United States Department of Labor
Employees' Compensation Appeals Board

C.B., Appellant	)	
and	)	**Docket No. 18-0071**
	)	**Issued: May 13, 2019**
U.S. DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA, Miami, FL, Employer	)	

Appearances:
Stephanie N. Leet, Esq., for the appellant[1]
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 11, 2017 appellant, through counsel, filed a timely appeal from an April 28, 2017 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish left shoulder and neck conditions causally related to the accepted November 5, 2015 employment incident.

[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.*

FACTUAL HISTORY

On December 8, 2015 appellant, then a 60-year-old executive services administrator, filed a traumatic injury claim (Form CA-1) alleging that, on November 5, 2015, she injured her left shoulder and neck as a result of pushing and pulling carts from an elevator to a lobby and turning over white plastic folding chairs while in the performance of duty. She did not stop work.

In a diagnostic report dated November 27, 2015, Dr. Alan Holz, a Board-certified diagnostic radiologist, examined the results of a magnetic resonance imaging (MRI) scan of appellant's cervical spine. He observed degenerative changes throughout the cervical spine, a slight flattening to the cord at C4-5 without myelomalacia, and a slight prominence to the central canal possibly reflecting a presyrinx state at C7-T1, but with no appreciable compression to the C8 nerve roots.

On December 31, 2015 Dr. Ivan Stoev, a Board-certified neurosurgeon, examined appellant and diagnosed spinal stenosis due to degenerative disc disease at C4-5, C5-6, and C6-7, and a disc herniation in the upper thoracic area at T4-5 without compression of the spinal cord. He noted that she had neck pain radiating to her left shoulder since November 2015. Dr. Stoev recommended that appellant undergo an anterior cervical discectomy and fusion from C4-7 with titanium plates and screws. He reported that appellant's medical history included back surgery, orthopedic surgery of the shoulder, and a laminectomy.

In a development letter dated January 7, 2016, OWCP informed appellant that she had not submitted sufficient factual or medical evidence to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded her 30 days to respond.

Appellant submitted medical reports relating to her prior medical treatment including a December 30, 2009 report by Dr. Michael Ruddy, a Board-certified orthopedic surgeon, who noted that a lumbar spine MRI scan had been conducted on December 18, 2009, finding a bulge, a left foraminal herniation, nerve root encroachment, and an annular tear at L5-S1. Also submitted was an October 11, 2010 report in which Dr. Ruddy noted that appellant was symptomatic in her left shoulder and hip.

In a diagnostic report dated July 14, 2011, Dr. Samuel Sered, a Board-certified diagnostic radiologist, examined a left shoulder MRI scan and diagnosed: moderate-to-severe supraspinatus tendinopathy with an associated intrasubstance tear and an intramuscular ganglion cyst along the supraspinatus myotendinous junction; minimal infraspinatus tendinopathy with a mild edema about the infraspinatus myotendinous junction; and mild acromioclavicular osteoarthritis.

In an operative note dated July 14, 2011, Dr. Ruddy performed a left shoulder operative arthroscopy with subacromial decompression including a busectomy, release of the coracoacromial ligament and a partial anterior/anterolateral acromioplasty. He noted that this procedure was due to chronic pain in her left shoulder. The surgery was completed without complications.

In a report dated November 9, 2015, Dr. Ruddy examined appellant and diagnosed cervical spondylosis, bilateral shoulder impingement syndrome, and left upper extremity ulnar neuropathy. He noted complaints of neck pain, bilateral shoulder pain.

On December 2, 2015 Dr. Ruddy reviewed the results of a November 27, 2015 MRI scan and diagnosed spinal cord pressure at C4-5 and C5-6 related to degenerative spur formation.

By letter dated January 26, 2016, appellant responded to OWCP's inquiries. She noted that, on the date of injury, she did not recognize its severity and she thought that the pain would subside in a few days. Appellant noted that she felt immediate effects of pain in her left shoulder along with slight pain in the left side of her neck and right shoulder. She stated that she did not sustain other injury between the date of injury and the dates she reported it to her supervisor and physician. Appellant responded that she did not have similar disability or symptoms before November 5, 2015, although she had left shoulder surgery on April 21, 2011 due to a fall and a prior laminectomy at L5-S1.

By decision dated February 12, 2016, OWCP denied appellant's claim, finding that she had not submitted sufficient evidence to establish causal relationship between her diagnosed conditions and the accepted November 5, 2015 employment incident. On February 7, 2017 appellant, through counsel, requested reconsideration and submitted a medical report, which counsel asserted established causal relationship. Counsel further contended that aggravation of a preexisting condition was compensable, regardless of the degree of aggravation and thus requested that the decision of February 12, 2016 be reversed and that appellant's claim be accepted for aggravation of cervical spondylosis.

In a report dated October 4, 2016, Dr. Jackson Cohen, Board-certified in physical medicine and rehabilitation, examined appellant and diagnosed complex regional pain syndrome of the right upper limb. He noted that she had a history of anterior cervical discectomy and fusion and a left posterior cervical foraminotomy at C5-6 and C6-7, and was being examined for follow-up after a right stellate ganglion block failed to provide relief for her right upper extremity.

In a November 4, 2016 report, Dr. Cohen diagnosed the additional condition of right cervical paraspinal muscle spasm and noted her right cervical paraspinal pain.

On November 10, 2016 Dr. Cohen performed a right cervical paraspinal trigger point injection. The procedure was completed without complications. On November 21, 2016 appellant returned for a follow-up, noting that the procedure had not provided significant pain relief for her neck pain, and that her right upper extremity remained very sensitive to touch.

On April 4, 2016 Dr. Susanne Gonzalez Gallardo, a Board-certified neurologist, noted appellant's chronic cervical pain status following her anterior cervical discectomy and fusion. Appellant reported a burning sensation over the lateral aspect of her shoulder to the midpoint between elbow and shoulder.

On April 22, 2016 appellant underwent a left posterior/cervical foraminectomy at C5-6 and C6-7. The surgery completed without complications. On the same date, appellant also underwent an anterior cervical discectomy and fusion from C5-7 with use of titanium plates and screws. This surgery also completed without complications.

In a report dated August 17, 2016, Dr. Ruddy noted that appellant had asked whether her condition was compensable based on her pushing and pulling carts at work. He noted that counsel would forward him a letter before a decision could be made, because he needed to review her entire chart to determine whether her reflex sympathetic dystrophy was related to an injury at work.

On June 24, 2016 Dr. Gallardo conducted a nerve conduction velocity study on appellant's left and right upper extremities. For the left side, he observed electrophysiological evidence of a moderate chronic cervical radiculopathy at C5, as well as a mild-to-moderate median mononeuropathy.

In a February 16, 2017 letter, Dr. Ruddy noted that appellant was asymptomatic and had been working regular duty prior to November 5, 2015. However, after the activities of November 5, 2015, she became symptomatic related to the activities of pushing and pulling carts and supplies over a carpet, pushing and pulling carts from an elevator to a lobby across another carpeted floor, and performance of repetitive activities involving the upper extremities, including placing chairs into an upright position. Dr. Ruddy noted, "These activities would increase the stresses and strains across the cervical spine by increasing loads across the spine and particularly the cervical disc that would put pressure on the spinal cord creating symptomology."

By decision dated April 28, 2017, OWCP declined to modify the decision dated February 12, 2016.

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 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 he or she actually experienced the employment incident at the time, place, and in the manner alleged.[7] Second, the employee must submit

[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] *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).

sufficient evidence to establish that the employment incident caused a personal injury.[8] Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.[9] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and the accepted employment incident.[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 incident identified by the employee.[11]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish left shoulder and neck conditions causally related to the accepted November 5, 2015 employment incident.

Appellant submitted a series reports from her physicians, including Drs. Stoev, Holze, Ruddy, and Sered detailing her prior shoulder surgeries, degenerative conditions, and other preexisting conditions which did not contain a statement of causal relationship between her diagnosed conditions and documented dates prior to the accepted employment incident of November 5, 2015. The Board has held that medical evidence which predates the date of a traumatic injury has no probative value on the issue of causal relationship of a current medical condition.[12]

In a report dated November 9, 2015, Dr. Ruddy examined appellant and diagnosed cervical spondylosis, bilateral shoulder impingement syndrome, and left upper extremity ulnar neuropathy. He noted neck pain, right shoulder pain, and left shoulder pain. Dr. Ruddy observed degenerative changes throughout the cervical spine, a slight flattening to the cord at C4-5 without myelomalacia, and a slight prominence to the central canal possibly reflecting a presyrinx state at C7-T1, but with no appreciable compression to the C8 nerve roots. On December 2, 2015 Dr. Ruddy explained the results of the November 27, 2015 MRI scan and diagnosed spinal cord pressure at C4-5 and C5-6 related to degenerative spur formation. On December 31, 2015 Dr. Stoev examined appellant and diagnosed stenosis due to degenerative disc disease at C4-5, C5-6, and C6-7; and a disc herniation in the upper thoracic area at T4-5 without compression of the spinal cord. In a report dated October 4, 2016, Dr. Cohen examined appellant and diagnosed complex regional pain syndrome of the right upper limb. He noted that she had a history of anterior cervical discectomy and fusion and a left posterior cervical foraminotomy at C5-6 and C6-7, and visited that day for a follow-up post a right stellate ganglion block on October 10, 2016, which did not provide relief for her right upper extremity. The Board has held that a medical report is of limited probative value regarding

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

[9] *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-56 (2006); *D'Wayne Avila*, 57 ECAB 642, 649 (2006).

[10] *J.J.*, Docket No. 09-0027 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

[11] *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[12] *V.N.*, Docket No. 16-1427 (issued December 13, 2016).

causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to employment factors.[13] As none of these medical reports provide medical rationale as to the cause of appellant's diagnosed conditions they are insufficient to establish her claim.

In support of his claim appellant submitted additional medical and surgical reports. In reports dated November 4, 10, and 21, 2016, Dr. Cohen noted his treatment of appellant and noted her diagnosed conditions. In an April 4, 2016 report, Dr. Gallardo noted appellant's ongoing complaints and he documented her April 22, 2016 left posterior/cervical foraminectomy at C5-6 and C6-7 and anterior cervical discectomy and fusion from C5-7 with use of titanium plates and screws. He noted that the surgeries were completed without complications. The Board finds that these medical reports also do not provide medical rationale as to the cause of appellant's diagnosed conditions and thus they are insufficient to establish her claim.

In medical reports dated February 16 and August 17, 2016, Dr. Ruddy provided medical reports which noted that appellant was asymptomatic and working regular duties prior to November 5, 2015, but after that date she became symptomatic related to the activities of pushing and pulling carts and supplies over a carpet, pushing and pulling carts from an elevator to a lobby across another carpeted floor, and performance of repetitive activities involving the upper extremities, including placing chairs into an upright position. He opined that these activities would increase the stresses and strains across the cervical spine by increasing loads across the spine and particularly the cervical disc that would put pressure on the spinal cord creating symptomology. The Board has held that 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 a causal relationship.[14] Without a well-rationalized differentiation of the symptoms of appellant's preexisting degenerative conditions from any possible symptoms of aggravation resulting from the incident of November 5, 2015, Dr. Ruddy's opinion is insufficient to establish appellant's claim.[15]

Finally, appellant has submitted diagnostic testing reports in support of her claim. The Board has explained that diagnostic studies lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.[16] These reports are therefore also insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence to support her allegation that she sustained an injury causally related to the incident of November 5, 2015, the Board finds that she has not met her burden of proof to establish a claim.

On appeal counsel argues that appellant has submitted sufficient evidence to establish a causal relationship between her diagnosed conditions and the November 5, 2015 employment

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

[14] *Supra* note 9.

[15] *Id.*

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

incident. 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 did not meet her burden of proof to establish an injury causally related to the accepted November 5, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the April 28, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 13, 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