United States Department of Labor
Employees' Compensation Appeals Board

R.A., Appellant	)	
and	)	**Docket No. 18-1097**
	)	**Issued: January 18, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Cooperstown, NY, Employer	)	

Appearances:
Aaron B. Aumiller, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 2, 2018 appellant, through counsel, filed a timely appeal from a November 3, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP).[2] Pursuant to the

[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] Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from November 3, 2017, the date of OWCP's last decision, was May 2, 2018. Since using May 7, 2018, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is May 2, 2018, rendering the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

Federal Employees' Compensation Act[3] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a cervical spine condition causally related to the accepted September 17, 2012 employment incident.

FACTUAL HISTORY

On September 24, 2012 appellant, then a 62-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that, on September 17, 2012, he injured his cervical spine in the performance of duty when he swerved his delivery vehicle left then right to avoid debris and the vehicle rolled over. He stopped work on September 17, 2012.

Immediately after the accident appellant was transported to a hospital emergency department by ambulance. A hospital intake form completed by a nurse noted a history of injury as "rolled car times four."

A September 17, 2012 computerized tomography scan of the cervical spine showed a small central spur or calcification at C3-4, a large central herniation at C4-5 with flattening of the thecal sac, and bilateral uncovertebral joint spurs at C6-7.

In a report dated September 28, 2012, Dr. Timothy H. LaFont, an attending Board-certified internist, noted appellant's account of the September 17, 2012 motor vehicle accident in which he swerved to avoid a large item that fell from the vehicle immediately in front of him, causing a tire to separate. Appellant lost control and his truck rolled over 360 degrees. Dr. LaFont related appellant's symptoms of cervical and lumbar pain and stiffness, with radiculopathy into the right buttock. He diagnosed hypertension, unchanged inflammatory polyarthritis, and unchanged polyarthralgia. Dr. LaFont held appellant off work from September 21, 2012 for an indefinite period.

By development letter dated October 9, 2012, OWCP advised appellant of the type of medical and factual evidence needed to establish his claim, including a detailed description of the September 17, 2012 employment incident, and a narrative report from his physician explaining how and why that event would cause the claimed neck condition. It afforded appellant 30 days to submit the necessary evidence.

In response, appellant submitted his statement in which he noted that, at the time of the accident, he was driving home from work. The employing establishment confirmed that he was in the performance of duty at the time of the September 17, 2012 accident as he "was on the most direct route between the point of his last official duty" and his home.

A police accident report dated September 17, 2012, noted that appellant had lost control of his vehicle while swerving around a box that fell from the vehicle in front of him. The passenger

[3] 5 U.S.C. § 8101 *et seq.*

side front tire caught on the shoulder, causing his vehicle to "flip onto its side." In an amended police accident report dated October 1, 2012, the accident diagram showed that appellant's vehicle swerved left over the shoulder of the road, swerved right, and was found inverted on its roof with all four tires oriented directly upward.

In a state compensation claim form dated October 15, 2012, appellant asserted that on September 17, 2012 an item of furniture flew out of a trailer in front of him. He swerved to avoid it, "turned back onto road then rolled over."

In a report dated October 31, 2012, Dr. LaFont opined that the September 17, 2012 motor vehicle accident caused changes in the cervical spine demonstrated by a comparison of December 28, 2005 and October 19, 2012 imaging studies.[4] He continued to hold appellant off from work.

By decision dated December 13, 2012, OWCP accepted that appellant was involved in an employment-related motor vehicle accident on September 17, 2012, as alleged. It denied the claim, however, as causal relationship had not been established.

On January 11, 2013 appellant requested a review of the written record by an OWCP hearing representative. He submitted additional medical evidence.

In a report dated December 11, 2012, Dr. LaFont noted appellant's continuing neck and back pain. He opined in a report dated January 2, 2013, that the September 17, 2012 motor vehicle accident exacerbated previously quiescent cervical disc disease and caused preexisting cervical disc bulges to progress to herniated discs.

In a report dated January 3, 2013, Dr. Craig Montgomery, an attending Board-certified neurosurgeon, noted that on September 17, 2012 appellant was driving his vehicle when debris fell off a trailer in front of him, striking his windshield. Appellant swerved, overcorrected, "eventually had a rollover of a Ford Explorer, and came to rest immediately." He diagnosed a herniated disc at C4-5, cervical spondylosis with myelopathy, lumbar spondylolisthesis, and lumbosacral spondylosis. In response to the question as to whether the September 17, 2012 incident was competent to cause the diagnosed conditions, Dr. Montgomery replied "yes."

By decision dated April 22, 2013, an OWCP hearing representative affirmed OWCP's December 13, 2012 decision. The hearing representative found that appellant had established that he was "involved in a September 17, 2012 motor vehicle accident in his work vehicle when he swerved to avoid hitting an object." However, appellant's physicians had not provided sufficient medical rationale to establish causal relationship between that incident and the diagnosed herniated cervical disc or a worsening of preexisting degenerative cervical disc disease.

[4] An October 19, 2012 magnetic resonance imaging (MRI) scan of the cervical spine showed a new small disc protrusion at C2-3, a previously demonstrated C3-4 disc herniation that appeared smaller than on a December 28, 2005 scan, a previously demonstrated C4-5 disc herniation that appeared larger, and broad diffuse disc bulging at C5-6 similar to the previous study. An October 19, 2012 lumbar MRI scan showed disc desiccation at L2-3, L3-4, and L4-5.

On September 24, 2013 appellant requested reconsideration.[5] He asserted that his truck had rolled over "450 degrees." Appellant provided a state police accident report dated September 22, 2012, which noted that appellant's truck "flip[ped] onto its side." He submitted additional medical evidence.[6]

Dr. LaFont noted in reports dated March 11 and June 20, 2013 that appellant's cervical spine condition remained unchanged and that he had developed left-sided lumbar radiculopathy.[7] In a letter dated July 5, 2013 he opined that on September 17, 2012, when appellant's "motor vehicle rolled over 360 degrees and an additional 90 degrees landing on its side it caused [appellant] cervical, thoracic, and lumbar spine injuries. Even though he was wearing a seat belt, his body was twisted and torqued in such a manner it caused axial load injuries to the spine."

Dr. Montgomery provided reports dated June 12 and October 17, 2013, noting that appellant's herniated discs at C4-5, C5-6, C6-7, and cervical spondylosis with myelopathy remained unchanged and required surgical intervention. On January 14, 2014 he performed anterior cervical discectomies and fusions at C4-5, C5-6, and C6-7 with bone allograft and cage stabilization. Dr. Montgomery noted in a March 27, 2014 report that appellant was progressing well.

Appellant also submitted reports dated March 7, 2013 and February 4, 2014 chart notes signed by Gabriella Canal, a physician assistant.

By decision dated July 16, 2014, OWCP denied appellant's claim as the medical evidence of record contained insufficient rationale to establish causal relationship. It found that, while the factual evidence of record established a September 17, 2012 motor vehicle accident, the evidence did not support a rollover, as the September 22, 2012 accident report noted only that his truck flipped onto its side.

On July 15, 2015 appellant, through counsel, requested reconsideration. He contended that the October 1, 2012 amended police report of the September 17, 2012 motor vehicle accident noted appellant's "wheels in the air," that his truck had flipped onto its roof, supporting his description of a rollover. Counsel provided three photographs dated September 18, 2012 of a Ford Explorer XLT with the left windshield and left driver's side of the roof smashed inward and generalized body damage.

In reports dated December 30, 2013 and January 16, 2014, Dr. Montgomery opined that appellant injured his cervical and lumbar spine in the September 27, 2012 motor vehicle accident.

[5] In a letter dated April 17, 2014, appellant, through counsel, again requested reconsideration.

[6] Appellant submitted a sacroiliac x-ray report dated February 2, 2004 which noted marked degeneration at L4-5. A December 28, 2005 cervical MRI scan report noted small focal disc protrusions at C2-3, C3-4, C4-5, and broad-based disc bulges at C5-6 and C6-7.

[7] Dr. Montgomery ordered nerve conduction velocity and electromyography studies performed on May 2, 2013, which demonstrated mild right-sided C6-7 radiculopathy, and mild left C5-6 and C6-7 radiculopathy.

In a chart note dated October 30, 2014, he diagnosed cervical spondylosis with myelopathy, with a good surgical result and increased function.

By decision dated October 16, 2015, OWCP denied appellant's claim, finding that causal relationship had not been established. It found that, as the police reports of record did not state that his vehicle had rolled over, Dr. LaFont's opinion was based on an inaccurate history of injury.

On October 14, 2016 appellant, through counsel, requested reconsideration. He contended that the totality of the evidence established a September 17, 2012 motor vehicle accident of sufficient severity to cause the diagnosed cervical disc herniations. Counsel argued that OWCP had adopted an adversarial posture in the case by denying appellant's claim based on minor discrepancies as to how far appellant's vehicle had rolled over.

In support of reconsideration, counsel submitted a September 20, 2012 vehicle appraisal finding that appellant's vehicle was a total loss due to "rollover" damage to the frame, all four doors, and all exterior trims and finishes. He also provided copies of medical evidence previously of record.

By decision dated January 9, 2017, OWCP denied appellant's claim as the additional evidence submitted did not provide a history of the September 17, 2012 injury or medical evidence establishing causal relationship.

On August 8, 2017 appellant, through counsel, requested reconsideration. He contended that an enclosed July 17, 2017 letter from Dr. LaFont was sufficient to establish that any of the various degrees of vehicle rollover presented in the case record would have been competent to cause the diagnosed cervical disc conditions.

In a letter dated July 17, 2017, Dr. LaFont opined that whether appellant's vehicle "rolled 90 or 180 degrees, this most certainly could have directly been the cause of [appellant's] injuries. Any hyperflexion and compression of the spinal discs could have caused his disc to rupture at the C4-5."

By decision dated November 3, 2017, OWCP denied appellant's traumatic injury claim as the medical evidence of record was insufficient to establish causal relationship. It found Dr. LaFont's July 17, 2017 letter to be speculative and lacking an explanation as to how the September 17, 2012 motor vehicle accident would cause the diagnosed C4-5 disc rupture.

LEGAL PRECEDENT

An employee seeking benefits under FECA[8] 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 is causally related to the

[8] *Supra* note 3.

employment injury.[9] 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.[10]

In order to determine whether an employee sustained a traumatic 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.[11] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[12]

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[13] 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 employee.[14] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[15]

ANALYSIS

The Board finds that this case is not in posture for decision.

OWCP accepted that appellant was involved in an employment-related motor vehicle accident on September 27, 2012. However, it found that the factual evidence of record failed to support his account that his vehicle had "rolled over." OWCP therefore found that medical evidence of record based on a vehicle rollover as the cause of injury was fatally flawed.

Immediately after the accident in the hospital emergency room, a nurse noted a history of injury as "rolled car times four." However, it is not clear that appellant was the source of this information. Appellant asserted in an October 15, 2012 form that, while swerving to avoid an item that had fallen from the vehicle in front of him, he swerved, "turned back onto road then rolled over." On September 24, 2013 he asserted that his truck had rolled over "450 degrees."

[9] *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

[10] *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

[11] *R.E.*, Docket No. 17-0547 (issued November 13, 2018); *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

[12] *R.E., id.*

[13] *G.N.*, Docket No. 18-0403 (issued September 13, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[14] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[15] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

The police reports of record demonstrate that appellant's vehicle was found resting on its roof with all four tires in the air. While two preliminary reports indicated that the truck flipped on its side, an amended October 1, 2012 report contains a clear diagram showing that appellant's vehicle came to rest on its roof. The precise nature of the vehicle's motions before it came to rest, such as the number of revolutions, are not specified. The Board notes, however, that the police reports are consistent with appellant's account of having "rolled over" during the September 27, 2012 employment incident. There is no question that the car came to rest on its roof. The Board therefore finds that appellant has established that the accepted September 27, 2012 employment incident involved a vehicle rollover in the manner that he had alleged.[16] It must then be determined if the medical evidence contains sufficient rationale to establish a causal relationship between the accepted employment incident and the claimed cervical spine condition.[17]

Dr. Montgomery indicated on January 3, 2013 that the September 17, 2012 vehicle rollover was competent to cause the diagnosed cervical spine conditions. He did so, however, by answering "yes" to a form question without providing supporting medical rationale. The Board has held that a physician's opinion which is limited to checking a box on a form report or answering "yes" to a prepared query is of limited probative value and insufficient to meet a claimant's burden of proof in establishing causal relationship.[18]

Dr. LaFont noted on September 28, 2012 that appellant's truck had rolled over. He explained in a July 5, 2013 letter that the rollover caused appellant's body to twist and torque, which resulted in "axial load injuries to the spine." Dr. LaFont elaborated in his July 17, 2017 letter that either a 90 degree or 180 degree vehicle rollover would be competent to cause "hyperflexion and compression of the spinal discs" sufficient to rupture the C4-5 disc.

Accordingly, the Board finds that Dr. LaFont provided an affirmative opinion on causal relationship which describes the mechanism of injury, findings upon examination, and explained how the motor vehicle accident produced mechanical forces which caused appellant's diagnosed conditions. The Board finds that Dr. LaFont's opinion, while not sufficiently rationalized to meet appellant's burden of proof, is sufficient, given the absence of opposing medical evidence, to require further development of the record.[19]

It is well established that proceedings under FECA are not adversarial in nature, and while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[20] It has an obligation to see that justice is done.[21]

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[16] *R.E., supra* note 11.

[17] *Id.*

[18] *M.O.*, Docket No. 18-1056 (issued November 6, 2018). *See Deborah L. Beatty*, 54 ECAB 3234 (2003).

[19] *S.S.*, Docket No. 17-0332 (issued June 26, 2018). *See also John J. Carlone*, 41 ECAB 354 (1898); *Horace Langhorne*, 29 ECAB 820 (1978).

[20] *S.S., id; see Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978).

[21] *S.S., supra* note 19; *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

The case will, therefore, be remanded to OWCP for further action consistent with this decision. On remand, after such further development of the case record as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the November 3, 2017 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this opinion.

Issued: January 18, 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