United States Department of Labor
Employees' Compensation Appeals Board

R.S., Appellant	)	
and	)	**Docket No. 18-1234**
	)	**Issued: March 22, 2019**
DEPARTMENT OF VETERANS AFFAIRS, NEW YORK HARBOR HEALTHCARE SYSTEM, Brooklyn, NY, Employer	)	

Appearances:
Thomas S. Harkins, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 1, 2018 appellant, through counsel, filed a timely appeal from a December 19, 2017 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 established an injury to his neck, shoulders, or back causally related to the accepted June 17, 2014 employment incident.

FACTUAL HISTORY

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

On June 24, 2014 appellant, then a 30-year-old program support assistant, filed a traumatic injury claim (Form CA-1) alleging that on June 17, 2014 he pinched a nerve or pulled muscles in his neck, shoulders, and spine when his walker and office chair locked into one another, causing him to fall to the floor. He stopped work on the date of injury.

Appellant was treated by a series of physicians for his neck, shoulder, and back conditions.

By decision dated August 21, 2014, OWCP denied appellant's traumatic injury claim. It found that the medical evidence of record was insufficient to establish a diagnosed condition causally related to the accepted June 17, 2014 employment incident.

On October 7, 2014 appellant, through counsel, requested reconsideration and submitted additional evidence.

By decision dated April 6, 2015, OWCP denied modification of its August 21, 2014 decision.

Appellant appealed to the Board. By decision dated August 24, 2015, the Board affirmed the April 6, 2015 decision.[4]

Appellant, through counsel, requested reconsideration on April 25, 2016 and submitted additional medical evidence.

By decision dated May 3, 2016, OWCP denied modification of its prior decision.

Appellant appealed to the Board. By decision dated December 8, 2016, the Board affirmed the May 3, 2016 decision.[5]

Appellant, through counsel, on November 29, 2017 requested reconsideration. Counsel contended that new medical evidence from Dr. Todd Schlifestein, an osteopath, and Dr. Alex

[3] Docket No. 15-1166 (issued August 24, 2015); Docket No. 16-1469 (issued December 8, 2016), *petition for recon. denied*, Docket No. 16-1469 (issued May 4, 2017).

[4] *Supra* note 3.

[5] *Supra* note 3.

Racco, also an osteopath, established that appellant had sustained a medical condition as a result of the accepted employment incident.

OWCP subsequently received a report dated September 20, 2017, wherein Dr. Schlifstein advised that subsequent to appellant's fall at work on June 17, 2014 he experienced neck and back pain radiating into his upper and lower extremities. Dr. Schlifstein noted that appellant had been using a walker since childhood due to preexisting cerebral palsy.

On November 19, 2017 Dr. Racco noted that appellant had used a walker beginning in childhood as a result of his cerebral palsy.

By decision dated December 19, 2017, OWCP denied modification of its prior merit decision. It found that the newly submitted medical reports were insufficient to establish that the accepted June 17, 2014 employment incident caused or aggravated a diagnosed condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA[6] 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 employment injury.[7] 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.[8]

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.[9] Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[10]

Causal relationship is a medical issue and the medical evidence 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

[6] *Supra* note 2.

[7] *See R.B.*, Docket No. 18-1327 (issued December 31, 2018).

[8] *See Y.K.*, Docket No. 18-0806 (issued December 19, 2018).

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

[10] *Id*.

between the diagnosed condition and the specific employment incident identified by the claimant.[11]

ANALYSIS

The Board finds that appellant has not established that he sustained an injury to his neck, shoulders, or back causally related to the accepted June 17, 2014 employment incident.

On prior appeals, the Board reviewed the evidence before OWCP at the time it issued its April 6, 2015 and May 3, 2016 decisions and found that it was insufficient to establish that appellant sustained a diagnosed condition causally related to the accepted June 17, 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.[12]

In a September 20, 2017 report, Dr. Schlifstein noted that appellant had used a walker since he was a child due to cerebral palsy. He related that appellant had experienced pain in his back and neck radiating into both the upper and lower extremities after a June 17, 2014 fall at work. Dr. Schlifstein, however, did not provide a specific diagnosis or provide rationale for his opinion. A medical opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury, but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.[13] Without explaining, physiologically, how the accepted employment incident caused or contributed to a diagnosed condition, Dr. Schlifstein Dr. Schlifstein's report is of limited probative value.[14]

Dr. Racco, on November 19, 2017, noted that appellant had been using a walker due to cerebral palsy. However, he did not provide a history of the June 17, 2014 employment incident, a diagnosis, or an opinion on causation. Without any reference to the June 17, 2014 employment incident, Dr. Racco's report is of diminished probative value.[15] The Board has held that a physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the described incident caused or contributed to a diagnosed medical condition.[16]

As the medical evidence does not contain a rationalized medical opinion explaining the causal relationship between a diagnosed condition and the accepted June 17, 2014 employment incident, appellant has not met his burden of proof.

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

[12] *See W.C.*, Docket No. 18-1386 (issued January 22, 2019).

[13] *K.R.*, Docket No. 18-1388 (issued January 9, 2019); *E.D.*, Docket No. 16-1854 (issued March 3, 2017); *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

[14] *M.N.*, Docket No. 18-1193 (issued December 28, 2018).

[15] *See S.T.*, Docket No. 17-1246 (issued November 2, 2017).

[16] *Id*.

On appeal, counsel asserts that he has established fact of injury, noting that the medical evidence submitted established that appellant used a walker due to preexisting cerebral palsy unrelated to his employment injury and that the cerebral palsy did not cause his diagnosed employment-related condition. As explained above, however, the evidence of record is insufficient to establish a firm medical diagnosis causally related to the accepted June 17, 2014 employment incident, and thus appellant has not met his burden of proof.[17]

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 established an injury to his neck, shoulders, or back causally related to the accepted June 17, 2014 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the December 19, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 22, 2019
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

[17] *M.E.*, Docket No. 18-1135 (issued January 4, 2019).