United States Department of Labor
Employees' Compensation Appeals Board

S.K., Appellant	)	
and	)	**Docket No. 19-0391**
	)	**Issued: December 13, 2019**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Holtsville, 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:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 12, 2018 appellant, through counsel, filed a timely appeal from July 17 and September 17, 2018 merit decisions 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 an injury to his cervical spine causally related to the accepted February 2, 2018 employment incident.

FACTUAL HISTORY

On February 2, 2018 appellant, then a 53-year-old tax examiner, filed a traumatic injury claim (Form CA-1) alleging that on that date he experienced right shoulder and neck pain radiating into his jaw when the arm rest on his chair broke when he was attempting to stand while in the performance of duty. He stopped work on February 2, 2018. The employing establishment controverted the claim, asserting that the medical evidence failed to demonstrate that appellant had sustained an employment-related injury.

In a development letter dated February 16, 2018, OWCP informed appellant that additional evidence was needed in support of his claim. It advised him of the type of factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a report dated February 22, 2018, Dr. Michael A. Hershey, a Board-certified anesthesiologist, evaluated appellant for neck pain radiating into both upper extremities, more so on the left. He indicated that his neck pain had begun when an arm rest on his chair collapsed as he was pushing on it to get up. Dr. Hershey related, "[Appellant] fell but did not hit his head; however, he did notice a popping sensation in his neck followed by pain radiating into his left shoulder down the left upper extremity." He noted that appellant had a history of a spinal fusion at C5 through C7 in 2008. Dr. Hershey reviewed the results of a February 2, 2018 magnetic resonance imaging (MRI) scan and diagnosed cervical degenerative disc disease and cervical radiculopathy.

On February 16, 2018 Dr. Salvatore Zavarella, an osteopath and Board-certified neurosurgeon, noted that appellant had been doing well following an anterior cervical discectomy and fusion at C5 to C7 until his chair broke at work, resulting in paracervical and left upper extremity radiculopathy. He noted that the recent MRI scan showed a large disc herniation at C7-T1 "with severe bilateral foraminal stenosis and compression of the existing C8 nerve roots." In a duty status report (Form CA-17) of even date, Dr. Zavarella diagnosed a herniated nucleus pulposus and provided work restrictions. In an attending physician's report (Form CA-20) of even date, he diagnosed a new large disc herniation at C7-T1 and checked a box marked "yes" that the condition was caused or aggravated by appellant's chair breaking at work, noting that he did not have symptoms prior to the incident.

On February 22, 2018 Dr. Zavarella advised that he was treating appellant for cervical spinal stenosis and advised that he had developed significant paracervical and left upper extremity radiculopathy from an incident at work. He noted that this occurred about two weeks prior and had progressively gotten worse. Dr. Zavarella provided work restrictions.

In a statement dated February 26, 2018, appellant described the February 2, 2018 employment incident and indicated that he had a history of spinal surgery.

In an attending physician's report (Form CA-20) dated February 26, 2018, Dr. Hershey diagnosed cervical spine stenosis. He checked a box marked "yes" that the condition was caused or aggravated by the described employment activity.

By decision dated March 23, 2018, OWCP denied appellant's traumatic injury claim. It found that the February 2, 2018 employment incident had occurred as alleged, but denied the claim as the medical evidence of record was insufficient to establish that he sustained an injury or diagnosed condition causally related to the accepted employment incident.

On April 17, 2018 appellant requested reconsideration.

Thereafter, appellant submitted a report from Dr. John M. Reyes, an osteopath, who evaluated appellant on February 2, 2018. Dr. Reyes diagnosed cervical disc disease, cervical radicular pain, acute right shoulder pain, and right arm paresthesia.

In a report dated April 18, 2018, Dr. Zavarella noted that appellant had developed significant paracervical pain with bilateral left greater than right radiculitis radiating into the C8 distribution down to the left ring and pinky fingers after he fell at work when his chair broke. He found that a recent MRI scan showed a C7-T1 disc herniation with compression of the C8 nerve root more on the left. Dr. Zavarella recommended conservative treatment initially.

By decision dated July 17, 2018, OWCP denied modification of its March 23, 2018 decision.

On August 15, 2018 Dr. Zavarella related that appellant had been doing well following a discectomy and fusion until the employment incident. He described appellant's complaints of pain and noted that the findings on the MRI scan directly correlate with his injuries sustained at his workplace. Dr. Zavarella noted that they were at a lower level than his surgery and prior to the date of incident appellant was back to normal health and function.

On August 21, 2018 appellant requested reconsideration.

By decision dated September 17, 2018, OWCP denied modification of its July 17, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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,[3] 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

[3] *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.[4] 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.[5] To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing 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.[6] Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[7]

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.[8]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an injury to his cervical spine causally related to the accepted February 2, 2018 employment incident.

In a report dated February 2, 2018, Dr. Reyes diagnosed cervical disc disease, cervical radicular pain, acute right shoulder pain, and right arm paresthesia. He did not, however, address the issue of causal relationship. Medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[9]

On February 22, 2018 Dr. Hershey discussed appellant's complaints of neck pain that started when the arm rest on his chair at work collapsed as he was standing up. He indicated that he had fallen and subsequently felt a popping in his neck and pain radiating into the left upper extremity. Dr. Hershey noted that appellant had undergone a spinal fusion at C5 through C7 in 2008. He diagnosed cervical degenerative disc disease and cervical radiculopathy. While Dr. Hershey discussed the February 2, 2018 employment incident, he did specifically address the cause of the diagnosed conditions of cervical degenerative disc disease and radiculopathy. As

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

[5] *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).

[6] *See G.H.*, Docket No. 18-0989 (issued January 3, 2019).

[7] *Id.*

[8] *H.B.*, Docket No. 18-0781 (issued September 5, 2018).

[9] *See J.H.*, Docket No. 19-0838 (issued October 1, 2019); *S.G.*, Docket No. 19-0041 (issued May 2, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.,* Docket No. 17-1549 (issued July 6, 2018).

discussed, without an opinion regarding the cause of an employee's condition, a report is of no probative value on the issue of causal relationship.[10]

In a February 16, 2018 report, Dr. Zavarella advised that appellant had been doing well following a C5 to C7 cervical discectomy and fusion until his chair broke at work. He reviewed the recent MRI scan which revealed a C7 to T1 large disc herniation with severe bilateral stenosis and compression of the C8 nerve roots. Again, however, while Dr. Zavarella noted a history of the accepted employment incident, he failed to specifically address causation, and thus his opinion is of no probative value regarding the cause of the diagnosed conditions.[11]

In a form report of even date, Dr. Zavarella diagnosed a new large disc herniation and checked a box marked "yes" that the condition was caused or aggravated by appellant's chair breaking at work, noting that he did not have symptoms prior to the incident. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.[12] While Dr. Zavarella noted that appellant had no symptoms prior to the employment incident, he provided no additional rationale. The Board has held that the fact that a claimant was asymptomatic before the injury is insufficient, without adequate rationale, to establish causal relationship.[13] Dr. Zavarella also completed a duty status report on February 16, 2018 which provided no opinion on causation and is of no probative value.[14]

On February 22, 2018 Dr. Zavarella noted that he was treating appellant for cervical spinal stenosis. He advised that he had developed paracervical and left upper extremity radiculopathy after an incident at work that had occurred around two weeks earlier. Dr. Zavarella provided work restrictions. He did not, however, describe in detail the accepted employment incident or explain how or why the incident caused the diagnosed conditions of paracervical and left upper extremity radiculopathy. A physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident caused or contributed to a diagnosed medical condition.[15] Such rationale is particularly necessary given appellant's history of a prior back condition.[16] Consequently, Dr. Zavarella's opinion is insufficient to meet his burden of proof.

In a February 26, 2018 form report, Dr. Hershey diagnosed cervical spine stenosis. He checked a box marked "yes" that the condition was caused or aggravated by the described employment activity, but did not contain a history of injury. As discussed, a checkmark or

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[10] *Id.*

[11] *Id.*; *see also B.P.*, Docket No. 19-0777 (issued October 8, 2019).

[12] *V.G.*, Docket No. 19-0908 (issued October 25, 2019).

[13] *M.B.*, Docket No. 19-0840 (issued October 2, 2019).

[14] *Supra* note 12.

[15] *K.K.*, Docket No. 19-1193 (issued October 21, 2019); *T.K.*, Docket No. 18-1239 (issued May 29, 2019).

[16] *M.E.*, Docket No. 18-0940 (issued June 11, 2019).

affirmative notation in response to a form question on causal relationship is insufficient, without medical rationale, to establish causal relationship.[17]

On April 18, 2018 Dr. Zavarella opined that appellant had experienced paracervical pain with bilateral radiculitis from the C8 nerve root after his chair broke at work and he fell. He diagnosed a C7-T1 disc herniation compressing the C8 nerve root more on the left side. However Dr. Zavarella, while providing a history of the accepted employment incident, did not specifically address the cause of the disc herniation or provide a reasoned opinion explaining how the February 2, 2018 employment incident caused or contributed to the herniated disc.[18]

In a report dated August 15, 2018, Dr. Zavarella advised that appellant had done well after back surgery until the accepted employment incident. He noted the findings on the MRI scan correlated with his work injury, and noted that the findings were at a level lower than that of his prior operation. As noted, however, the lack of symptoms prior to an employment incident does not in itself provide rationale in support of causal relationship.[19] Dr. Zavarella failed to explain how the mechanism of injury caused or contributed to appellant's herniated disc, and thus his opinion is of diminished probative value.[20]

As appellant has not submitted rationalized medical evidence establishing that his medical condition is causally related to the accepted February 2, 2018 employment incident, the Board finds that he has not met his burden of proof.[21]

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 an injury to his cervical spine causally related to the accepted February 2, 2018 employment incident.

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[17] *See A.P.*, Docket No. 19-1158 (issued October 29, 2019).

[18] *See W.D.*, Docket No. 19-1124 (issued October 22, 2019); *J.T.*, Docket No. 18-0664 (issued August 12, 2019).

[19] *M.J.*, Docket No. 17-0725 (issued May 17, 2018).

[20] *See B.P.*, *supra* note 11.

[21] *See K.K.*, *supra* note 15.

ORDER

IT IS HEREBY ORDERED THAT the September 17 and July 17, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 13, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board