

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

C.A., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
HOUSTON REGIONAL OFFICE,)
San Antonio, TX, Employer)

Docket No. 18-0037
Issued: May 29, 2019

Appearances:

Brett E. Blumstein, 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 October 5, 2017 appellant, through counsel, filed a timely appeal from a September 6, 2017 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 an injury causally related to the accepted June 8, 2016 employment incident.

FACTUAL HISTORY

On June 15, 2016 appellant, then a 64-year-old appraiser and assessor, filed a traumatic injury claim (Form CA-1) alleging that on, June 8, 2016, he collided with a vehicle that turned in front of him while in the performance of duty. He claimed that the incident caused pain and stiffness in his neck, shoulders, lower back, and lower extremities. On the reverse side of the claim form, the employing establishment affirmed that appellant was injured in the performance of duty.

In a development letter dated June 21, 2016, OWCP advised appellant of the deficiencies in the evidence received, requested that he complete a factual questionnaire regarding his activities at the time of the injury, and also requested medical evidence to support his claim. It afforded him 30 days to respond.

Appellant subsequently submitted a completed questionnaire, a Motor Vehicle Accident Report, and a Texas Peace Officer's Crash Report dated June 8, 2016. He indicated that the immediate effects of the injury were extreme pain and stiffness to his neck, shoulders, lower back, and lower extremities. Appellant referred to the accident and police reports to describe the injury.

Appellant also submitted a July 6, 2016 report by Dr. Hameed A. Sosunmu, a Board-certified internist, who noted that appellant was his patient since February 23, 2013. Dr. Sosunmu advised that appellant first complained of low back pain on May 4, 2015. He explained that objective findings were insufficient at that time to order diagnostic testing. Dr. Sosunmu indicated that there were no further complaints of neck or low back pain until he saw appellant on June 10, 2016 following the motor vehicle accident on June 8, 2016. Upon examination he indicated that appellant had decreased range of motion with tenderness to palpation of the cervical and lumbar spine, as well as bilateral knee tenderness. Dr. Sosunmu noted that x-rays were ordered and that the cervical spine x-ray revealed markedly severe spondylosis with retrolisthesis of C4-5. He indicated that the lumbar spine x-ray revealed moderate-to-severe degenerative changes in the form of endplate spurring and spondylosis. Dr. Sosunmu found that the right and left knee x-rays revealed osteoarthritis. He explained that degenerative disc disease is a progressive condition and any type of injury to the spine, as was sustained in the motor vehicle accident on June 8, 2016, would aggravate the existing condition. Dr. Sosunmu noted that appellant had not exhibited complications related to his cervical or lumbar spine until he suffered the reported work-related motor vehicle accident.

By decision dated July 26, 2016, OWCP denied the claim, finding that appellant had not met his burden of proof to establish causal relationship between the accepted June 8, 2016 employment incident and a diagnosed medical condition. It noted that he had not submitted medical evidence in support of his claim.

On August 25, 2016 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

In an August 20, 2016 statement, appellant described the June 8, 2016 incident and provided copies of the accident report, duplicate copies of the notice of injury form, and pictures of the vehicle at the body shop. He explained that he initially told the paramedics that he did not feel any pain and thought he would be alright. However, the next morning, appellant began to feel sharp pain in his neck, lower back, and legs, as well as stiffness with range of movement in his entire body. He explained that the first appointment he was able to obtain was on June 10, 2016 and his physician had explained that the diagnosed conditions had been aggravated due to his injury “sustained to my spine in the car crash while conducting my daily job assignments-operating my government vehicle.” Appellant also indicated that there was no previous complication with his spine prior to the work-related motor-vehicle accident.

OWCP received a copy of the July 6, 2016 report, a June 13, 2016 automobile repair estimate, and previously submitted reports.

By decision dated February 21, 2017, OWCP’s hearing representative affirmed the July 26, 2016 decision. She found that there was no rationalized medical evidence of record establishing that appellant sustained an injury casually related to the accepted June 8, 2016 employment incident, as alleged.

By letter dated August 23, 2017, appellant, through counsel, requested reconsideration and submitted additional evidence.

In a July 31, 2017 report, Dr. John W. Ellis, an occupational medicine specialist Board-certified in family medicine, noted appellant’s history of injury, reviewed his medical treatment records, and performed a physical examination. He explained that on June 8, 2016, appellant was in a sedan when a vehicle turned in front of him and his vehicle hit the other vehicle. Dr. Ellis related that at impact, appellant was thrown forward and his body hit the seatbelt, but not the steering wheel. He explained that the airbag did not deploy. Additionally, Dr. Ellis related that appellant informed him that he was dazed and felt stunned, but he felt like he could not move his neck, back, arms, or legs. He explained that this lasted for several minutes. Appellant informed him that, after an hour, he drove home, but by the time he got home he was very stiff in the back of his neck and between his shoulders and he also had some pain in his shoulder joints, as well as a lot of pain in his back and numbness radiating down both arms and legs. Dr. Ellis noted that he had pain in both kneecaps and it was different from the shooting pain that was going from his back down his legs.

In his report Dr. Ellis noted that appellant’s medical history and records included cervical x-rays that revealed markedly severe spondylosis with retrolisthesis of C4-5 and lumbar spine x-rays that revealed moderate-to-severe degenerative changes present in the form of endplate spurring and spondylosis. Furthermore, bilateral knee x-rays revealed osteoarthritis. Dr. Ellis indicated that a lumbar spine MRI scan without contrast revealed degenerative changes of the lower lumbar spine while a cervical spine MRI scan without contrast revealed multilevel disc disease, spondylosis with canal stenosis, and neuroforaminal narrowing. He noted appellant’s current complaints of pain and impairment.

Dr. Ellis opined that, based upon his examination of the employee, review of the medical and other records, and his physical examination findings, appellant’s diagnosed medical conditions

were causally related to the motor vehicle accident of June 8, 2016. He explained that in the motor vehicle accident, “there was sudden stopping, which caused sudden movement of his neck and back. The sudden movement and forces involved are stronger than the muscles and ligaments in his neck and back, which caused tearing of some of the muscles and ligaments in the neck, back, and shoulders. The tight muscles in his neck and shoulders are impinging the brachial plexus of nerves down the arms.” Dr. Ellis indicated that he had not found evidence of a specific spinal nerve impingement down the arms, but he observed two findings in appellant’s back. He explained that “obviously [he] has muscle spasm and tenderness in his back as well as tightness of his buttock muscles causing impingement of the sciatic nerves and weakness down his legs.” Dr. Ellis indicated that there could be underlying deranged discs in the back causing bilateral L5 and S1 spinal nerve impingement, but he could not make such a diagnosis with a positive electromyogram and nerve conduction velocity (EMG/NCV) study. He explained that appellant “being older and having the osteoarthritis in the neck and shoulders would make him more prone to pulling the muscles and ligaments in his neck than if he was 16 years old.” Dr. Ellis noted, however, that, if he had not had the motor vehicle accident, he would not have had the muscle tendon unit strain in his neck, shoulders, and back and the brachial plexis and lumbosacral plexus impingement. He opined that the employment-related motor vehicle accident caused the diagnoses set forth in his report, except for those which first require an EMG/NCV study including possible diagnoses of deranged discs causing impingement of the spinal nerves. Dr. Ellis noted that appellant had osteoarthritis in both of his knees which was made worse by the contusion of the kneecaps in the motor vehicle accident.”

By decision dated September 6, 2017, OWCP denied modification of the February 21, 2017 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,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

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

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).

allegedly occurred.⁶ The second component is whether the employment incident caused a personal injury. An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.⁷

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.⁸ Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.⁹ 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.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 a decision.

In support of the need for medical rationale supporting that his diagnosed conditions are causally related to the accepted June 8, 2017 employment incident, appellant submitted a report by Dr. Ellis dated July 31, 2017. Dr. Ellis provided a detailed history of injury and accurately described the June 8, 2016 motor vehicle accident, noting that appellant was in a sedan when a vehicle turned in front of him and his vehicle hit the other vehicle. He related that at impact, appellant was thrown forward and his body hit the seatbelt, but not the steering wheel. Dr. Ellis explained that the airbag did not deploy. Additionally, he described appellant's symptoms at the time and how he could not move his neck, back, arms or legs for several minutes. Dr. Ellis also indicated that he reviewed diagnostic reports, which included cervical x-rays revealed markedly severe spondylosis with retrolisthesis of C4-5 and lumbar spine x-rays which revealed moderate-to-severe degenerative changes. He also explained that right and left knee x-rays revealed osteoarthritis. Dr. Ellis also indicated that lumbar spine MRI scan without contrast revealed degenerative changes of the lower lumbar spine and that a cervical spine MRI scan without contrast revealed multilevel disc disease, spondylosis with canal stenosis and neuroforaminal narrowing. He provided details of appellant's current complaints and his prior employment history. Dr. Ellis

⁶ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁸ *J.L.*, Docket No. 18-0698 (issued November 5, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

⁹ *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁰ *L.D., id.*; see also *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹¹ *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

opined that the employment incident contributed to, aggravated and/or caused this employee's injuries, disabilities, and impairments as set forth in his report.

Dr. Ellis provided a detailed narrative explanation as to how the motor vehicle accident of June 8, 2016 was sufficient to cause the straining of the muscles and ligaments and then impinge the nerves down appellant's arms and legs. He explained how sudden stopping resulted in a sudden movement of appellant's neck and back and that the forces involved were stronger than the muscles and ligaments in his neck and back, which caused tearing of the muscles and ligaments in the neck, back, and shoulders. Dr. Ellis further explained that the tight muscles in his neck and shoulders caused impingement of the brachial plexus of nerves down the arms. He also indicated that he has muscle spasm and tenderness in his back as well as tightness of his buttock muscles which results in impingement of the sciatic nerves and weakness down his legs. Dr. Ellis noted that because appellant was older and having prior osteoarthritis in the neck and shoulders made him more prone to pulling the muscles and ligaments in his neck than if he was younger. He also noted osteoarthritis in both of knees which was made worse by the contusion of the kneecaps in the motor vehicle accident.

The Board finds that, although the report of Dr. Ellis contains insufficient rationale to discharge appellant's burden of proof on the issue of causal relationship, the Board finds that his report is of sufficient quality to require further development of his claim by OWCP.¹² The Board also notes that there is no probative opposing medical evidence in the record. Furthermore, Dr. Sosunmu, the original treating physician, also provided support that the incident caused or aggravated an employment-related condition.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter.¹³ While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.¹⁴ When OWCP undertakes to develop the medical aspects of a case, it must exercise extreme care in seeing that its administrative processes are impartially and fairly conducted.¹⁵

The Board finds that this case shall be remanded for OWCP to refer appellant to a second opinion physician for a detailed, reasoned medical opinion explaining whether his June 9, 2016 employment incident caused or aggravated the identified medical diagnoses. The Board notes that the diagnostic reports referred to by Dr. Ellis should also be obtained prior to the second opinion examination. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

¹² *John J. Carlone*, 41 ECAB 354 (1989); *see also Cheryl A. Monnell*, 40 ECAB 545 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

¹³ *R.B.*, Docket No. 08-1662 (issued December 18, 2008); *A.A.*, 59 ECAB 726 (2008); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Vanessa Young*, 55 ECAB 575 (2004).

¹⁴ *D.N.*, 59 ECAB 576 (2008); *Richard E. Simpson*, 55 ECAB 490 (2004).

¹⁵ *See P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Peter C. Belkind*, 56 ECAB 580 (2005).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the September 6, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision of the Board.

Issued: May 29, 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