United States Department of Labor
Employees' Compensation Appeals Board

A.S., Appellant	)	
and	)	**Docket No. 19-0915**
	)	**Issued: November 22, 2019**
DEPARTMENT OF THE NAVY, NORFOLK NAVAL SHIPYARD, Portsmouth, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 25, 2019 appellant, through counsel, filed a timely appeal from a November 8, 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.

[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 left lower extremity condition causally related to the accepted June 6, 2013 employment incident.

FACTUAL HISTORY

On June 7, 2013 appellant, then a 54-year-old marine machine mechanic, filed a traumatic injury claim (Form CA-1) alleging that on June 6, 2013 he sustained an upper left leg (groin) area injury while in the performance of duty. He indicated that he slipped while descending a ladder at work and felt a twinge in his left leg. Appellant did not stop work.

Appellant submitted two reports dated June 6, 2013 from Dr. Nicolas L. Schockett[3] who indicated that appellant had tripped while descending a ladder and landed on his left leg. He presented with complaints of left leg pain around the groin area.

In a separate narrative statement dated June 6, 2013, appellant indicated that at approximately 7:30 a.m. on June 6, 2013 he was descending the main ladder (stairwell) on the USS New York when his right foot got stuck. When it became free, his left leg slipped and he later felt a sharp pain in the groin area of his left leg. Appellant stated that it became very difficult to put full weight on his left leg.

On May 14, 2014 Dr. Edward W. Lambert, a Board-certified orthopedic surgeon, indicated that appellant was seen for a preoperative orthopedic examination for a left total hip arthroplasty which he performed on June 6, 2014. In a duty status report (Form CA-17) dated June 10, 2014, he advised that appellant was totally disabled from work due to slipping and straining his left hip.

In reports dated June 18 and July 21, 2014, Dr. Jennifer B. Bernstein, a neurologist, diagnosed osteoarthritis localized primary, left hip.

On July 21, 2014 Dr. Devin Oakes, a general practitioner, advised that appellant would be working full duty when he returned from leave on August 11, 2014.

In an attending physician's report (Form CA-20) dated November 3, 2014, Dr. Prashant Bagalkotkar, a family practitioner, diagnosed osteoarthritis and related that appellant had fallen down a ladder and injured his left hip. In a duty status report (Form CA-17) dated November 4, 2014, Dr. Bagalkotkar diagnosed "sprain" and released appellant to full-time work as of June 6, 2013.

On January 5, 2015 Dr. Lambert opined that appellant had fully recovered from his left hip replacement and provided work restrictions of no ladder climbing, no crawling, no walking on uneven surfaces, and no heavy lifting/carrying more than 45 pounds.

[3] The Board is unable to determine the specialty of Dr. Schockett.

In an April 24, 2017 report, Dr. Bagalkotkar opined that appellant had reached maximum medical improvement (MMI).

On October 23, 2017 counsel requested a schedule award on behalf of appellant and submitted a report dated October 9, 2017 from Dr. Robert W. Macht, a general surgeon, who diagnosed status post total left hip replacement surgery and status post total left knee replacement surgery and opined, based on the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*[4] (A.M.A., *Guides*) that appellant had 74 percent permanent impairment of the left lower extremity due to his status post total left hip and left knee replacements surgeries.

In a March 15, 2018 development letter, 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 indicated that it had reopened the claim for formal consideration because a claim for wage-loss compensation had been received. OWCP requested that appellant provide additional factual and medical information in support of his claim, and afforded him 30 days to respond.[5]

By decision dated April 19, 2018, OWCP accepted that the June 6, 2013 employment incident occurred as alleged, but denied appellant's claim, finding that he had not established a diagnosed medical condition causally related to the accepted employment incident and, thus, the requirements had not been met for establishing an injury as defined by FECA.

On April 24, 2018 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

A telephonic hearing was held before an OWCP hearing representative on August 27, 2018. Appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence.

Appellant subsequently submitted a report dated September 20, 2018 from Dr. Bagalkotkar. He stated that appellant was injured on the job on June 6, 2013 and was evaluated that same day by another provider who had diagnosed left groin strain as a result of tripping down a ladder, falling and landing on the left leg. Dr. Bagalkotkar found that an x-ray of the left hip showed moderate arthritis in both hips, left worse than right. Conservative treatment was administered with anti-inflammatory medications and appellant eventually underwent a left total hip replacement in June 2014. Dr. Bagalkotkar indicated that appellant had asymptomatic arthritis prior to injury and he opined that this injury could have significantly accelerated his arthritis in the left hip due to his traumatic injury. He stated that it was uncommon for arthritis to progress so rapidly without other significant contributing factors. Dr. Bagalkotkar concluded that if this injury

[4] A.M.A., *Guides* (6th ed. 2009).

[5] On March 16, 2018 appellant filed a claim for a schedule award (Form CA-7).

had not occurred, appellant's arthritis would not have progressed so rapidly to require surgery within one year of his fall.

By decision dated November 8, 2018, OWCP's hearing representative affirmed OWCP's April 19, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[6] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, 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, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[7] These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[8]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. 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 time, place, and in the manner alleged.[9] Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[10]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[11] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[12] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).[13]

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[6] *Supra* note 2.

[7] *K.V.*, Docket No. 18-0947 (issued March 4, 2019); *M.E.*, Docket No. 18-1135 (issued January 4, 2019); *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

[8] *K.V.* and *M.E., id.*; *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *G.C.*, Docket No. 18-0506 (issued August 15, 2018).

[10] *Id.*

[11] *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

[12] *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

[13] *Id.*; *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

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.[14]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left lower extremity condition causally related to the accepted June 6, 2013 employment incident. In support of his claim, appellant submitted several reports from Dr. Bagalkotkar. Dr. Bagalkotar did not provide an opinion on causal relationship in either his November 4, 2014 duty status report (Form CA-17) or his April 24, 2107 narrative. As such, the Board finds that these reports are of no probative value. Medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.[15]

In his September 20, 2018 report, Dr. Bagalkotkar explained that appellant had asymptomatic arthritis prior to the alleged employment incident. He opined that the traumatic employment incident on June 6, 2013 accelerated appellant's left hip arthritis, noting that it was uncommon for arthritis to progress so rapidly without other contributing factors. While he identified the specific employment incident alleged by appellant, he did not provide a pathophysiological explanation as to how those activities either caused or contributed to appellant's diagnosed condition.[16] The Board has consistently held that complete medical rationalization is particularly necessary when there are preexisting conditions involving the same body part,[17] and has required medical rationale differentiating between the effects of the work-related injury and the preexisting condition in such cases.[18] Thus, the Board finds that the report from Dr. Bagalkotkar is insufficient to meet appellant's burden of proof.

Dr. Lambert, in a report dated June 10, 2014, described the June 6, 2013 employment incident and offered an opinion generally supporting causal relationship. While he opined that appellant was totally disabled for work due to slipping and straining his left hip, he did not sufficiently explain how falling off a ladder caused the strain or why employment factors occurring over the course of only one day caused or contributed to his osteoarthritis and left hip replacement surgery. As noted, the need for medical rationale is particularly important given that Dr. Lambert was treating appellant for a preexisting condition.[19] Dr. Lambert did not sufficiently explain how

[14] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *See R.D.*, Docket No. 18-1551 (issued March 1, 2019).

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

[16] *Id.*

[17] *K.R.*, Docket No. 18-1388 (issued January 9, 2019).

[18] *See, e.g., A.J.*, Docket No. 18-1116 (issued January 23, 2019); *M.F.*, Docket No. 17-1973 (issued December 31, 2018); *J.B.*, Docket No. 17-1870 (issued April 11, 2018); *E.D.*, Docket No. 16-1854 (issued March 3, 2017); *P.O.*, Docket No. 14-1675 (issued December 3, 2015).

[19] *Id.*

the accepted work incident altered appellant's preexisting conditions, and thus his opinion is of diminished probative value.[20]

Although Dr. Lambert provided work restrictions in his January 5, 2015 report, he did not address whether the restrictions were due to the effects of the accepted June 6, 2013 employment incident. As he did not provide an opinion on causal relationship, his report is of no probative value.[21] Thus, it too is insufficient to establish appellant's claim.

Appellant was also followed by Drs. Bernstein, Oakes, Schockett, and Macht; however, as none of these physicians addressed causal relationship, their reports are of no probative value and insufficient to meet appellant's burden of proof.[22]

As appellant has not submitted rationalized medical evidence sufficient to establish an injury causally related to the accepted employment incident, the Board finds that he has not met his burden of proof.

On appeal counsel contends that Dr. Bagalkotkar's report was relevant, probative, and rationalized; therefore, appellant's claim should have been accepted. However, as explained above, Dr. Bagalkotkar's reports, as well as the other medical reports of record, are insufficient to meet appellant's 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 a left lower extremity condition causally related to the accepted June 6, 2013 employment incident.

[20] *K.C.*, Docket No. 17-1693 (issued October 29, 2018).

[21] *See supra* note 14.

[22] *T.R.*, Docket No. 18-1272 (issued February 15, 2019); *see also L.B.* and *D.K.*, *supra* note 15.

ORDER

IT IS HEREBY ORDERED THAT the November 8, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 22, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board