United States Department of Labor
Employees' Compensation Appeals Board

K.M., Appellant	)	
and	)	**Docket No. 18-1740**
	)	**Issued: May 10, 2019**
DEPARTMENT OF THE NAVY, MILITARY SEALIFT COMMAND, Norfolk, VA, Employer	)	

Appearances:
Alan J. Shapiro, 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 September 18, 2018 appellant, through counsel, filed a timely appeal from a July 30, 2018 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish that his lumbar conditions were causally related to the accepted December 26, 2016 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 May 2, 2017 appellant, then a 68-year-old radio electronics technician, filed an occupational disease claim (Form CA-2) alleging that he developed a sciatic nerve injury on December 26, 2016 when he climbed on a table to reset a clock and slipped while in the performance of duty. He related that he first became aware of the medical condition on December 26, 2016 and realized that it was caused or aggravated by his federal employment on December 27, 2016, the day he stopped work.

In support of his claim, appellant submitted physical therapy notes dated March 27, and May 1, and 2, 2017, which related that he was seen for complaints of recurring lower lumbar back pain and intermittent left lower extremity pain and weakness. The physical therapist reported diagnoses of lumbar sciatica, L4-5 and L5-S1 lumbar degenerative disc disease, Grade 1 spondylolisthesis, and L4-5 nerve root impingement.

On May 25, 2017 OWCP converted the claim to a traumatic injury claim rather than an occupational disease claim as the injury described occurred during the course of a single work shift.

In a development letter also dated May 25, 2017, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of medical and factual evidence needed and provided a questionnaire for his completion. By separate letter of even date, OWCP requested that the employing establishment provide information regarding appellant's work status. It afforded both parties 30 days to respond.

Appellant subsequently submitted a December 30, 2016 x-ray report, a January 1, 2017 magnetic resonance imaging (MRI) scan, and physical therapy notes covering the period March 27 to May 25, 2017. He also submitted an additional statement in which he described his injury.

In an attending physician's report (Form CA-20) dated June 7, 2017, Dr. Ismail S. Ahmed, a Board-certified internist, diagnosed left sciatica with excessive left leg pain.[3] He described the December 26, 2016 incident when appellant climbed on top of a table to change a clock battery, slipped, and landed on his back. Dr. Ahmed reported that appellant had sustained an injury to the same area that he had injured when he fell down stairs at work in August 2008, which had healed. Examination findings included severe spinal stenosis, L4-5 foraminal stenosis, and impingement of the L5 nerve root. Dr. Ahmed checked a box marked "yes" to the question of whether the diagnosed condition had been caused or aggravated by the December 26, 2016 work incident and wrote "direct correlation to [appellant's] fall." He indicated that this injury required hospitalization with admission on December 27, 2016 and discharge on January 4, 2017.

By decision dated July 6, 2017, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between the accepted December 26, 2016 employment incident and the diagnosed medical conditions. It noted that appellant had a preexisting lumbar radiculopathy and sciatica which had been accepted by OWCP under OWCP File No. xxxxxx591 on October 27, 2008. On August 10, 2017 OWCP received

[3] The record also contains an attending physicians report (Form CA-20) from Dr. Ahmed received on June 15, 2017, which referenced OWCP File No. xxxxxx591 and an injury date of August 22, 2008.

appellant's August 2, 2017 request for a telephonic hearing before an OWCP hearing representative, which was also postmarked August 2, 2017. The telephonic hearing was held on December 13, 2017.

By decision dated January 23, 2018, an OWCP hearing representative affirmed the denial of appellant's claim.

Subsequent to the hearing representative's decision, OWCP received progress notes dated September 5 and 30, and December 26, 2017, as well as a September 29, 2017 surgical report and October 2, 2017 discharge summary from Dr. Mario M. Sertich, a Board-certified neurosurgeon. It also received physical therapy notes covering the period October 17 to December 15, 2017 and a September 29, 2017 lumbosacral x-ray interpretation.

Dr. Sertich, in his September 5, 2017 report, noted that appellant had experienced degenerative spinal problems for the past 10 years. Appellant reported a worsening of pain, more on the left than on the right. Dr. Sertich reviewed an MRI scan, which revealed significant L2-3, L3-4, and L4-5 spinal stenosis. Physical examination and medical history findings were detailed. He diagnosed lumbar facet arthritis, chronic bilateral low back pain with bilateral sciatica, and lumbar stenosis with neurogenic claudication. Dr. Sertich recommended decompressive laminectomy surgery.

In a September 29, 2017 operative report, Dr. Sertich performed L2-3, L3-4, and L4-5 decompressive laminectomy *via* the left side based on a diagnosis of L2-3, L3-4, and L4-5 spinal stenosis. On September 30, 2017 he observed that appellant had considerable pain following his back surgery. Dr. Sertich diagnosed L2-4, L3-4, and L4-5 spinal stenosis.

On December 26, 2017 appellant was seen for complaints of back pain and occasional left sciatic pain by Dr. Sertich. Dr. Sertich noted that appellant was status three months after having left-sided decompressive surgery. He provided examination findings and diagnosed lumbar facet arthritis, left-sided sciatica, and lumbar stenosis with neurogenic claudication.

By decision dated July 30, 2018, OWCP denied modification of its prior decision, finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed medical conditions and the accepted December 26, 2016 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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[5] 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

[4] *Supra* note 2.

[5] OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

employment injury.[6] 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.[7]

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.[8] 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 sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[10]

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 incident identified by the claimant.[11] This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the incident. The weight of 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 lumbar conditions were causally related to the accepted December 26, 2016 employment incident.

OWCP received reports from Dr. Ahmed. In a June 7, 2017 Form CA-20, Dr. Ahmed diagnosed left sciatica with excessive left leg pain, and noted a prior August 2008 employment injury. He noted the history of appellant's December 26, 2016 employment incident and concluded that there was a direct correlation between the diagnosed left sciatica and the accepted incident. Dr. Ahmed also checked a box marked "yes" indicating that the diagnosed conditions were caused by the employment incident. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking a box marked "yes" to a form question, without explanation or rationale, that opinion has limited probative value and is insufficient to

[6] *N.C.*, Docket No. 17-0425 (issued June 21, 2018); *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[7] *N.C., id.; S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[8] *R.B.*, Docket No 17-2014 (issued February 14, 2019); *B.F.*, Docket No. 09-0060 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 6.

[9] *S.F.*, Docket No. 18-0296 (issued July 26, 2018); *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

[10] *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 6.

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

[12] *S.H.*, Docket No. 17-1660 (issued March 27, 2018); *James Mack*, 43 ECAB 321 (1991).

establish a claim.[13] Dr. Ahmed did not specifically explain how appellant's December 26, 2016 employment incident physiologically caused the diagnosed conditions. A conclusory statement regarding causal relationship is of limited probative value.[14] Thus, this report is insufficient to establish appellant's claim.

The record also contains several reports from Dr. Sertich, diagnosing L2-3, L3-4, and L4-5 spinal stenosis. Dr. Sertich, however, offered no opinion regarding the cause of the diagnosed conditions. 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.[15] For this reason, Dr. Sertich's reports are insufficient to establish appellant's claim.

Appellant also submitted reports from physical therapists. These reports, however, do not constitute competent medical evidence because physical therapists are not considered "physicians" as defined under FECA.[16] As such, this evidence is of no probative value and is insufficient to meet appellant's burden of proof.

OWCP also received diagnostic reports. The Board has held that reports of diagnostic tests lack probative value as they do not provide an opinion on the causal relationship between appellant's employment duties and the diagnosed conditions.[17]

As appellant has not submitted rationalized medical evidence establishing causal relationship between his diagnosed conditions and the accepted employment incident, the Board finds that appellant has not met his burden of proof.

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 lumbar conditions were causally related to the accepted December 26, 2016 employment incident.

[13] *L.M.*, Docket No. 18-1274 (issued February 6, 2019).

[14] *See R.D.*, Docket No. 18-1551 (issued March 1, 2019); *B.B.*, Docket No. 18-1036 (issued December 31, 2018); *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

[15] *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018); *Ellen L. Noble*, 55 ECAB 530 (2004).

[16] 5 U.S.C. § 8101(2) provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *See* 5 U.S.C. § 8102(2); *M.M.*, Docket No. 16-1617 (issued January 24, 2017); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants and physical therapists are not competent to render a medical opinion under FECA). *See also Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

[17] *K.K.*, Docket No. 18-1209 (issued March 7, 2019).

ORDER

IT IS HEREBY ORDERED THAT the July 30, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 10, 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