United States Department of Labor
Employees' Compensation Appeals Board

W.C., Appellant	)	
and	)	**Docket No. 18-1386**
	)	**Issued: January 22, 2019**
DEPARTMENT OF THE ARMY, CIVILIAN PERSONNEL ADVISORY CENTER, Fort Drum, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 5, 2018 appellant, through counsel, filed a timely appeal from a May 4, 2018 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.

[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 neck, back, ribs, and left shoulder causally related to the accepted October 3, 2014 employment incident.

FACTUAL HISTORY

This case has previously been before the Board.[3] The facts and circumstances as set forth in the prior Board's decision are incorporated herein by reference. The relevant facts are as follows.

On October 14, 2014 appellant, then a 64-year-old telecommunications mechanic, filed a traumatic injury claim (Form CA-1) alleging that on October 3, 2014 he injured his neck, back, ribs, and left shoulder in the performance of duty. He described his injury as occurring when a rope he had used to pull a fiber optic cable through a conduit snapped, jerking his hand and arm. The employing establishment did not controvert the claim.

Dr. Daniel G. DiChristina, a Board-certified orthopedic surgeon, on October 27, 2014 obtained a history of appellant injuring his cervical spine at work on October 3, 2014. On examination, he found a positive impingement sign on the left and pain on palpation of the trapezius. Dr. DiChristina diagnosed cervical sprain/strain, underlying degenerative disease, and left shoulder sprain/strain following a prior rotator cuff repair. He noted that x-rays of the cervical spine showed C3-7 degenerative disc disease and x-rays of the shoulder revealed a prior distal clavicle excision.[4]

In a report dated November 25, 2014, Dr. DiChristina discussed appellant's symptoms of left shoulder and neck pain. He diagnosed osteoarthritis of the cervical spine and a lesion of the superior glenoid labrum. Dr. DiChristina opined that the "incident [he] described is the competent medical cause of this injury/illness" and that his complaints were also consistent with the examination findings and history of injury.

By decision dated January 12, 2015, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a diagnosed condition causally related to the accepted October 3, 2014 employment incident. It found that he had not submitted medical evidence sufficient to show that he had sustained osteoarthritis of the cervical spine, a superior glenoid labrum lesion, or rotator cuff syndrome as a result of the October 3, 2014 employment incident.

On March 27, 2015 Dr. DiChristina found that appellant had experienced "an injury to his neck and left shoulder on the date of October 3, 2014 when a line jerked through his hand and pulled his left shoulder in to significant extension and twisted his cervical spine." He diagnosed cervical sprain/strain with underlying degenerative disc disease and left shoulder sprain causing rotator cuff tendinitis. Dr. DiChristina opined that his left shoulder and cervical condition resulted

[3] Docket No. 16-1800 (issued February 21, 2017).

[4] Dr. DiChristina opined that appellant was disabled from employment until November 27, 2014.

from the employment incident of October 3, 2014 and should be covered by workers' compensation.[5]

On May 12, 2015 appellant requested reconsideration. In support of his request, he submitted an undated authorization for examination and/or treatment (Form CA-16) from Dr. Thaddeus M. Pajak, an osteopath.[6] Dr. Pajak obtained a history of a whiplash injury from a cord under tensile strength. He diagnosed brachial plexitis and checked a box marked "yes" indicating that the condition was caused or aggravated by the described employment activity. Dr. Pajak found that appellant could perform modified work.

By decision dated July 14, 2015, OWCP denied modification of its January 12, 2015 decision. It found that the medical evidence submitted was insufficiently rationalized to support that the accepted employment incident caused or aggravated a diagnosed condition.

Dr. DiChristina, in a July 27, 2015 report, diagnosed cervical sprain, osteoarthritis of the cervical spine, and rotator cuff syndrome. He opined that the incident described by appellant caused the injury.[7]

On January 26, 2016 appellant, through counsel, requested reconsideration.

By decision dated April 25, 2016, OWCP denied appellant's request for reconsideration, finding that he had not raised an argument or submitted evidence sufficient to warrant reopening his case for further merit review under 5 U.S.C. § 8128(a).

On May 2, 2016 appellant, through counsel, again requested reconsideration. With his request, he submitted a February 17, 2015 operative report of his a rotator cuff repair performed by Dr. John B. Savage, a Board-certified orthopedic surgeon.[8]

By decision dated July 15, 2016, OWCP denied modification of its July 14, 2015 decision. It found that Dr. DiChristina failed to adequately explain how the accepted October 3, 2014 employment incident had caused or aggravated a diagnosed condition.

Appellant subsequently appealed to the Board. By decision dated February 21, 2017, the Board affirmed the July 15, 2016 decision, finding that appellant had not submitted sufficient medical evidence to establish causal relationship between a diagnosed condition and the accepted employment incident.[9]

[5] On April 27, 2015 Dr. DiChristina indicated that appellant was disabled from employment indefinitely.

[6] The Form CA-16 was not signed by an authorized representative of the employing establishment.

[7] On August 6, 2015 Dr. DiChristina found that appellant could resume modified employment.

[8] Dr. Savage, on a March 2, 2016 return to work form, noted that appellant had sustained an injury at work in October 2014 and found that he was totally disabled from work.

[9] *Supra* note 3.

On February 5, 2018 appellant, through counsel, requested reconsideration. He submitted a January 25, 2018 report from Dr. Neil Allen, a Board-certified internist and neurologist, in support of his reconsideration request.

In a January 25, 2018 report, Dr. Allen indicated that he had reviewed appellant's medical records. He opined that his claim should be "updated to include the diagnosis of aggravation of other spondylosis with radiculopathy, cervical region," noting that he had no symptoms of either condition before the October 3, 2014 employment incident. Dr. Allen indicated that the normal aging process resulted in a loss of spinal disc height and facet joint narrowing, causing osteophytes and bony overgrowth compressing the nerve roots. He advised that appellant had preexisting spondylitic changes with neural foraminal narrowing, and that the acceleration/deceleration that he had experienced had overstretched the ligaments of his spine and compressed the spinal nerves, resulting in inflammation and irritation of the nerve root and aggravating his cervical spondylosis. Dr. Allen also diagnosed a cervical and left shoulder sprain/strain. He related:

> "When the rope snapped [appellant] was exposed to a rapid acceleration/ deceleration event. This rapid change in directional force causes the muscles of the neck to strongly contract, shortening their length, in order to stabilize the spine and prevent fracture and/or dislocation. [His] head continued to jerk sideways, against said muscle contraction, as his arm was pulled by the rope resulting in microscopic tearing of the shortened muscles, their associated tendons and surrounding spinal ligaments…."

Dr. Allen explained that the same stress caused left shoulder sprain. He explained that the shoulder is a ball and socket joint, held in place and stabilized by muscles, tendons, and ligaments and that when the rope incident occurred it jerked appellant's arm outward and a traction-type stress was applied to the tendons, ligaments, and joint capsule of the shoulder. Dr. Allen further explained that the strength of the rope far outweighs the strength of the said ligaments and tendons, which resulted in microscopic, partial-thickness and even full-grade tearing of said structures against the traction-type force. He concluded that appellant's injuries from the October 3, 2014 incident were "both reasonable and expected based upon the mechanism described by [him] and documented within his medical records."

By decision dated May 4, 2018, OWCP denied modification of its February 21, 2017 decision. It found that Dr. Allen had failed to adequately explain how the October 3, 2014 work incident affected preexisting cervical and left shoulder conditions. OWCP also noted that he had not performed a physical examination, but instead had reviewed the medical records.

LEGAL PRECEDENT

An employee seeking benefits under FECA[10] 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

[10] 5 U.S.C. § 8101 *et seq*.

employment injury.[11] 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.[12]

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.[13] Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[14]

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.[15]

ANALYSIS

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

On prior appeal, the Board reviewed the evidence before OWCP at the time it issued its July 15, 2016 decision and found that it was insufficient to establish that appellant sustained a diagnosed condition causally related to the accepted October 3, 2014 employment incident. The Board's review of the previously submitted medical evidence of record is *res judicata* absent further review by OWCP under section 8128(a) and therefore the prior evidence need not be addressed again in this decision.[16]

Following the Board's February 21, 2017 decision, appellant, through counsel, requested reconsideration on February 5, 2018. In support of his request, he submitted a January 25, 2018 report from Dr. Allen. Dr. Allen reviewed appellant's medical records. He noted the history of injury based upon the medical records and the prior findings of the Board. Dr. Allen reported that appellant was pulling a fiber optic cable through a conduit that was approximately 1,800 feet long and a flat rope rated at 6,000 pounds tensile strength was attached to fiber cable to pull it through. He noted that the rope broke, snagging appellant's hand/arm and jerking/yanking it violently. Dr. Allen acknowledged a past medical history of a prior left rotator cuff repair in 2013 and explained that the medical records following the employment incident reflect ongoing neck and

[11] *See E.B.*, Docket No. 17-0164 (issued June 14, 2018); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[12] *See P.S.*, Docket No. 17-0939 (issued June 15, 2018); *Ellen L. Noble*, 55 ECAB 530 (2004).

[13] *See V.J.*, Docket No. 18-0452 (issued July 3, 2018); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[14] *Id*.

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

[16] *See E.C.*, Docket No. 17-1765 (issued January 24, 2018).

left shoulder complaints. He noted his review of clinical study reports, noting October 27, 2014 cervical spine and left shoulder x-rays.

Dr. Allen opined that the diagnoses of aggravation of other spondylosis with radiculopathy, cervical region; sprain/strain of the cervical spine; and sprain/strain of the left shoulder. For each diagnosis he provided an explanation as to the physiologic basis for his medical opinion. For the diagnosis of aggravation of other spondylosis with radiculopathy, cervical region, Dr. Allen explained in detail that in an individual with underlying spondylitic change and corresponding narrowing of the neural foramen, as is the case with appellant, the "whiplash" incident would result in overstretching of the spinal ligaments and compression of the existing spinal nerves. He noted that such an incident ignites a local inflammatory reaction affecting both pain and irritation of muscular tissue and symptomatology along the injured nerve root. Likewise, for the diagnosis of strain/sprain of the cervical spine, Dr. Allen explained that when the rope snapped, appellant was exposed to a rapid acceleration/deceleration event with a rapid change in directional force which caused the neck muscles to strongly contract, shortening their length, in order to stabilize the spine and prevent fracture or dislocation. He concluded that these forces resulted in microscopic tearing of the shortened muscles, their associated tendons, and surrounding ligaments, resulting in the cervical sprain/strain. Finally, as to the diagnosis of left shoulder sprain/strain, Dr. Allen described the anatomy of the shoulder as a ball and socket joint held in place by muscles, tendons, and ligaments. Again, noting the accepted employment incident previously accepted by the Board, he explained how traction-type stress was applied to the shoulder resulting in microscopic, partial-thickness, and even full-grade tearing. Dr. Allen noted that the medical records documented symptoms following the accepted incident with the rope which were consistent with the typical symptoms he would expect from such incident. He concluded that appellant's injuries resulting from the employment incident on October 3, 2014 were both reasonable and expected based upon the mechanism described by the patient and as documented within the medical records.

The Board thus finds that the medical opinion of Dr. Allen is based upon a complete factual history and medical background of appellant, is provided with reasonable medical certainty, and provides a sufficient level of medical rationale explaining the nature of the relationship between the diagnosed conditions and the accepted employment incident.[17] The Board further finds that the medical opinion of Dr. Allen is accurately premised upon the physical examinations conducted by Dr. DiChristina and Dr. Pajak and that, under the facts as set forth in this case, a physical examination is unnecessary for the limited purpose of providing a physiologic explanation of whether the accepted employment incident resulted in appellant's diagnosed medical conditions.

The Board has long held that factors such as the opportunity for and thoroughness of examination performed by the physician, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed by the physician are all to be considered in determining the probative value afforded a medical report.[18] As Dr. Allen's report was provided for the limited purpose of providing a medical explanation linking the accepted employment incident and diagnosed conditions, the Board finds that his report is relevant and persuasive evidence. The lack of an

[17] *See supra* note 16.

[18] *See D.W.*, Docket No. 18-0123 (issued October 4, 2018); *Melvina Jackson*, 38 ECAB 443 (1987).

opportunity for examination, under the circumstances in this case where the medical record is well-developed and uncontested, does not outweigh the probative value of his detailed report as to the issue of causal relationship.

The Board thus finds that the opinion of Dr. Allen is sufficient to require further development of the record.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While a claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.[19] On remand, OWCP should refer appellant and the medical evidence of record to an appropriate specialist to obtain a rationalized opinion regarding whether he sustained cervical spine and left shoulder conditions causally related to the accepted employment incident on October 3, 2014.[20] After such further development as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

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

[19] *See W.W.*, Docket No. 15-1130 (issued August 7, 2015); *Phillip L. Barnes*, 55 ECAB 426 (2004).

[20] *See M.K.*, Docket No. 17-1140 (issued October 18, 2017).

ORDER

IT IS HEREBY ORDERED THAT the May 4, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: January 22, 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