

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

R.M., Appellant)	
)	
and)	Docket No. 18-0058
)	Issued: May 7, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 10, 2017 appellant, through counsel, filed a timely appeal from an August 15, 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 a back condition causally related to the accepted October 12, 2015 employment incident.

FACTUAL HISTORY

On October 12, 2015 appellant, then a 54-year-old lead technician, filed a traumatic injury claim (Form CA-1) alleging a “lower back slight pull” injury on October 12, 2015 as a result of pulling down a roll-up door while in the performance of duty. In his accompanying narrative statement, he indicated that the strap on the door broke while it was descending, causing him to fall backwards. Appellant explained that he felt a little pull on his back and he had to twist to gain his balance and composure. He stopped work on October 13, 2015.

On October 12, 2016 the employing establishment executed an OWCP authorization for examination and/or treatment (Form CA-16) authorizing appellant to obtain treatment from Saint Michaels Medical Center.

In an October 15, 2015 report, Dr. Edward Novik, a Board-certified anesthesiologist and pain medicine specialist, diagnosed lumbar radiculopathy and advised that appellant was disabled from work for the period October 15 to November 15, 2015.

On October 23, 2015 the employing establishment controverted appellant’s claim, asserting that the evidence submitted failed to establish causal relationship.

In a November 16, 2015 report, Dr. Novik diagnosed status post lumbar fusion and indicated that appellant had a lumbar fusion at L5-S1 on September 27, 2015. Appellant did not report any significant improvement of his pain and continued to complain of low back pain with radiation to the left leg associated with numbness, weakness, and paresthesia.

In an attending physician’s report (Form CA-20) dated December 3, 2015, Dr. Novik diagnosed post-traumatic lumbago, lumbar radiculopathy, and a herniated lumbar disc. He checked a box marked “Yes” indicating that these conditions were caused or aggravated by appellant’s employment activity. Dr. Novik advised that appellant remained disabled from work from October 27 to December 27, 2015.

On January 5, 2016 appellant filed a claim for wage-loss compensation (Form CA-7) for the period November 27, 2015 to January 1, 2016.

In a development letter dated January 12, 2016, OWCP indicated that when appellant’s claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work and, based on these criteria and because the employing establishment did not controvert continuation of pay or challenge the case, payment of a limited amount of medical expenses was administratively approved. It explained that it had reopened the claim for consideration because he had filed a claim for wage-loss compensation. OWCP requested additional evidence and afforded appellant 30 days to respond to its inquiries.

In response, appellant submitted a December 23, 2015 report from Dr. Novik who diagnosed cervical/lumbar radiculopathy and advised that appellant was disabled for work for the period December 27, 2015 to January 7, 2016.

On October 16, 2015 Dr. Marc A. Cohen, a Board-certified orthopedic surgeon, diagnosed lumbar disc herniation at L5-S1, lumbar internal disc disruption disease at L5-S1, and lumbosacral radiculopathy. He noted that appellant had an “injury at work when [appellant] was pulling something down and this aggravated his back even worse” and “led [appellant] to the understanding that he must have something seriously wrong with his back because he cannot function with respect to his persistent back pain.”

A magnetic resonance imaging (MRI) scan of the lumbar spine dated December 15, 2015 revealed status post L5-S1 pedicle fixation surgery and L4-5 right paracentral disc herniation with annular tear and thecal sac indentation.

In a December 22, 2015 report, Dr. Cohen diagnosed status post lumbar fusion at L5-S1 without radiographic evidence of change and a new disc herniation at L4-5 right side after traumatic event.

On October 15, 2015 Dr. Novik reiterated his diagnoses. He explained that appellant was taking stuff out of a truck, fell down from the truck, hit the ground, and felt immediate sharp pain in his low back, but his main problem was that his left leg went numb immediately and he lost all feeling. Dr. Novik indicated that appellant continued to complain of low back pain with radiation to the legs, but the main problems was the numbness. Initially, it was only down his left leg, but now appellant felt the numbness in his right leg.

In a November 18, 2015 report, Dr. Cohen diagnosed status post-laminectomy and fusion with initial improvement with respect to leg pain and back pain and exacerbation of appellant’s recent surgical pain with “a traumatic driving episode.”

On January 7, 2016 Dr. Novik diagnosed post-laminectomy syndrome and reported that appellant complained of low back pain with radiation to his legs and was not responding to conservative treatment with anti-inflammatory medications and a structured home exercise program.

In a January 25, 2015 report, Dr. Novik diagnosed lumbalgia and opined that appellant’s symptoms were directly and causally related to a January 30, 2013 motor vehicle accident.

On February 4, 2016 Dr. Novik advised that appellant was disabled from work from February 7 to March 7, 2016.

By decision dated February 18, 2016, OWCP denied the claim finding that the evidence of record failed to establish that the claimed October 12, 2015 incident occurred as alleged.

Appellant subsequently submitted a February 4, 2016 report from Dr. Novik, who continued to diagnose post-traumatic lumbalgia, post-laminectomy syndrome, and lumbar radiculopathy. Dr. Novik indicated that appellant had a caudal epidural steroid injection and reported 50 percent improvement in his pain.

On March 1, 2016 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Counsel further submitted an operative report dated October 27, 2015 from Dr. Cohen, who performed an open lumbar laminectomy, lateral recess decompression, and 100 percent facetectomy at L5-S1.

A telephonic hearing was held before an OWCP hearing representative on November 15, 2016. Appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence.

By decision dated January 17, 2017, OWCP's hearing representative affirmed the prior decision, as modified, accepting that the October 12, 2015 employment incident occurred as alleged, but denying the claim finding that the medical evidence of record failed to establish a causal relationship between appellant's diagnosed conditions and the accepted October 12, 2015 employment incident.

On May 31, 2017 appellant, through counsel, requested reconsideration and submitted a May 29, 2017 report from Dr. Cohen, who diagnosed lumbar internal disc disruption disease/discogenic instability at L5-S1 and lumbosacral radiculopathy.

In a June 27, 2017 report, Dr. Novik continued to diagnose post-traumatic lumbago, lumbar radiculopathy, and herniated lumbar disc. He reiterated the factual history of the claim and opined that appellant's conditions were causally related to the October 12, 2015 work incident.

By decision dated August 15, 2017, OWCP denied modification of its prior 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

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).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.⁶ First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.⁷ Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁸

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 sufficient to establish such causal relationship.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 factors identified by the claimant.¹⁰

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹¹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a back condition causally related to the accepted October 12, 2015 employment incident.

In support of his claim, appellant submitted medical reports by Dr. Cohen who diagnosed a lumbar disc herniation at L5-S1, lumbar internal disc disruption disease at L5-S1, and lumbosacral radiculopathy and reported the history of injury. Dr. Cohen reported that appellant had initially been referred to his office for a spinal surgical evaluation on March 20, 2014 because of a motor vehicle accident in 2013 which injured appellant's back. He explained that appellant was managing his back complaints until the work-related injury of October 12, 2015 when his back pain became significant and eventually necessitated surgical intervention. On October 27, 2015 Dr. Cohen performed an open lumbar laminectomy, lateral recess decompression, and 100 percent facetectomy at L5-S1. After appellant's surgery, he diagnosed exacerbation of appellant's recent surgical pain due to new disc herniation at L4-5 after "a traumatic driving event." Dr. Cohen noted that appellant had done very well from his surgery and then indicated that he had an incident when he was a passenger in a car that was transporting him from the hospital when the driver went off the road. The Board has held that a report is of limited probative value regarding causal

⁶ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁷ *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *K.V.*, Docket No. 18-0723 (issued November 9, 2018).

¹⁰ *I.J.*, 59 ECAB 408 (2008).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

relationship if it does not contain medical rationale explaining how a given medical condition was caused or aggravated by an employment incident.¹² The Board finds that Dr. Cohen's report does not provide sufficient medical rationale explaining how appellant's new or preexisting lumbar conditions were caused or aggravated by on the accepted October 12, 2015 employment incident. The need for rationale is particularly important as the evidence indicates that appellant had a preexisting back condition due to a 2013 motor vehicle accident.¹³ Therefore, the Board finds that the reports from Dr. Cohen are insufficient to establish causal relationship.

Appellant also submitted medical reports by Dr. Novik, who opined that appellant's cervical and lumbar spine conditions were causally related to the accepted October 12, 2015 employment incident. Dr. Novik reported the history of injury and provided examination findings. The Board finds that he failed to provide sufficient medical rationale explaining how the accepted October 12, 2015 employment incident either caused or contributed to appellant's diagnosed conditions. Dr. Novik opined that appellant's conditions were causally related to the October 12, 2015 pulling and falling incident at work. However, the fact that a condition manifests itself during a period of employment is insufficient to establish causal relationship.¹⁴ Temporal relationship alone will not suffice.¹⁵ Dr. Novik's reports did not include sufficient medical rationale explaining how the October 12, 2015 incident either caused or contributed to appellant's back conditions.¹⁶ For these reasons, the Board finds that the evidence from Dr. Novik is insufficient to establish that appellant's diagnosed conditions are causally related to the October 12, 2015 work incident.

Appellant also submitted diagnostic testing reports. The MRI scan of the lumbar spine dated December 15, 2015 confirmed the diagnosis of status post L5-S1 surgery and L4-5 right paracentral disc herniation. Diagnostic studies are of limited probative value as they do not address whether the employment incident caused any of the diagnosed conditions.¹⁷ Thus, this evidence is insufficient to satisfy appellant's burden of proof with respect to causal relationship.

As appellant has not submitted rationalized medical evidence to support his claim that he sustained a back injury causally related to the accepted October 12, 2015 employment incident, he has not met his burden of proof to establish entitlement to compensation benefits.

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.

¹² See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹³ *Supra* note 11.

¹⁴ 20 C.F.R. § 10.115(e).

¹⁵ See *D.I.*, 59 ECAB 158, 162 (2007).

¹⁶ *Supra* note 12.

¹⁷ See *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a back condition causally related to the accepted October 12, 2015 employment incident.¹⁸

ORDER

IT IS HEREBY ORDERED THAT the August 15, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 7, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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

¹⁸ On return of the case record OWCP shall also review the Form CA-16 of record. The Board notes that the employing establishment issued appellant a signed authorization for examination and/or treatment (Form CA-16) authorizing medical treatment. The Board has held that where an employing establishment properly executes a CA-16 form, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation which does not involve the employee directly to pay the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. §§ 10.300 and 10.304; *R.W.*, Docket No. 18-0894 (issued December 4, 2018).