United States Department of Labor
Employees' Compensation Appeals Board

B.C., Appellant	)	
and	)	**Docket No. 20-0498**
	)	**Issued: August 27, 2020**
U.S. POSTAL SERVICE, POST OFFICE, Sturgis, MI, Employer	)	

Appearances:
Anita Lewallen, for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 3, 2020 appellant, through his representative, filed a timely appeal from a December 12, 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 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 medical condition causally related to the accepted January 5, 2017 employment incident.

FACTUAL HISTORY

On January 5, 2017 appellant, then a 46-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that he experienced back pain when the back door of a long life vehicle (LLV) fell and struck him while in the performance of duty. He stopped work on January 5, 2017 and returned to work on January 8, 2017.

On January 5, 2017 appellant was treated in the emergency room by Dr. Robert Sherwin, Board-certified in emergency medicine, for lumbar contusion, and lumbago with sciatica of the left side. He placed appellant off work from January 5 to 8, 2017. A January 5, 2017 computerized tomography scan of the lumbar spine revealed no fracture or other acute abnormality, L4-5 broad-based left paracentral disc protrusion causing effacement of the central canal, L5-S1 moderate disc space narrowing, mild spondylosis, and diffuse disc bulging. Patrick MacKnick, a certified physician assistant working in the emergency room, also treated appellant on January 5, 2017 for back and neck injuries which appellant indicated occurred when a heavy door fell on his lower back. He diagnosed lumbar contusion.

In a January 5, 2017 authorization for examination and/or treatment (Form CA-16), the employing establishment authorized appellant to seek medical care. In Part B of the Form CA-16, attending physician's report, dated January 9, 2017, Kristin A. Smith, a physician assistant, reported that he was struck by a mail truck door at work and injured his lower back. She diagnosed trauma to lumbar spine and associated pain. Ms. Smith checked a box marked "Yes" indicating that the diagnosed conditions were caused or aggravated by the described employment activity. She opined that appellant was totally disabled from work beginning January 5, 2017. In a duty status report (Form CA-17) of even date, Ms. Smith diagnosed left spine pain and trauma and advised that he was disabled from work.

On February 10, 2017 Dr. Mark J. Krinock, a Board-certified neurologist, treated appellant for acute low back pain due to trauma. Appellant reported that, on January 5, 2017 while at work, the rear door of his vehicle fell onto his lower back. Dr. Krinock noted a history of low back surgery approximately 20 years ago and diagnosed acute back pain due to trauma, chronic low back pain, degenerative disc disease of the lumbar spine, left leg pain, and lumbar spondylosis. In a duty status report (Form CA-17) dated February 10, 2017, he diagnosed back and leg pain and noted that appellant continued to be disabled. Dr. Krinock prepared a certification of healthcare provider on February 22, 2017 and noted that appellant experienced back pain radiating into the left lower extremity. He continued to find appellant disabled from work.

OWCP received a February 24, 2017 x-ray of the lumbar spine, which revealed very mild degenerative disc changes at L5-S1. A magnetic resonance imaging scan of the lumbar spine of even date revealed previous left laminectomy discectomy at L4-5, granulation tissue within the epidural space, possible left central extruded disc material, small right central disc protrusion

partially mineralized at L5-S1 abutting and mildly displacing the right S1 nerve root, and additional mild degenerative changes.

In a March 16, 2017 development letter, OWCP advised that, when appellant's claim was received, it appeared to be a minor injury that resulted in minimal or no lost time from work. Therefore, payment of a limited amount of medical expenses was administratively approved without formal consideration of the merits of his claim. OWCP reopened appellant's claim for consideration of the merits. It advised him of the deficiencies of his claim and requested additional factual and medical evidence from him. OWCP afforded appellant 30 days to respond.

Appellant attended physical therapy treatment on March 1, 2017.

Dr. Krinock treated appellant on March 6 and April 3, 2017 in follow-up and diagnosed acute back pain, acute back pain due to trauma, chronic low back pain, lumbar degenerative disc disease, herniated nucleus pulposus at L4-5, left lumbar radiculopathy, lumbar spondylosis, and recurrent herniation of lumbar disc. He recommended an epidural steroid injection. In a letter dated March 21, 2017, Dr. Krinock advised that appellant did well following his back surgery in the 1990's and it was not until January 5, 2017, when appellant bent over and the door of his vehicle fell onto his back that he experienced severe low back pain radiating into the left lower extremity. He noted that the x-ray reports demonstrated a recurrent disc herniation at the L4-5 level, which correlated with appellant's back and left leg pain. Dr. Krinock continued to recommended an epidural steroid injection. In a duty status report (Form CA-17) dated March 9 and April 3, 2017, he diagnosed disc herniation and lumbar radiculopathy and noted that appellant remained disabled.

On March 16, 2017 Dr. Kevin Drew, a Board-certified anesthesiologist, treated appellant for low back and left leg pain, which began after appellant was struck by a truck door on January 5, 2017. His history was significant for prior lumbar surgery. Dr. Drew diagnosed subacute low back and left leg pain, left S1 radiculopathy, history of previous L4-5 laminectomy, possible internal disc disruption, and lumbar zygapophyseal joint pain. He recommended an epidural steroid injection.

By decision dated April 28, 2017, OWCP denied appellant's traumatic injury claim finding that the medical evidence submitted was insufficient to establish causal relationship between his diagnosed condition and the accepted January 5, 2017 employment incident.

On August 15, 2017 appellant requested reconsideration. He submitted a July 14, 2017 letter from Dr. Krinock, who described appellant's injury which occurred when the weight of a vehicle door fell on his back causing pain. Dr. Krinock opined that "this truly represents a cause-and-effect" and a traumatic aggravation of appellant's condition. In a Form CA-17 dated June 15, 2017, he diagnosed disc herniation and returned appellant to part-time work four hours per day. In a July 10, 2017 Form CA-17, Dr. Krinock diagnosed disc herniation and returned appellant to work six hours a day with restrictions.

By decision dated October 23, 2017, OWCP denied modification of the decision dated April 28, 2017.

On March 20, 2018 appellant requested reconsideration. He submitted a February 28, 2018 report from Dr. Krinock, who noted a history of appellant's back surgery and the subsequent January 5, 2017 work injury. Dr. Krinock opined that the new onset of symptoms following a trauma had resulted in a recurrent disc herniation at the L4-5 level and unequivocally accelerated any potential decline in function.

By decision dated June 14, 2018, OWCP denied modification of the decision dated October 23, 2017.

On April 18, 2019 appellant requested reconsideration. He submitted a March 6, 2019 report from Dr. Jerry Powell, a Board-certified family practitioner, who noted a history of injury and medical treatment. Dr. Powell diagnosed other intervertebral disc displacement lumbosacral region, disc disorder/lumbar spine radiculopathy, and other intervertebral disc degeneration in the lumbar spine. On January 5, 2017 he noted that appellant was leaning into the back of his LLV to get mail and the back door cable and spring broke causing the 100-pound door to come crashing down on appellant's lumbar spine trapping him. Dr. Powell opined that as the door impacted appellant's lumbar spine it caused the previously surgically repaired disc at L4-5 to herniate and caused a moderate diffuse disc bulging at L5-S1. He noted that the jelly like nucleus disc, which moved within the outer annulus according to the pressures of the spine, was displaced causing the protrusion and bulging. Dr. Powell indicated that the 100-pound weighted doors impact to the lumbar spine was in excess of a tolerable force and caused the L4-5 and L5-S1 discs to protrude and bulge causing a decreased amount of space for the nerve to exit, causing nerve impingement and radiculopathy. He opined that appellant sustained a herniation of his lumbar disc at L4-5, the protrusion of L5-S1 of the central disc displacing the right S1 nerve root, acceleration of the degenerative changes at L5-S1, and permanent aggravation of lumbosacral osteoarthritis as a direct result of the 100-pound door falling on his back while performing his work duties.

By decision dated July 15, 2019, OWCP denied modification of the decision dated June 14, 2018.

On September 13, 2019 appellant through his representative, requested reconsideration. He submitted an amended report from Dr. Powell dated September 12, 2019 and corrected the date of thoracic and lumber spine x-rays from September 12, 2019 to May 16, 2013. Dr. Powell explained that the disc herniation at L4-5, L5-S1 disc space narrowing vacuum disc phenomena, and moderate disc bulging with mild spondylosis was due to the new trauma that occurred on January 5, 2017, which also aggravated and exacerbated the degenerative osteoarthritic condition that was previously asymptomatic.

By decision dated December 12, 2019, OWCP denied modification of the July 15, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United

[3] *Id.*

States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,[4] 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.[5] 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.[6]

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. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[7]

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[8] 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 specific employment factors identified by the employee.[9]

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.[10]

Pursuant to OWCP's procedures, no development of a claim is necessary where the condition reported is a minor one which can be identified on visual inspection by a lay person (*e.g.*,

[4] *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[9] *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[10] 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).

burn, laceration, insect sting or animal bite).[11] No medical report is required to establish a minor condition such as a laceration.[12]

ANALYSIS

The Board finds that appellant has met his burden of proof to establish a lumbar contusion causally related to the accepted January 5, 2017 employment incident.

On January 5, 2017 the date of the accepted employment incident, appellant received treatment in the emergency room by Dr. Sherwin and Mr. MacKnick for, among other things, a lumbar contusion as a result of a heavy door falling on appellant's back while in the performance of duty. The diagnosis of lumbar contusion was visible on inspection and consistent with the locus and mechanism of injury. As such, the Board finds that this evidence is sufficient to establish that appellant sustained a lumbar contusion causally related to the accepted February 21, 2019 employment incident.[13] Upon return of the case record OWCP shall make payment and/or reimbursement of medical expenses and wage-loss compensation, if any, with regard to the accepted lumbar contusion.

The Board further finds that the case is not in posture for decision regarding whether the diagnosed conditions of other intervertebral disc displacement lumbosacral region, disc disorder/lumbar spine radiculopathy, and other intervertebral disc degeneration in the lumbar spine were causally related to or aggravated by the accepted January 5, 2017 employment incident.

Dr. Powell provided a proper factual and medical history of injury. In his reports dated March 6 and September 12, 2019, he opined that the impact of the 100-pound work vehicle door on appellant's back on January 5, 2017 caused the acceleration of degenerative changes at L5-S1 and permanent exacerbation and aggravation of osteoarthritis in his lumbar spine. Dr. Powell opined that as the door impacted appellant's lumbar spine it caused the previously surgically repaired disc at L4-5 to herniate and caused a moderate diffuse disc bulging at L5-S1. He further explained that the jelly like nucleus disc, which moved within the outer annulus according to the pressures of the spine, was displaced during the impact causing the protrusion and bulging. Dr. Powell indicated that the impact of the 100-pound door on appellant's lumbar spine was in excess of a tolerable force which caused the L4-5 and L5-S1 discs to protrude and bulge, causing a decreased amount of space for the nerve to exit and causing nerve impingement and radiculopathy. He concluded that appellant sustained a lumbar disc herniation at L4-5, protrusion of L5-S1 of the central disc displacing the right S1 nerve root, acceleration of degenerative changes at L5-S1, and permanent aggravation of lumbosacral osteoarthritis as a direct result of the work-related injury when the back door cable spring broke and the 100-pound door fell on appellant's back while performing his work duties.

[11] *See id*. at Chapter 2.800.6(a) (June 2011).

[12] *Id.*; *see S.H.*, Docket No. 20-0113 (issued June 24, 2020) (the Board accepted a contusion as causally related to the accepted employment incident).

[13] *Supra* notes 11 and 12.

The Board finds that the reports from Dr. Powell are sufficient to require further development of the medical evidence. Dr. Powell is a Board-certified physician who is qualified in his field of medicine to render rationalized opinions on the issue of causal relationship and he provided a comprehensive understanding of the medical record and case history. His report suggests a pathophysiological explanation as to how a 100-pound LLV door, which fell on appellant's back while at work resulted in a diagnosis of other intervertebral disc displacement of the lumbosacral region, disc disorder/lumbar spine radiculopathy, and other intervertebral disc degeneration in the lumbar spine. The Board has long held that it is unnecessary that the evidence of record in a case be so conclusive as to suggest causal connection beyond all possible doubt. Rather, the evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound, and logical.[14] Accordingly, Dr. Powell's March 6 and September 12, 2019 medical opinion is well-rationalized and is therefore sufficient to require further development of appellant's claim.[15]

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[16] OWCP has an obligation to see that justice is done.[17]

On remand OWCP shall refer appellant to an appropriate specialist, along with the case record and a statement of accepted facts. Its referral physician shall provide a well-rationalized opinion as to whether his diagnosed conditions of other intervertebral disc displacement lumbosacral region, disc disorder/lumbar spine radiculopathy, and other intervertebral disc degeneration in the lumbar spine were causally related to or aggravated by the accepted January 5, 2017 employment incident. After such further development of the case record as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

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

[14] *W.M.*, Docket No. 17-1244 (issued November 7, 2017); *E.M.*, Docket No. 11-1106 (issued December 28, 2011); *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983) and cases cited therein.

[15] *J.H.*, *supra* note 5; *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *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).

[16] *See id. See also A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

[17] *See B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

ORDER

IT IS HEREBY ORDERED THAT the December 12, 2019 decision of the Office of Workers' Compensation Programs is reversed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 27, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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