

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

_____)	
G.S., Appellant)	
)	
and)	Docket No. 18-1696
)	Issued: March 26, 2019
U.S. POSTAL SERVICE, NETWORK)	
DISTRIBUTION CENTER, Atlanta, GA,)	
Employer)	
_____)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 10, 2018 appellant, through counsel, filed a timely appeal from a May 9, 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 that his cervical condition was causally related to the accepted September 6, 2016 employment incident.

FACTUAL HISTORY

On September 12, 2016 appellant, then a 67-year-old mail handler/equipment operator, filed a traumatic injury claim (Form CA-1) alleging that on September 6, 2016 he sustained a skull/head injury while in the performance of duty. He stopped work on September 6, 2016.

In a September 15, 2016 development letter, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the factual and medical evidence necessary to establish his claim and also provided a questionnaire for completion. OWCP afforded appellant 30 days to provide the necessary factual information and medical evidence.

OWCP subsequently received a September 6, 2016 employing establishment accident report, which described that on September 6, 2016 appellant was observed passed out on a forklift just before he hit a stationary concrete pillar. It indicated that appellant was not wearing his seat belt and fell off the forklift, hitting his head on the concrete floor.

OWCP received various hospital records. In a report dated September 6, 2016, Dr. David M. Bradberry, Jr., an osteopath specializing in physical medicine and rehabilitation, related that appellant was driving a forklift when he hit a concrete pole, fell from the forklift, and struck his head. He reported that diagnostic imaging testing was negative for signs of ischemia, but showed severe spinal canal stenosis at C3-4. Dr. Bradberry diagnosed cervical stenosis of the spinal canal, central cord syndrome, bilateral arm weakness, and reactive depression.

On September 7, 2016 appellant underwent further diagnostic testing. A neurological spine computerized tomography (CT) report showed no findings of acute intracranial hemorrhage or large vascular territory infarction. A cervical spine magnetic resonance imaging (MRI) scan report showed mild congenital narrowing of the spinal canal, moderate to large disc osteophyte complex compressing the spinal cord at C3-4, mild-to-moderate posterior disc osteophyte complex at C4-5, mild posterior disc osteophyte at C5-6, and minimal disc osteophyte complex at C6-7.

In an examination report dated September 7, 2016, Dr. Antonio Wehbeh, an internist, indicated that appellant was seen at the hospital as a stroke alert. He related that, prior to his arrival, appellant was driving a fork lift, hit a tree, and fell to the ground. Dr. Wehbeh noted that appellant had positive medical history for strokes. He reviewed diagnostic testing and reported that sensory examination showed anterior sensory level at the C4 innervation area. Dr. Wehbeh reported that the etiology of appellant's symptoms appeared most consistent with cord contusion after trauma due to severe stenosis, with cord edema and some degree of cord compression.

On September 12, 2016 appellant underwent unauthorized anterior cervical discectomy and fusion at C3-4 and C4-5 surgery. The operative report noted a preoperative diagnosis of central cord syndrome with cervical stenosis.

Appellant remained in the hospital for continued postoperative treatment and rehabilitation. Hospital records dated September 7 to October 12, 2016 document appellant's daily laboratory results, vitals, postoperative examination notes, and rehabilitation progress notes. The diagnoses listed were cervical stenosis of spinal canal, bilateral arm weakness, central cord syndrome, closed head injury, hyperglycemia, leukocytosis, and anemia.

In an examination report dated September 15, 2016, Dr. Anuradha Subramanian, a critical care specialist, related that appellant had suffered an injury at C3-4 after a forklift crash. She described that on September 6, 2016 appellant was driving a forklift when it crashed into a pole. Dr. Subramanian reported a possible syncope episode and diagnosed C3-4 severe spinal canal stenosis with spinal cord compression, resulting in central cord syndrome. She provided an assessment that appellant "suffered an injury status post forklift crash with the following injuries: C3-4 severe spinal canal stenosis with spinal cord compression, resulting in central cord syndrome." Dr. Subramanian continued to treat appellant and provided examination notes dated September 20 to October 12, 2016.

On October 13, 2016 OWCP received appellant's response to its development letter. Appellant described that on September 6, 2016 he was operating his forklift and "crossing the loop." He indicated that he looked left and right checking for mail and as he turned his head, his fork lift collided with a pole. Appellant related that the crash caused him to be ejected from his forklift and he landed on the concrete floor. He noted that he did not have any similar disabilities or symptoms before this injury.

In an October 13, 2016 letter, T.G., a human resource specialist for the employing establishment, indicated that she was attaching a list of appellant's prescriptions prior to his admission to the hospital. She alleged that the medications that appellant was taking may have contributed to his injury. T.G. noted that appellant had previously been diagnosed with diabetes.

By decision dated October 21, 2016, OWCP denied appellant's traumatic injury claim, finding that the factual evidence of record was insufficient to establish that the alleged incident occurred as described due to factual discrepancies.

On November 28, 2016 appellant requested a hearing before an OWCP hearing representative. A hearing was held on June 20, 2017.

OWCP received hospital progress notes dated September 6 to October 24, 2016 regarding appellant's medical treatment and rehabilitation after surgery to treat his diagnosed C3-4 severe spinal canal stenosis with spinal cord compression, resulting in central cord syndrome.

In a progress note dated November 17, 2016, Renee L. Thomas, a physician assistant, related that appellant had a closed head injury status post trauma in September 2016, which resulted in extremity weakness, cervical stenosis of spinal canal, and central cord syndrome.

By decision dated September 5, 2017, an OWCP hearing representative affirmed the October 21, 2016 decision with modification. He accepted that the September 6, 2016 employment incident occurred as alleged, but denied appellant's claim finding that the medical evidence of record failed to establish a diagnosed condition due to the accepted incident. The hearing representative also determined that the medical evidence was insufficient to establish that

appellant's fall at work on September 6, 2016 was due to an idiopathic condition. He further found that because appellant was driving a tow motor at work at the time of the accepted incident, the incident occurred in the performance of duty.

On January 22, 2018 appellant, through counsel, requested reconsideration of the September 5, 2017 decision.

In a letter dated November 9, 2017, Dr. Jonathan A. Grossberg, a Board-certified neurological surgeon, indicated that appellant was treated at a hospital for a traumatic injury that occurred in early September. He related that appellant was involved in a forklift accident and subsequently complained of weakness in his upper and lower extremities. Dr. Grossberg reported that physical examination findings were consistent with central cord syndrome. He noted that appellant's CT and MRI scans showed no acute fractures, but severe cervical stenosis with cord signal change "likely representing a contusion from the injury." Dr. Grossberg opined: "It is likely that the trauma led to worsening of his cervical stenosis with a contusion of his spinal cord (central cord syndrome) which was responsible for his weakness."

By decision dated May 9, 2018, OWCP denied modification of the September 5, 2017 decision. It found that the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed cervical condition and the accepted September 6, 2016 employment incident.

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 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 In order to determine whether a federal employee has sustained a traumatic injury in the performance of duty, OWCP must first determine whether fact of injury has been established.⁶ 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

³ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

time, place, and in the manner alleged.⁷ Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.⁸ An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability or condition relates to the employment incident.⁹

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.¹⁰ The opinion of the physician must be based on a complete factual and medical background of the employee, 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.¹¹ The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹²

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that his diagnosed cervical condition was causally related to the accepted September 6, 2016 employment incident.

Appellant submitted several hospital reports dated September 6 to October 24, 2016. In a September 6, 2016 report, Dr. Bradberry related that appellant was driving a forklift when he hit a concrete pole, fell down, and struck his head. He diagnosed cervical stenosis of the spinal canal, central cord syndrome, bilateral arm weakness, and reactive depression. Dr. Bradberry did not, however, specifically address the cause of appellant's cervical stenosis, central cord syndrome, bilateral arm weakness, or depression nor provide an opinion on causal relationship. The Board has held that 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.¹³

Likewise, the diagnostic examination reports, including the September 7, 2016 cervical spine CT and MRI scans also fail to establish appellant's claim as they do not include an opinion on the causal relationship between appellant's diagnosed cervical conditions and the accepted September 6, 2016 employment incident. The Board has held that reports of diagnostic tests are of

⁷ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁸ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

¹⁰ *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

¹¹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹² *James Mack*, 43 ECAB 321 (1991).

¹³ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

lack probative value as they fail to provide an opinion on the causal relationship between appellant's employment duties and the diagnosed conditions.¹⁴

In her reports dated September 15 to October 12, 2016, Dr. Subramanian accurately described the September 6, 2016 employment incident and noted diagnosis of C3-4 severe spinal canal stenosis with spinal cord compression, resulting in central cord syndrome. She provided an assessment that appellant "suffered an injury status post forklift crash with the following injuries: C3-4 severe spinal canal stenosis with spinal cord compression, resulting in central cord syndrome." Although Dr. Subramanian attributed appellant's cervical conditions to the accepted September 6, 2016 employment incident, she did not provide an affirmative opinion explaining how the described forklift crash at work resulted in the diagnosed medical conditions. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to employment factors.¹⁵ Because Dr. Subramanian did not provide a reasoned opinion explaining how the September 6, 2016 employment incident caused or contributed to appellant's cervical conditions, her reports are insufficient to establish his claim.

In a November 9, 2017 letter, Dr. Grossberg related that appellant was involved in a forklift accident in early September and reported that physical examination findings were consistent with central cord syndrome. He opined: "It is likely that the trauma led to worsening of his cervical stenosis with a contusion of his spinal cord (central cord syndrome) which was responsible for his weakness." The Board finds that Grossberg's opinion is speculative in nature.¹⁶ He did not specifically describe the September 6, 2016 employment incident nor definitively opine that appellant's employment caused or contributed to his cervical conditions.¹⁷ The Board has held that medical opinions that are speculative or equivocal in nature are of diminished probative value.¹⁸

Similarly, Dr. Wehbeh's opinion in his September 7, 2016 report that appellant's symptoms appeared "most consistent" with cord contusion after trauma is speculative and equivocal and is also insufficient to establish causal relationship. An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between his claimed condition and his employment.¹⁹

¹⁴ See *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

¹⁵ See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition/disability).

¹⁶ *Roy L. Humphrey*, 57 ECAB 238, 242 (2005); *Michael E. Smith*, 50 ECAB 313 (1999).

¹⁷ A physician's opinion on causal relationship must be based on a complete factual and medical background. *Victor J. Woodhams*, *supra* note 13.

¹⁸ *Z.B.*, Docket No. 17-1336 (issued January 10, 2019); *D.D.*, 57 ECAB 734, 738 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004).

¹⁹ *Robert A. Boyle*, 54 ECAB 381 (2003); *Patricia J. Glenn*, 53 ECAB 159 (2001).

OWCP also received a November 17, 2016 report by Ms. Thomas, a physician assistant. This report does not constitute competent medical evidence because a physician assistant is not considered a “physician” as defined under FECA.²⁰ As such, this evidence is also insufficient to meet appellant’s burden of proof.

On appeal, counsel contends that appellant’s claim should have been accepted for spinal cord contusion. For the reasons set forth above appellant has not met his burden of proof to establish his claim.

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 that his cervical condition was causally related to an accepted September 6, 2016 employment incident.

²⁰ See *M.M.*, Docket No. 17-1641 (issued February 15, 2018); *K.J.*, Docket No. 16-1805 (issued February 23, 2018); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law).

ORDER

IT IS HEREBY ORDERED THAT the May 9, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 26, 2019
Washington, DC

Christopher J. Godfrey, 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