated that he examined appellant for aggravation of preexisting cervical spondylosis without myelopathy and aggravation of preexisting displaced cervical intervertebral disc that occurred on December 19, 2015,³ as well as a recurrence of right shoulder rotator cuff tear that occurred on February 7, 2002.⁴ He related that she complained of new lumbosacral and left knee injuries. Dr. Kim diagnosed aggravation of preexisting cervical spondylosis and aggravation of preexisting displaced cervical discs. He also indicated that appellant had a recurrence of a right rotator cuff tear and sustained injuries to her left knee. Dr. Kim noted that she had surgery on her cervical spine on October 19, 2006, and surgery on her right shoulder on May 8, 2013. He further diagnosed left knee patellar maltracking and left knee effusion and derangement. Dr. Kim noted that appellant could return to work full time with restrictions.

By decision dated September 1, 2017, OWCP denied appellant's claim, finding that she had not submitted evidence sufficient to establish that her medical conditions were causally related to the accepted factors of her federal employment.

On October 6, 2017 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

³ OWCP File No. xxxxxx742, which is an occupational disease claim accepted for cervical spondylosis and displacement of the cervical disc.

⁴ OWCP File No. xxxxxx740, which is a February 7, 2002 traumatic injury accepted for right shoulder sprain and partial tear of the right rotator cuff.

In a magnetic resonance imaging (MRI) scan report dated February 2, 2017, Dr. Charles Hecht-Leavitt, Board-certified in diagnostic radiology, noted impressions of moderate central disc protrusion deforming the spinal cord at C3-4, postoperative changes at C4-5 and C5-6, and mild annular bulging and bilateral ligamentum flavum hypertrophy mildly narrowing the neural canal at C6-7.

In an MRI scan report dated February 17, 2017, Dr. Carl Bundschuh, Board-certified in diagnostic radiology, noted impressions of epidural lumbar lipomatosis, severe central stenosis at L6-S1 and L4-5, and moderate central stenosis at L3-4.

In a report dated September 21, 2017, Dr. Eric J. Goldberg, a Board-certified neurologist, reviewed MRI scans of appellant's lumbar and cervical spine and an electromyography study, and diagnosed radiculopathy.

A telephonic hearing was held before an OWCP hearing representative on March 13, 2018.

In a report dated March 15, 2018, Dr. Goldberg diagnosed cervical and lumbosacral radiculopathy, right shoulder labrum tears, and left knee joint disorder. He noted that these conditions were related to appellant's employment-related physical activity of traversing up and down stairs, shipboard ladders, and scaffolding while carrying weighted backpacks filled with binders.

By decision dated May 24, 2018, OWCP's hearing representative affirmed the September 1, 2017 decision, finding that appellant had not submitted rationalized medical evidence explaining how her medical conditions were causally related to the physical nature of her duties of federal employment.

On July 10, 2018 appellant, through counsel, requested reconsideration of OWCP's May 24, 2018 decision. Counsel resubmitted Dr. Goldberg's March 15, 2018 report along with the request.

By decision dated July 18, 2018, OWCP denied modification of the May 24, 2018 decision, finding that appellant failed to submit a physician's rationalized opinion that discussed a complete and accurate medical and factual history along with an explanation of how the factors of her federal employment caused or contributed to her diagnosed medical conditions supported with medical reasoning.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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,⁶ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related

⁵ *Supra* note 2.

⁶ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.⁷ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁸

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition 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.⁹

The medical evidence required to establish causal relationship is rationalized medical opinion evidence.¹⁰ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish cervical, lumbar, right shoulder, and left knee conditions causally related to the accepted factors of her federal employment.

Appellant submitted medical reports dated September 21, 2017 and March 15, 2018 from Dr. Goldberg, which diagnosed cervical and lumbosacral radiculopathy, right shoulder labrum tears, and left knee joint disorder. Dr. Goldberg noted that these conditions were related to appellant's employment-related physical activity of traversing up and down stairs, shipboard ladders, and scaffolding while carrying weighted backpacks filled with binders. However, he failed to offer a rationalized medical opinion regarding the cause of appellant's conditions. A conclusory statement regarding causal relationship is of limited probative value.¹² The Board has held that a report is of limited probative value regarding causal relationship if it does not contain

⁷ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁸ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁹ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁰ *M.B.*, Docket No. 17-1999 (issued November 13, 2018).

¹¹ *M.L.*, Docket No. 18-1605 (issued February 26, 2019).

¹² *See B.B.*, Docket No. 18-1036 (issued December 31, 2018).

medical rationale explaining how a given medical condition is causally related to an employment incident.¹³

In his July 14, 2017 report, Dr. Kim diagnosed aggravation of preexisting cervical spondylosis and aggravation of preexisting displaced cervical discs. He also indicated that appellant had a recurrence of right rotator cuff tear and sustained injuries to her left knee. Dr. Kim did not explain how her injuries first realized on December 19, 2015 had caused her diagnosed conditions or contributed to or aggravated her preexisting conditions. The need for medical rationale is particularly important given that Dr. Kim indicated that appellant had a preexisting condition.¹⁴ In cases where a claimant has a preexisting condition, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury and the preexisting condition.¹⁵ Dr. Kim did not sufficiently explain how appellant sustained cervical, lumbar, right shoulder, and left knee conditions from the repetitive factors of her federal employment, and how these activities altered or aggravated her preexisting conditions.¹⁶ Therefore, his report is of limited probative value.

Appellant also submitted two diagnostic test reports in support of her claim. The Board has held that diagnostic studies lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.¹⁷ Therefore, such diagnostic reports are insufficient to establish appellant's claim.

The Board finds that appellant has not met her burden of proof to provide sufficient medical evidence to establish that her diagnosed conditions were causally related to the accepted factors of her federal employment. Thus, appellant has not met her burden of proof to establish her claim.

Appellant may submit new evidence or argument as part of 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 her burden of proof to establish cervical, lumbar, right shoulder, and left knee conditions causally related to the accepted factors of her federal employment.

¹³ *J.L.*, Docket No. 17-1460 (issued December 21, 2018); *see Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition/disability).

¹⁴ *K.R.*, Docket No. 18-1388 (issued January 9, 2019); *see C.D.*, Docket No. 17-2011 (issued November 6, 2018).

¹⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

¹⁶ *See K.C.*, Docket No. 17-1693 (issued October 29, 2018).

¹⁷ *See J.S.*, Docket No. 17-1039 (issued October 6, 2017).

ORDER

IT IS HEREBY ORDERED THAT the July 18, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 24, 2019
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