United States Department of Labor
Employees' Compensation Appeals Board

A.J., Appellant	)	
and	)	**Docket No. 19-1167**
	)	**Issued: November 8, 2019**
U.S. POSTAL SERVICE, SALISBURY POST OFFICE, Salisbury, NC, Employer	)	

Appearances:
Erik B. Blowers, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 30, 2019 appellant, through counsel, filed a timely appeal from a February 4, 2019 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 to consider the merits of this case.[3]

[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.*

[3] The Board notes that, following the February 4, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a traumatic injury causally related to the accepted October 18, 2017 employment incident.

FACTUAL HISTORY

On November 21, 2017 appellant, then a 44-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 18, 2017 he pushed a loaded parcel buggy and injured his back while in the performance of duty. He stopped work on November 21, 2017. In a November 21, 2017 statement, appellant described a popping sensation in his low back with pain radiating into the lower extremities while pushing a parcel buggy to his delivery vehicle earlier that day. He noted that he sustained a prior occupational lumbar injury on September 4, 2015, accepted by OWCP for an aggravation of lumbar spondylosis without myelopathy or radiculopathy.[4] A.D., appellant's supervisor, confirmed that appellant had sustained a prior accepted back injury in September 2015, but chose to claim a new traumatic injury.

Dr. Paul Alan Withers, a Board-certified physiatrist, in his November 21, 2017 report, restricted appellant to sedentary duty with no driving, and lifting limited to five pounds. Appellant accepted a modified-duty position on November 25, 2017.

In a November 29, 2017 development letter, OWCP advised appellant of the deficiencies of his claim. It requested additional factual and medical evidence from appellant and afforded him 30 days to respond. No additional evidence was received.

By decision dated January 8, 2018, OWCP denied appellant's claim finding that he had not met his burden of proof to provide evidence sufficient to establish that the incident occurred as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On March 12, 2018 appellant, through counsel, requested reconsideration, asserting that the evidence of record was sufficient to establish that the October 18, 2017 employment incident occurred, as alleged. Counsel submitted a February 22, 2018 statement from appellant describing the claimed October 18, 2017 employment incident, and witness statements by coworkers T.G. and S.M.

In a report dated November 21, 2017, Dr. Withers noted appellant's history of an L3 disc herniation with radiculopathy in 2012, which resolved and remained stable until a 2015 incident while bending to put down a box caused a recurrence of lumbar pain and radiculopathy. A lumbar magnetic resonance imaging (MRI) scan in 2015 demonstrated lumbar facet arthropathy without spinal stenosis or disc pathology. Appellant underwent bilateral medial branch blocks at L3, L4, and L5 on June 6, 2017, radiofrequency ablation at L3, L4, and L5 on the right on June 26, 2017, L3, L4, and L5 on the left on July 11, 2017, and a series of lumbar epidural injections on October 3 and November 14, 2017. He recently complained of bowel incontinence without bladder issues. Dr. Withers diagnosed low back pain with possible lumbar or thoracic stenosis. He noted that this

[4] On June 22, 2017 under File No. xxxxxx499, OWCP accepted that on September 4, 2015, appellant squatted to place a parcel on a porch while in the performance of duty and sustained an aggravation of lumbar spondylosis without myelopathy or radiculopathy.

was an "aggravation of his prior injury and not a new injury." In a March 6, 2018 addendum, Dr. Withers clarified that appellant had reported "a new injury at work" on October 18, 2017 with increased pain.

In a January 4, 2018 report, Dr. Withers noted that a recent MRI scan showed "continued severe facet arthropathy and L5-S1 bilateral neuroforaminal stenosis," and multilevel thoracic disc bulging causing spinal stenosis. He diagnosed severe lumbar facet arthropathy, bilateral L5-S1 neuroforaminal stenosis, multilevel thoracic disc bulging causing mild spinal stenosis, and lumbar pain with bilateral radiculopathy. Dr. Withers recommended a neurosurgical consultation.

In a report dated March 26, 2018, Dr. Tuan Huynh, a Board-certified family practitioner, noted a September 4, 2015 employment injury, and the October 18, 2017 employment incident in which appellant "injured his low back by pushing a parcel cart." He diagnosed lumbar spondylosis without radiculopathy, and lumbosacral disc degeneration. Dr. Huynh opined that appellant injured his low back on October 18, 2017 by pushing a parcel mail cart at work.[5]

By decision dated June 29, 2018, OWCP modified its prior decision finding that appellant had established the October 18, 2017 employment incident occurred as alleged. However, it continued to deny the claim as he had not met his burden of proof to establish causal relationship between his lumbar conditions and the accepted October 18, 2017 employment incident.

On July 24, 2018 appellant, through counsel, requested reconsideration. He submitted additional medical evidence.

In a July 12, 2018 report, Dr. Huynh provided a detailed history of the accepted September 4, 2015 employment injury and the accepted October 18, 2017 employment incident. He noted that appellant's duties as a rural carrier required repetitive heavy lifting, causing compression of the lumbar vertebrae over time, superimposed on age-related dehydration and degradation of the disc substance. Dr. Huynh explained that spondylosis was a term used to describe degenerative change in the intervertebral discs and adjacent structures. Lumbar spondylosis denoted "the natural deterioration of the lower spine due to compression and age." Appellant's preexisting lumbar spondylosis, including dehydrated lumbar discs with diminished elasticity, resulted in disc space narrowing and nerve root impingement. Dr. Huynh explained that pushing the loaded parcel buggy on October 18, 2017 caused a direct "strenuous injury" to the previously asymptomatic degenerated disc and lumbar spondylosis, resulting in radiculopathy and lumbar pain.

By decision dated October 19, 2018, OWCP denied modification finding that causal relationship had not been established.

On November 14, 2018 appellant, through counsel, requested reconsideration. He submitted additional medical evidence.

A March 25, 2018 lumbar MRI scan demonstrated L5-S1 facet osteoarthritis producing a grade 1 anterolisthesis, bilateral foraminal stenosis at L5-S1, and segmental instability.

[5] On its face, Dr. Huynh's March 26, 2018 report refers to the year of the October 18th employment incident as 2018 rather than 2017. This appears to be a harmless typographical error.

By decision dated February 4, 2019, OWCP denied modification as the evidence of record did not contain sufficient medical rationale supporting causal relationship to meet appellant's burden of proof.

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,[6] 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.[7] 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.[8]

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.[9] 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.[10] 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.[11] 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.[12]

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.[13] 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

[6] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[7] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[8] *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).

[9] *R.B.*, Docket No. 17-2014 (issued February 14, 2019); *B.F.*, Docket No. 09-0060 (issued March 17, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

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

[11] *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 9.

[12] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[13] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

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 this case is not in posture for a decision.

In support of his claim, appellant provided a July 12, 2018 report from Dr. Huynh indicating that he was aware of appellant's underlying lumbar conditions as the result of the accepted September 4, 2015 employment injury, including lumbar spondylosis. He found that the accepted October 18, 2017 employment incident caused a new strain injury to a previously asymptomatic degenerated lumbar disc, resulting in lumbar pain and radiculopathy.

Dr. Huynh provided a detailed explanation of lumbar spondylosis and degenerative disc disease. He explained that lumbar spondylosis described the natural process of disc degeneration and dehydration due to compression and age. The degenerated discs had lost elasticity, causing disc space narrowing with nerve root impingement. Dr. Huynh also explained that pushing the parcel buggy at work on October 18, 2017 caused a direct strain injury to degenerated, but previously asymptomatic, lumbar discs and lumbar spondylosis, resulting in lumbar pain and radiculopathy. He thus presented a detailed biomechanical explanation of how appellant's lumbar condition resulted from the accepted October 18, 2017 employment incident. Although Dr. Huynh's reports are insufficient to discharge appellant's burden of proving that his current lumbar condition(s) was caused or aggravated by the October 18, 2017 employment incident, his opinion is of sufficient probative quality to require further development of the case record by OWCP, and is uncontroverted in the record.[15]

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. The claimant has the burden of proof to establish entitlement to compensation. However, OWCP shares responsibility in the development of the evidence to see that justice is done.[16]

On remand OWCP should refer appellant to an appropriate specialist, along with the case record and a statement of accepted facts. Its referral physician should provide an evaluation and a rationalized medical opinion as to the relation of the claimed lumbar condition(s) to the accepted October 18, 2017 employment incident. Any contribution from the September 4, 2015 employment injury should also be discussed. After such further development of the case record as OWCP deems necessary, including administratively combining OWCP File Nos. xxxxxx499 and xxxxxx037, it shall issue a *de novo* decision.

[14] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *R.A.*, Docket No. 19-0423 (issued August 7, 2019); *D.S.*, Docket No. 17-1359 (issued May 3, 2019).

[15] *R.A.*, *supra* note 14; *D.S.*, *supra* note 14.

[16] *Id.*; *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the February 4, 2019 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: November 8, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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