United States Department of Labor
Employees' Compensation Appeals Board

M.B., Appellant	)	
and	)	**Docket No. 19-1655**
	)	**Issued: April 7, 2020**
DEPARTMENT OF THE ARMY, U.S. ARMY CORPS OF ENGINEERS, Seattle, WA, Employer	)	

Appearances:
Howard L. Graham, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 1, 2019 appellant, through counsel, filed a timely appeal from a February 28, 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 that the acceptance of his claim should be expanded to include additional conditions as causally related to his accepted April 21, 2016 employment injury.

FACTUAL HISTORY

On May 24, 2016 appellant, then a 49-year-old power plant operator, filed a traumatic injury claim (Form CA-1) alleging that on April 21, 2016 he tripped over low hanging wires and struck the concrete floor with both knees while in the performance of duty. On June 8, 2017 OWCP accepted the claim for contusion of the right knee and meniscus tear of the right knee. Appellant stopped work on May 23, 2016.

Appellant treated with Dr. Navin Nagaraj, a Board-certified internist, on August 7, 2017 for chronic knee and back pain. Dr. Nagaraj reported that in April 2016 appellant tripped at work and wrenched both knees and sprained his back. Appellant related that his back pain was progressively worsening and associated with leg pain and weakness. Dr. Nagaraj noted an x-ray of the thoracic spine from August 2016 revealed mild multilevel thoracic disc space narrowing, endplate spurring, with significant spondylosis within the cervical spine. Similarly, an x-ray of the lumbar spine revealed trace anterolisthesis of L5 upon S1, pars interarticularis defect, facet athropathy at L2-S1, and mild degenerative endplate spurring at L4-5. Findings on examination of the knees revealed decreased range of motion, patellar tendon tenderness, and tenderness of the thoracic and lumbar spine. Dr. Nagaraj diagnosed osteoarthritis of the lumbar and thoracic spines with radiculopathy, chronic instability of the right knee, and chondromalacia of the right knee.

Appellant followed up with Dr. Nagaraj again on August 17, 2017 and issued a progress note and letter. Dr. Nagaraj noted that appellant presented with worsening back and bilateral knee pain. Appellant reported that there was a delay of nine months in OWCP in accepting his claim and as a result he lost his job and his back condition progressed to the point where he was unable to do the lightest of labor without aggravating his condition. He asserted that the delay and time spent without treatment for his knee injuries caused his lower back injury. Appellant also reported that earlier in the year he felt a "pop" in his back and sharp pain shooting down both legs while trying to pick up his daughter. Findings on examination revealed decreased range of motion and tenderness of the thoracic and lumbar spine, positive straight leg raises bilaterally, and crepitus in the bilateral knees. Dr. Nagaraj diagnosed acute meniscal tear of the right knee, contusion of the right knee, and lumbar radiculopathy. He opined that lumbar radiculopathy was a consequential injury to the right knee injury sustained in April 2016. Dr. Nagaraj explained that the right knee injury caused appellant to favor his left knee and left side thereby changing the way he walked.

On August 22, 2017 Dr. Casey Cornelius, an osteopath and orthopedic surgeon, evaluated appellant for right knee injury which occurred at work. He diagnosed chondromalacia patella of the right knee.

Appellant was treated by Dr. Neil N. Saldua, a Board-certified orthopedist, on October 22, 2017 for lumbar and thoracic spine pain. Dr. Saldua reported an onset in April 2016 when appellant fell approximately three feet at work. Findings on examination revealed tenderness of

the cervical, thoracic and lumbar areas of the spine, and restricted range of motion of the lumbar spine. Dr. Saldua diagnosed low back pain after an on-the-job injury.

An x-ray of the lumbar spine dated October 23, 2017 revealed no fractures or dislocations, and no dynamic instability or spondylolisthesis.

A magnetic resonance imaging (MRI) scan of the lumbar spine dated October 31, 2017 revealed mild grade 1 anterolisthesis at L4-5, mild central canal narrowing at L4-5, mild neuroforaminal narrowing at L4-5 and L5-S1, small anterior endplate osteophytes at L2-3, and no evidence of herniated nucleus pulposus.

Dr. Saluda treated appellant in follow up on November 7, 2017 and January 9, 2018 for low back pain with radiation into the left lower extremity. He noted an essentially normal physical examination. Dr. Saluda reviewed the MRI scan and diagnosed grade 1 degenerative spondylolisthesis at L4-5 with right-sided L4-5 facet cyst. He recommended physical therapy and activity modification.

In a letter dated January 9, 2018, Dr. Saluda diagnosed grade 1 degenerative spondylolisthesis at L4-5. He indicated that appellant was injured on April 21, 2016 when he fell three feet at work. Dr. Saluda noted that on initial evaluation appellant's knees were the focus as they were bothering him the most. He opined that the work-related injury caused greater than 51 percent of his current symptoms.

Dr. Cornelius treated appellant in follow-up on January 12 and March 14, 2018 for persistent popping of the right knee with activity. He diagnosed right knee osteoarthritis and recommended platelet rich plasma (PRP) injections.

Appellant received physical therapy treatment on January 15 and March 12, 2018.

An x-ray of the right knee dated March 19, 2018 revealed narrowing of the medial joint space and patellofemoral space, and small osteophyte formation.

On April 30, 2018 OWCP referred appellant, the case file, a statement of accepted facts (SOAF), and a series of questions to Dr. Mary Rose Anne Cunningham, a Board-certified orthopedic surgeon, for a second opinion examination and opinion on appellant's employment-related conditions and disability. It requested that Dr. Cunningham determine whether appellant continued to suffer from residuals of his work-related injury and whether he was capable of returning to gainful employment.

In a May 10, 2018 medical report, Dr. Cunningham described appellant's April 21, 2016 employment injury, noting that he tripped on wires and struck the concrete with both knees. She discussed appellant's medical history, reviewed diagnostic reports, and provided findings on physical examination. Dr. Cunningham diagnosed bilateral patellofemoral osteoarthritis, preexisting, low back pain, secondary to degenerative spondylotic changes, not work related, and right knee contusion and right knee medial meniscal tear. She opined that the diagnosed conditions were not considered to be related to the incident of April 21, 2016 by direct cause, aggravation, precipitation, or acceleration. Dr. Cunningham noted that appellant sustained a mechanical, low energy, ground level fall and would not be expected to have ongoing sequelae. She noted that

there was no mention of a low back injury until August 7, 2017, nearly 16 months after the work event. Dr. Cunningham further noted multiple areas of degenerative changes in his lumbar and thoracic spine and patellofemoral arthrosis which developed over a prolonged time (even decades) and would not be the result of the ground level fall in April 2016. She noted that appellant's active lifestyle including playing ice hockey and international mountain climbing would be expected to cause more significant impact upon appellant's arthritic conditions than a ground level fall. Dr. Cunningham opined that, based on these factors, she could not relate the back symptomology or ongoing knee symptoms to the alleged work event. She found no residuals of the work injury which was considered resolved and concluded that appellant did not require any further treatment or work restrictions related to the accepted conditions.

By decision dated June 20, 2018, OWCP denied expansion of the acceptance of appellant's claim, finding that the medical evidence of record was insufficient to establish that the additional condition of degenerative spondylolisthesis of the lumbar spine was causally related to the accepted April 21, 2016 employment injury. It noted that the second opinion report of Dr. Cunningham established that appellant did not develop degenerative spondylolisthesis of the lumbar spine as a consequence of his accepted injury.

On July 19, 2018 appellant, through counsel, requested an oral hearing before an OWCP hearing representative which was held on December 14, 2018.

OWCP subsequently received a December 19, 2018 report wherein Dr. Cornelius noted that he treated appellant in follow up and diagnosed right knee osteoarthritis.

In a report dated February 25, 2019, Dr. Nagaraj noted treating appellant since February 28, 2013 for lumbar and knee injuries sustained at work on August 7, 2011.[3] He described appellant's April 21, 2016 employment injury, noting that he tripped on wires and struck the concrete with both knees. Dr. Nagaraj opined that appellant's lumbar condition arose as a consequential condition due to the delay in seeking treatment for his right knee condition and the ergonomic issues it caused to appellant's gait and change in walk. He concluded with a reasonable medical certainty that the April 21, 2016 accepted employment injury contributed to the current lumbar condition which was diagnosed by MRI scan on October 31, 2017. Dr. Nagaraj diagnosed mild grade 1 anterolisthesis at L4-5 and mild central canal narrowing at L4-5, mild right neuroforaminal narrowing at L4-5 and mild left neuroforaminal narrowing at L5-S1, small anterior endplate osteophytes present at L2-3, and no evidence of acute herniated nucleus pulposus.

By decision dated February 28, 2019, an OWCP hearing representative affirmed the June 20, 2018 decision.

[3] OWCP assigned that claim File No. xxxxxx575 and accepted it for bilateral sprain of the lateral collateral ligament of the knee. Appellant's claims have not been administratively combined.

LEGAL PRECEDENT

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[4]

To establish causal relationship, the employee must submit rationalized medical opinion evidence.[5] The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 accepted employment injury.[6] 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.[7]

ANALYSIS

The Board finds that appellant has not established that the acceptance of his claim should be expanded to include additional conditions as causally related to his accepted April 21, 2016 employment injury.

In support of his request for claim expansion, appellant submitted an August 7, 2017 report from Dr. Nagaraj who noted that, while at work in April 2016, appellant tripped and wrenched both knees and sprained his back. Dr. Nagaraj diagnosed osteoarthritis of the lumbar and thoracic spines with radiculopathy, chronic instability of the right knee, and chondromalacia of the right knee. However, he did not offer medical rationale explaining how the accepted employment injury caused the diagnosed lumbar condition.[8] Dr. Nagaraj did not explain how the mechanism of injury would have physiologically caused or aggravated the additional diagnosed conditions.[9]

On August 17, 2017 Dr. Nagaraj diagnosed acute meniscal tear of the right knee, contusion of the right knee, and lumbar radiculopathy. He opined that the lumbar radiculopathy was a consequential injury as a result of the right knee injury sustained in April 2016. Dr. Nagaraj explained that the right knee injury caused appellant to favor his left knee and left side thereby changing the way he walked causing the left knee and lumbar back conditions. He further determined that the nine-month delay by OWCP in accepting his claim for his knee injuries caused his lower back injury. Similarly, in a report dated February 25, 2019, Dr. Nagaraj noted diagnoses

[4] *See T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[5] *See S.A.*, Docket No. 18-0399 (issued October 16, 2018).

[6] *See P.M.*, Docket No. 18-0287 (issued October 11, 2018).

[7] *Id*.

[8] *See C.F.*, Docket No. 18-1156 (issued January 22, 2019); *T.M.*, Docket No. 08-0975 (issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

[9] *See F.H.*, Docket No. 18-1238 (issued January 18, 2019); *J.R.*, Docket No. 18-0206 (issued October 15, 2018).

and opined that appellant's lumbar condition arose as a consequential condition due to the delay in seeking treatment for his right knee condition and the ergonomic issues it caused to appellant's gait and change in walk. He noted with a reasonable medical certainty the accepted injury of April 21, 2016 contributed to the current lumbar condition. While he provided affirmative opinions which supported causal relationship, Dr. Nagaraj did not offer a rationalized medical explanation in any of his reports to support his opinion. Medical evidence that provides a conclusion, but does not offer a rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[10]

Other reports from Dr. Cornelius dated August 22, 2017 to December 19, 2018, evaluated appellant for right knee injury which occurred at work and diagnosed chondromalacia patella of the right knee and osteoarthritis. These reports are of no probative value as to whether acceptance of the claim should be expanded as they do not address the additional diagnosed conditions. The Board has held that 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.[11] Thus, these reports are insufficient to meet appellant's burden of proof.

Reports from Dr. Saldua dated October 22, 2017 to January 9, 2018 noted a history of injury and diagnosed grade 1 degenerative spondylolisthesis at L4-5. Dr. Saldua opined that the work-related injury was greater than 51 percent of the cause of his current symptoms. While his opinion is generally supportive of causal relationship, Dr. Saldua again did not provide adequate medical rationale explaining the basis of his opinion on causal relationship.[12] Thus, the Board finds that his reports are insufficient to establish appellant's burden of proof.

OWCP further developed the issue of whether the acceptance of appellant's claim should be expanded to include degenerative spondylolisthesis of the lumbar spine by referring him to Dr. Cunningham, a second opinion examining physician. On May 10, 2018 Dr. Cunningham discussed appellant's April 21, 2016 employment injury and subsequent complaints of bilateral knee and lumbar pain. She diagnosed bilateral patellofemoral osteoarthritis, preexisting, low back pain, secondary to degenerative spondylotic changes, not work related, and right knee contusion and right knee medial meniscal tear. Dr. Cunningham opined that the diagnosed conditions were not considered to be related to the incident of April 21, 2016 by direct cause, aggravation, precipitation, or acceleration. She noted that appellant sustained a mechanical, low energy, ground level fall which would not have caused the ongoing sequelae. Rather, Dr. Cunningham noted that appellant's active lifestyle including playing ice hockey and international mountain climbing trips would have a more significant impact upon his arthritic condition than the April 21, 2016 incident. She noted multiple areas of degenerative changes in his lumbar and thoracic spine and patellofemoral arthrosis which developed over a prolonged time (decades) and would not be the result of the ground level fall in April 2016. Dr. Cunningham further noted that there was no

[10] *C.V.*, Docket No. 18-1106 (issued March 20, 2019); *M.E.*, Docket No. 18-0330 (issued September 14, 2018); *A.D.*, 58 ECAB 149 (2006).

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

[12] *See M.B.*, Docket No. 18-0906 (issued November 21, 2018).

mention of a low back injury until August 7, 2017, nearly 16 months after the work event. She found no residuals of the work injury which was considered resolved.

The record contained x-ray and MRI scan reports; however, the Board has held that diagnostic studies standing alone lack probative value as they do not address whether the employment injury caused any of the diagnosed conditions.[13] Appellant also submitted reports from a physical therapist. This evidence has no probative value; however, because physical therapists are not considered physicians as defined under FECA.[14]

The Board thus finds that appellant has not met his burden of proof to establish that the acceptance of his claim should be expanded to include additional conditions as causally related to the accepted April 21, 2016 employment injury.

On appeal counsel argues that the statement of accepted facts (SOAF) did not contain all the accepted conditions and that appellant sustained additional disabling injuries and conditions causally related to the accepted April 21, 2016 employment injury. The Board notes that the SOAF was accurate and complete noting accepted conditions of right knee contusion and right meniscus tear. As explained above, the evidence of record does not contain sufficient medical rationale to expand appellant's claim to include additional diagnosed conditions.[15]

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 established that the acceptance of his claim should be expanded to include additional conditions as causally related to the accepted April 21, 2016 employment injury.

[13] *See V.H.*, Docket No. 18-1282 (issued April 2, 2019); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

[14] 5 U.S.C. § 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See also Roy L. Humphrey*, 57 ECAB 238 (2005). *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *Jane A. White*, 34 ECAB 515, 518 (1983) (physical therapists are not considered physicians under FECA).

[15] *See M.M.*, Docket No. 19-0951 (issued October 24, 2019) (where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury); *R.J.*, Docket No. 17-1365 (issued May 8, 2019).

ORDER

IT IS HEREBY ORDERED THAT the February 28, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 7, 2020
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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