United States Department of Labor
Employees' Compensation Appeals Board

B.L., Appellant	)	
and	)	**Docket No. 20-0652**
	)	**Issued: December 17, 2020**
DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION, Washington, DC, 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:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 31, 2020 appellant, through counsel, filed a timely appeal from a January 8, 2020 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.[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 January 8, 2020 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 diagnosed medical conditions causally related to the accepted April 19, 2019 employment incident.

FACTUAL HISTORY

On April 19, 2019 appellant, then a 36-year-old special agent, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained rhabdomyolysis when participating in Special Weapons and Tactics (SWAT) team tryouts while in the performance of duty. He noted that he was involved in multiple tests, which included physical training exercises, combat shooting, and problem-solving tests. On the reverse side of the claim form, the employing establishment acknowledged that appellant was injured in the performance of duty. Appellant stopped work on April 19, 2019.

In an April 24, 2019 attending physician's report, Part B of an authorization for medical examination and/or treatment (Form CA-16),[4] a physician with an illegible signature noted that appellant was injured when performing physical exercise. The physician diagnosed rhabdomyolysis and checked a box marked "Yes" to indicate that the diagnosed condition was caused or aggravated by the described employment activity.

An x-ray of appellant's chest, dated April 24, 2019, revealed bibasilar abnormal lung opacity.

In a development letter, dated May 14, 2019, OWCP noted that when appellant's claim was first 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 otherwise challenge the case, payment of a limited amount of medical expenses was administratively approved. It noted that it had reopened the claim for consideration and requested additional medical evidence, including a physician's opinion explaining how the employment incident caused or aggravated the diagnosed condition. OWCP afforded appellant 30 days to submit the necessary evidence.

By decision dated June 21, 2019, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a valid medical diagnosis causally related to the accepted April 19, 2019 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On July 3, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant submitted additional evidence including laboratory testing results, dated April 19 to 26, 2019, which showed the results of hematology, metabolic, and urine testing.

In an April 19, 2019 report, Dr. Andrew Garvie, a Board-certified specialist in emergency medicine, noted that appellant had been experiencing thigh cramping for the past three days following a tryout for work which required physical exertion. He examined appellant and

[4] The Board notes that the first page of the Form CA-16, is not contained in the case record.

reviewed his laboratory testing results. Dr. Garvie diagnosed nontraumatic rhabdomyolysis and acute kidney injury.

Dr. Moses Kear, a Board-certified specialist in internal medicine, noted in an April 19, 2019 report that appellant had been experiencing bilateral thigh cramping for the prior three days. He indicated that appellant was drinking water during the strenuous exercise required for his training, but had problems urinating. Dr. Kear examined appellant and reviewed his laboratory testing results. He diagnosed exertional rhabdomyolysis, abnormal liver function, dehydration, and acute kidney injury.

In an April 20, 2019 report, Dr. Abla Awadh, a Board-certified specialist in internal medicine, noted that appellant was experiencing abdominal discomfort and nausea. She examined him and reviewed his laboratory testing. Dr. Awadh diagnosed acute rhabdomyolysis and acute renal failure. She noted in an April 21, 2019 progress note appellant's complaints of thigh swelling, nausea, and epigastric discomfort. Dr. Awadh examined him and diagnosed acute renal failure, acute rhabdomyolysis, thigh swelling, and abdominal pain.

Dr. Sandhu Ankur, a Board-certified nephrologist, noted in an April 21, 2019 report, that appellant had severe quadriceps issues following his work training. She examined him and reviewed his laboratory testing. Dr. Ankur diagnosed exertional rhabdomyolysis, hypocalcemia setting of hypovolemic state, and thigh swelling.

In an April 22, 2019 report, Dr. Jenna McAllister, a Board-certified specialist in internal medicine, noted that appellant was having some improvement in urinary output, but was still experiencing pain and stiffness in the legs. She examined him and reviewed his laboratory testing results. Dr. McAllister diagnosed exertional rhabdomyolysis, acute kidney injury, leg swelling, and abnormal liver function tests.

In an April 22, 2019 report, Dr. Thomas Officer, a Board-certified specialist in nephrology, noted that appellant's hypocalcemia had resolved and his thigh swelling was improving. He examined appellant and reviewed his laboratory test results. Dr. Officer diagnosed acute renal failure, acute rhabdomyolysis, metabolic acidosis, and thigh swelling.

Dr. Officer noted in an April 23, 2019 report, that appellant's metabolic acidosis seemed to be stabilizing, but appellant's acute renal failure was worsening. He examined appellant and reviewed appellant's laboratory test results. Dr. Officer diagnosed acute rhabdomyolysis, acute renal failure, and metabolic acidosis.

In an April 23, 2019 report, Dr. McAllister noted that appellant's urine output was improving, but he still had stiffness and pain in the legs. She examined him and diagnosed exertional rhabdomyolysis, acute kidney injury, leg swelling, and abnormal liver function tests.

Dr. McAllister noted in an April 24, 2019 follow-up report that appellant was hypoxic overnight and his chest x-ray showed pleural effusions. She examined him and diagnosed exertional rhabdomyolysis, hypoxia, acute kidney injury, leg swelling, and abnormal liver function tests.

In an April 24, 2019 report, Dr. Thomas Fortune, a Board-certified nephrologist, noted that appellant had experienced some shortness of breath and significant edema in both legs. He

examined appellant and reviewed appellant's laboratory testing results. Dr. Fortune diagnosed acute rhabdomyolysis, acute kidney injury, volume overload, hypertension, and edema.

In an April 25, 2019 report, Dr. McAllister noted a slight improvement in appellant's edema. She examined him and diagnosed exertional rhabdomyolysis, hypoxia, acute kidney injury, leg swelling, abnormal liver function tests, and hypertension.

In an April 25, 2019 report, Dr. Fortune noted that appellant had edema in both legs, but swelling had improved. He examined appellant and diagnosed acute kidney injury, hypertension, rhabdomyolysis, and volume overload.

Appellant also submitted hospital progress notes from registered nurses dated April 20 to 25, 2019 which showed his treatment progression.

In an April 26, 2019 report, Dr. Fortune noted decreased edema in the legs and diagnosed acute rhabdomyolysis, acute kidney injury, volume overload, and hypertension.

In an April 26, 2019 discharge report, Dr. McAllister noted that appellant's exertional rhabdomyolysis from strenuous activity was improving. She examined him and diagnosed exertional rhabdomyolysis, hypoxia, acute kidney injury, leg swelling, abnormal liver function tests, and hypertension. Dr. McAllister indicated that appellant's conditions were improving and ordered no strenuous activity pending a follow-up appointment.

Appellant submitted hospital discharge notes, order notes, medication lists, flowsheets, care timelines, and care plans related to his April 19 to 26, 2019 hospital stay.

Appellant also submitted laboratory test results, dated April 28 to 30, 2019, which showed the results of hematology, metabolic, and urine testing.

In an April 28, 2019 report, Dr. Brian Wexler, a Board-certified specialist in emergency medicine, noted that appellant returned to the emergency department with generalized weakness and bilateral lower extremity swelling. He examined appellant and reviewed appellant's laboratory test results. Dr. Wexler diagnosed nausea, hypertension, traumatic rhabdomyolysis, acute renal failure, and hypertensive crisis.

In an April 29, 2019 report, Dr. Mirza Baig, a Board-certified specialist in internal medicine, noted that appellant had bi-temporal headaches, intermittent nausea, and elevated blood pressure. He examined appellant and reviewed appellant's laboratory test results. Dr. Baig diagnosed accelerated essential hypertension, acute kidney injury, exertional rhabdomyolysis, nausea, and episodic headache.

In an April 29, 2019 report, Dr. Awadh noted that appellant was not in acute distress. She examined him and diagnosed isolated systolic hypertension, acute renal failure, and rhabdomyolysis. In an April 30, 2019 report, Dr. Awadh noted that appellant's kidney function was improving and that his rhabdomyolysis had almost resolved. She examined him and indicated that he was stable for discharge.

In an April 30, 2019 report, Dr. Robert Canady, a Board-certified nephrologist, noted that appellant was improving and was permitted to discharge from a renal perspective. He examined appellant and diagnosed acute kidney injury, exertional rhabdomyolysis, and hypertension.

Appellant submitted hospital discharge notes, order notes, medication lists, flowsheets, care timelines, and care plans related to his April 28 to 30, 2019 hospital stay.

In a May 7, 2019 report, Dr. Canady noted that appellant had no new problems, symptoms, or complaints after being discharged from the hospital. He indicated that appellant still had mild headaches, but was slowly improving. Dr. Canady examined appellant and diagnosed acute kidney injury, hypertension, and exertional rhabdomyolysis. He recommended that appellant avoid strenuous exertion and heavy lifting for the next three to four weeks.

Appellant submitted normal basic metabolic panel test results, dated May 31, 2019.

In a July 11, 2019 report, Dr. Canady noted that appellant was admitted to the hospital on April 19, 2019 and was discharged on April 26, 2019. He indicated that appellant was diagnosed with rhabdomyolysis, acute kidney injury, and other conditions as noted in appellant's hospital records. Dr. Canady opined that appellant's conditions were precipitated by appellant's April 18 to 19, 2019 participation in tryouts for his work.

A telephonic hearing was held on October 16, 2019. Appellant testified that he had never had problems with exertional rhabdomyolysis, kidney failure, or hypertension before the employment incident. Counsel argued that Dr. Canady's opinion that appellant's work tryouts caused his rhabdomyolysis was a sufficient physiological explanation as rhabdomyolysis could be caused by overexertion and there were no other intervening causes.

By decision dated January 8, 2020, OWCP's hearing representative modified the June 21, 2019 decision, finding that appellant had established valid medical diagnoses in connection with the accepted April 19, 2019 employment incident. The claim remained denied, however, because the medical evidence of record was insufficient to establish a causal relationship between appellant's diagnosed conditions and the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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

[5] *Supra* note 2.

[6] *M.O.*, Docket No. 19-1398 (issued August 13, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[9] The second component is whether 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] 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 specific employment incident identified by the claimant.[12]

OWCP's procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection.[13] In clear-cut traumatic injury claims, such as a fall resulting in a broken arm, a physician's affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.[14]

ANALYSIS

The Board finds that appellant has met his burden of proof to establish the conditions of bilateral swelling and edema of the legs and thighs as casually related to the accepted April 19, 2019 employment injury.

In support of his claim, appellant submitted numerous reports dated April 19 through July 11, 2019 from Drs. Garvie, Kear, Awadh, Ankur, McAllister, Officer, Canady, and Fortune who diagnosed exertional rhabdomyolysis as well as visible conditions of thigh swelling, leg swelling, and edema. As noted above, OWCP's procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual

[7] *J.R.*, Docket No. 20-0496 (issued August 13, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[8] *B.M.*, Docket No. 19-1341 (issued August 12, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[9] *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[10] *D.M.*, Docket No. 20-0386 (issued August 10, 2020); *John J. Carlone*, 41 ECAB 354 (1989).

[11] *A.R.*, Docket No. 19-0465 (issued August 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[12] *W.L.*, Docket No. 19-1581 (issued August 5, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

[13] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(c) (January 2013).

[14] *Id*. at Chapter 2.805.3(d) (January 2013).

inspection.[15] The Board therefore finds that this evidence is sufficient to meet appellant's burden of proof that he sustained bilateral swelling/edema of the legs and thighs.

The Board further finds that this case is not in posture for decision as to whether appellant has met his burden of proof to establish additional diagnosed medical conditions causally related to the accepted April 19, 2019 employment injury.

Appellant was also diagnosed with exertional rhabdomyolysis and associated medical conditions with no clear visible manifestations, including acute kidney injury, acute renal failure, hypocalcemia setting of hypovolemic state, metabolic acidosis, hypoxia, volume overload, and hypertension. In his July 11, 2019 report, Dr. Canady opined that appellant's conditions were precipitated by his work participation in SWAT team tryouts on April 18 and 19, 2019. In clear-cut traumatic injury claims, where the fact of injury is established and is clearly competent to cause the condition described, a fully-rationalized medical opinion is not needed. The physician's diagnosis and an affirmative statement are sufficient to accept the claim.[16] The Board therefore finds that this report from Dr. Canady and appellant's other hospital reports of record are sufficient, when taken together, to require further development for these conditions.[17] Dr. Canady is a Board-certified specialist in nephrology who is qualified in his field of medicine to render rationalized opinions on the issue of causal relationship. He reviewed appellant's hospital records and provided a comprehensive understanding of the claimed mechanism of injury, exertion. Dr. Canady's opinion is supportive, unequivocal, bolstered by objective findings, and based on an accurate history.[18] His opinion is not contradicted by any substantial medical or factual evidence of record.[19] While the July 11, 2019 medical report of Dr. Canady is insufficiently rationalized to meet appellant's burden of proof to establish the acceptance of nonvisible conditions, it does explain a physiological process by which the accepted injury could have caused or aggravated the diagnosed conditions.[20] As such, further development of appellant's claim is required.[21]

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.[22] OWCP has an obligation to see that justice is done.[23]

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[15] *Supra* note 13.

[16] *Id.*; *see also S.S.*, Docket No. 20-0509 (issued August 18, 2020); *A.J.*, Docket No. 19-1289 (issued December 31, 2019).

[17] *C.H.*, Docket No. 20-0440 (issued August 3, 2020).

[18] *D.B.*, Docket No. 19-0504 (issued July 22, 2020).

[19] *Id.*

[20] *C.H.*, *supra* note 17.

[21] *Id.*

[22] *J.D.*, Docket No. 20-0404 (issued July 22, 2020); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978).

[23] *Id.*

Thus, the Board will remand the case to OWCP to obtain a rationalized medical opinion on the issue of whether appellant has sustained additional conditions causally related to the accepted April 19, 2019 employment injury. On remand OWCP shall prepare a statement of accepted facts and refer the matter to a specialist in the appropriate field of medicine. Upon referral, the physician shall conduct a physical evaluation, if deemed necessary, and provide a rationalized medical opinion as to whether any additional diagnosed conditions were caused or aggravated by the accepted April 19, 2019 employment injury. Following this, and any other further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has met his burden of proof to establish the conditions of bilateral swelling and edema of the legs and thighs as casually related to the accepted April 19, 2019 employment injury. The Board further finds that this case is not in posture for decision as to whether he has met his burden of proof to establish additional diagnosed medical conditions causally related to the accepted April 19, 2019 employment injury.[24]

[24] The Board notes that the case record contains an attending physician's report (Part B of a Form CA-16), dated April 24, 2019. A properly completed Form CA-16 form authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. 20 C.F.R. § 10.300(c); *P.R.*, Docket No. 18-0737 (issued November 2, 2018); *N.M.*, Docket No. 17-1655 (issued January 24, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the January 8, 2020 decision of the Office of Workers' Compensation Programs is reversed in part and set aside in part and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 17, 2020
Washington, DC

Christopher J. Godfrey, Deputy 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