

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

_____)	
T.M., Appellant)	
)	
and)	Docket No. 19-0380
)	Issued: June 26, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Newark, NJ, Employer)	
_____)	

Appearances:
James D. Muirhead, 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 December 12, 2018 appellant, through counsel, filed a timely appeal from a November 2, 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 his burden of proof to establish a medical condition causally related to the accepted June 6, 2017 employment incident.

FACTUAL HISTORY

On June 16, 2017 appellant, then a 41-year-old custodian, filed a traumatic injury claim (Form CA-1) alleging that he sustained a lower back injury due to an accident on June 6, 2017 while in the performance of duty. He asserted that he was on a ladder cleaning ceiling vents when he felt a sharp pain in his back. Appellant stopped work on June 9, 2017.

In support of his claim, appellant submitted several disability from work notes. In a June 23, 2017 note, Dr. Thomas P. Alapatt, an attending Board-certified internist, indicated that appellant could return to work on July 25, 2017. In a July 21, 2017 note, he advised that appellant could return to work on August 15, 2017. Appellant also submitted June 26 and July 5, 2017 reports from Dr. Thomas F. Mazzoni, an attending Board-certified otolaryngologist, regarding his complaints of right ear pain and perceived hearing loss commencing on June 6, 2017.

In a development letter dated August 10, 2017, OWCP requested that appellant submit additional evidence in support of his claim, including a physician's opinion supported by a medical explanation as to how the reported June 6, 2017 employment incident had caused or aggravated a medical condition. It provided an attached questionnaire for his completion which posed various questions regarding the reported June 6, 2017 employment incident. OWCP afforded appellant 30 days to respond.³

Appellant submitted an undated statement in which he asserted that on June 6, 2017 he was standing on a ladder and using an extended duster cleaner to clean vents. He indicated that a foreign object fell from the vents which caused him to jerk and fall to the ground. Appellant asserted that he felt a sharp jolt in his lower back.⁴

Appellant also submitted an August 4, 2017 attending physician's report (Form CA-20) in which Dr. Alapatt listed a date of injury of June 6, 2017 and provided findings of low back pain syndrome and severe lumbar radiculopathy. Dr. Alapatt indicated that appellant could return to work on August 15, 2017.

In an August 22, 2017 report, Dr. Alapatt advised that appellant was suffering from lower back pain syndrome, cervical radiculopathy, and bilateral shoulder pain. He noted that appellant was supposed to return to work on August 15, 2017, but noted that "according to the last visit, he may be put off of work indefinitely." Dr. Alapatt indicated that appellant experienced worsening

³ On August 10, 2017 OWCP also requested additional information from the employing establishment which was to be submitted within 30 days.

⁴ Appellant asserted that there was a lot of debris and dirt particles in the vent he cleaned and indicated that, after the June 6, 2017 incident, he had severe pain in his ears and throat. He noted that he was hospitalized from June 19 to 22, 2017 due to a viral infection. Counsel later indicated that appellant was not pursuing a claim for employment-related ear/throat conditions, but rather was only claiming employment-related cervical and lumbar conditions.

symptoms since June 6, 2017 with injuries consistent with a fall. He advised that magnetic resonance imaging (MRI) scans of appellant's cervical and lumbar spines showed bulging or herniated discs at multiple cervical and lumbar levels.

By decision dated September 21, 2017, OWCP accepted that on June 6, 2017 appellant fell from a ladder, as alleged, but it denied the claim as appellant had not submitted medical evidence establishing a diagnosed medical condition causally related to the accepted June 6, 2017 employment incident. It concluded that the requirements had not been met to establish an injury or medical condition causally related to the accepted employment incident.

On October 3, 2017 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant submitted an October 16, 2017 report from Dr. Brett Gerstman, an attending Board-certified physical medicine and rehabilitation physician, who indicated that appellant reported falling from a ladder at work and landing on his feet on June 6, 2017. Dr. Gerstman opined that appellant had a C6 disc herniation (with right upper extremity radiculopathy) and an L5-S1 disc herniation (with associated persistent low back pain) both of which were causally related to the June 6, 2017 employment incident.

During the hearing held on March 13, 2018, appellant testified that on June 6, 2017 he was cleaning vents while standing approximately three feet up on a seven-foot ladder. He asserted that he was startled by something that came out of a vent and he jerked his body. Appellant testified that he jumped off the ladder because it became unstable and he fell to the ground. He asserted that he felt back pain when he jerked his body and that pain traveled from his lower extremities up to his shoulders after he hit the ground.

At the time of the hearing, appellant submitted a March 9, 2018 report of Dr. Uzma Parvez, an attending Board-certified physical medicine and rehabilitation physician. In her report, Dr. Parvez noted that appellant reported that on June 6, 2017 he fell from a ladder at work and landed on his feet. Appellant reported that he felt a "jolt straight up" from his legs to his neck. Dr. Parvez noted that MRI scans from late 2017 showed bulging or herniated discs at multiple cervical levels (C3-4 through C4-5) and multiple lumbar levels (L3-4 through L4-5). She detailed the findings of the physical examination she conducted on March 9, 2018, noting decreased range of motion of the lumbar spine, positive right-sided leg raise test, and decreased sensation along the right C5-6 dermatome. Dr. Parvez opined that appellant's cervical and lumbar disc conditions were related to the June 6, 2017 fall and noted that, as a result, appellant had waxing and waning disability involving his ability to lift, bend, sit, or stand for too long. She advised that appellant had ongoing symptoms and was currently under treatment.

By decision dated May 21, 2018, OWCP's hearing representative affirmed the September 21, 2017 decision. He determined that the medical evidence submitted by appellant did not contain a rationalized medical opinion on the issue of causal relationship.

On August 6, 2018 appellant, through counsel, requested reconsideration of the May 21, 2018 decision.

Appellant submitted Dr. Parvez' undated addendum to her March 9, 2018 report. Dr. Parvez noted that disc degeneration, which commonly begins in early adulthood, might directly predispose the disc to herniation and that the degenerative process leads to an increased inability of the disc to withstand physiologic loading which then absorbs the axial load in a non-uniform manner. She explained that the disc responds to both type of mechanical loading, depending on the direction and the magnitude of the load. Dr. Parvez advised that human cadaveric studies have shown that herniations occur at a significantly lower intradiscal pressure in discs with preexisting degeneration. Although disc herniation occurs with highly repetitive flexion/extension moments, increased magnitudes of axial compressive force result in more frequent and more severe disc injuries. Dr. Parvez maintained that, in appellant's case, the axial compressive mechanical loading that occurred during the fall resulted in a more vertical transmission of weight/load across the entire spine and caused the disc herniations evident in the cervical and lumbar spines. She indicated that the axial compressive force can result in forceful expansion of the annular fibers, causing tearing and disc herniation, and posited that the absence of symptoms prior to appellant's fall and the onset of symptoms after the fall further causally correlated the June 6, 2017 incident to appellant's current conditions. Dr. Parvez opined that the impairment/structural changes to appellant's cervical and lumbar spine discs were permanent in nature and could result in waxing and waning disability manifested by an inability to lift, bend, sit, or stand for too long.

By decision dated November 2, 2018, OWCP denied modification of the May 21, 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,⁵ 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 to the employment injury.⁶ 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.⁷

To determine if an employee has 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 that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that

⁵ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *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).

allegedly occurred.⁸ The second component is whether the employment incident caused a personal injury.⁹

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 incident.¹⁰ 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.¹¹

ANALYSIS

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

In support of his claim for cervical and lumbar spine injuries due to a June 6, 2017 fall, appellant submitted a March 9, 2018 report from Dr. Parvez, who noted that appellant reported that on June 6, 2017 he fell from a ladder at work and landed on his feet. Dr. Parvez advised that MRI scans showed bulging or herniated discs at multiple cervical levels (C3-4 through C4-5) and multiple lumbar levels (L3-4 through L4-5). She opined that appellant's cervical and lumbar disc conditions were related to the June 6, 2017 fall and noted that, as a result, appellant had waxing and waning disability involving his ability to lift, bend, sit, or stand for too long.

In August 2018 appellant submitted Dr. Parvez' addendum to her March 9, 2018 report. Dr. Parvez noted that disc degeneration, which commonly begins in early adulthood, might directly predispose the disc to herniation and that the degenerative process leads to an increased inability of the disc to withstand physiologic loading which then absorbs the axial load in a non-uniform manner. She maintained that, in appellant's case, the axial compressive mechanical loading that occurred during the fall resulted in a more vertical transmission of weight/load across the entire spine and caused the disc herniations which were evident in both the cervical and lumbar spine. Dr. Parvez indicated that the axial compressive force can result in forceful expansion of the annular fibers, causing tearing and disc herniation, and posited that the absence of symptoms prior to appellant's June 6, 2017 fall and the onset of symptoms after the fall further causally correlated the incident to appellant's current conditions. She opined that the impairment/structural changes to appellant's cervical and lumbar spine discs were permanent in nature and could result in waxing and waning disability manifested by an inability to lift, bend, sit, or stand for too long.

The Board finds that while Dr. Parvez' reports are insufficient to meet appellant's burden of proof, they do raise an uncontroverted inference of causal relation between his claimed

⁸ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

¹¹ *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

conditions and the accepted June 6, 2017 employment incident, and are sufficient to require OWCP to undertake further development of appellant's claim.¹²

Thus, the Board finds that further development is required to determine whether appellant sustained a back injury due to the accepted June 6, 2017 employment incident.¹³ On remand, OWCP shall prepare a statement of accepted facts and refer appellant to an appropriate Board-certified specialist for a second opinion examination and an evaluation regarding whether he sustained a June 6, 2017 employment injury. Following any necessary further development, OWCP shall issue a *de novo* decision.

CONCLUSION

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

¹² See *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *John J. Carlone*, 41 ECAB 354 (1989). The Board notes that Dr. Parvez' finding of cervical and lumbar conditions due to the June 6, 2017 fall is also supported by reports of Dr. Alapatt and Dr. Gerstman.

¹³ *D.C.*, Docket No. 14-1312 (issued May 6, 2015); *K.M.*, Docket No. 12-0726 (issued January 22, 2013); *D.N.*, Docket No. 09-0651 (issued April 20, 2010).

ORDER

IT IS HEREBY ORDERED THAT the November 2, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further action consistent with this decision of the Board.

Issued: June 26, 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