

**United States Department of Labor
Employees' Compensation Appeals Board**

A.J., Appellant)	
)	
and)	Docket No. 20-1074
)	Issued: December 31, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Mount Pleasant, SC, Employer)	
)	

Appearances:
Joanne M. Wright, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On April 24, 2020 appellant, through her representative, filed a timely appeal from an April 6, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 her burden of proof to establish an expansion of the acceptance of the claim to include additional conditions as causally related to the accepted April 21, 2016 employment incident.

FACTUAL HISTORY

On April 25, 2016 appellant, then a 52-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 21, 2016 she stepped off a platform and her right leg gave out causing her to fall and sustain injuries to her back, shoulder, neck, knee, hip, and right knee while in the performance of duty. She did not immediately stop work.

In a separate statement, appellant indicated that on April 21, 2016 she began her day casing flats and letters while standing on a platform that was five inches high and four feet long. As she proceeded to prepare her route for delivery, she took a step and her right leg gave out, causing her to fall face first on the concrete floor. Appellant noted that she did not have a history of upper back sprain.

On May 4, 2016 appellant was treated by Dr. Howard L. Brilliant, a Board-certified orthopedist, for thoracic pain. She reported an injury at work on April 21, 2016, when her leg gave out and she fell face down on the floor. Dr. Brilliant noted findings on examination of pain and tenderness in the upper and mid thoracic spine and paraspinal muscle. X-rays of the thoracic spine revealed no acute fractures, dislocation, or other obvious abnormalities. Dr. Brilliant diagnosed contusion, sprain of the paraspinal muscles of the thoracic spine. In a duty status report (Form CA-17) dated May 4, 2016, he diagnosed sprain of the paraspinal muscles and noted that appellant could work with restrictions.

By decision dated June 8, 2016, OWCP denied appellant's traumatic injury claim, finding that the medical evidence submitted was insufficient to establish causal relationship between her diagnosed condition and the accepted April 21, 2016 employment incident.

OWCP subsequently received additional evidence. On June 21, 2016 Dr. Brilliant indicated that appellant was injured at work when her right leg gave way causing her to fall. He diagnosed a sprain and continued work restrictions. On July 25, 2016 Dr. Brilliant treated appellant in follow up for upper arm and upper back pain, which flared up when she tried to lift heavy objects. He instructed appellant to avoid strenuous activities. On August 10, 2016 Dr. Brilliant reevaluated appellant who reported that her shoulder was quite sore and uncomfortable. Examination revealed tenderness in the upper spine paraspinal muscles and he recommended limited activity and physical therapy.

On October 20, 2016 Dr. John W. Ellis, a Board-certified family practitioner, treated appellant for injuries sustained to her shoulders and cervical and thoracic spine during a fall at work on April 21, 2016. He diagnosed sprain of the right and left shoulder, sprain of the thoracic and cervical spine, and contusion of the right wrist and left wrist, resolved. Dr. Ellis opined that, based on his examination and review of the medical records, with reasonable medical certainty, it is more probable than not, that the injuries, impairments, and disabilities set forth in his diagnoses

arose out of and in the course of the employees employment and that employment factors and work duties contributed to, aggravated, or caused said injuries, disabilities, and impairment. He noted that appellant's right leg gave way, causing her to fall forward. Appellant was very tight and bracing herself when she landed, straining the muscles at the base of her neck, thoracic spine, and shoulder girdle areas. Dr. Ellis further noted that appellant had asymmetrical tightness in the right levator scapulae, rhomboid, and shoulder girdle area, which was consistent with an acute strain on April 21, 2016.

On November 23, 2016 appellant requested reconsideration.

By decision dated December 5, 2016, OWCP vacated its June 8, 2016 decision, finding that the medical evidence of record was sufficiently rationalized to establish causal relationship between a diagnosed thoracic back sprain and the accepted April 21, 2016 employment incident. However, it denied the acceptance of the additional conditions diagnosed by Dr. Ellis including sprain of right and left shoulder, sprain of the cervical spine, and contusion of the right and left wrist, resolved.³

OWCP subsequently received duty status reports (Form CA-17) from Dr. Brilliant dated January 23 through June 12, 2017, diagnosing thoracic and cervical spine sprain, right and left shoulder sprain, and contusion of the bilateral wrists. Dr. Brilliant noted that appellant could work with restrictions. In other reports from Dr. Brilliant dated March 20 through April 17, 2017, appellant reported improvement in the upper back and shoulder muscles. Dr. Brilliant continued limited duty, no heavy lifting or bending. On May 25, 2017 he saw appellant in follow up after an electromyogram and nerve conduction studies (EMG/NCV), which confirmed that there was no nerve root involvement. Dr. Brilliant continued the current restrictions. On June 12, 2017 appellant reported continued tenderness to the right upper shoulder blade. On August 10, 2017 Dr. Brilliant noted that appellant appeared to be stable and released her from treatment. On October 16, 2017 he treated appellant for disc and lower back injuries resulting from a separate work injury dated June 4, 2015.

On November 21, 2017 appellant requested reconsideration of the denial of expansion of the claim to include the additional conditions diagnosed by Dr. Ellis.

By decision dated February 12, 2018, OWCP denied modification of the December 5, 2016 decision.

On December 15, 2018 appellant requested reconsideration. In support of her request, she submitted an undated note from Dr. Brilliant who described her April 21, 2016 injury, noting that she was stepping down from a platform at work when her right leg gave out resulting in her falling down on the hard concrete floor. Dr. Brilliant explained that the force of her body striking the concrete flooring caused the injury to the musculature tissue of her upper back and shoulder region. He diagnosed sprain of the ligaments of her thoracic spine and chronic sprain and strain to the right shoulder girdle muscles. Dr. Brilliant opined "within a degree of medical certainty that the injury to her thoracic spine and right shoulder were caused when she fell while stepping down from a

³ By separate decision dated December 5, 2016, OWCP formally accepted sprain of the ligaments of the thoracic spine.

platform at work on April 21, 2016.” On April 19, 2018 he treated appellant for right shoulder pain and thoracic pain secondary to injuries at work. Dr. Brilliant diagnosed subacromial bursitis, tendinitis, and old sprain of spine muscles and continued work with restrictions.

By decision dated February 28, 2019, OWCP denied modification of the February 12, 2018 decision.

On February 12, 2020 appellant requested reconsideration. In support thereof, she submitted a January 30, 2020 report wherein Dr. Brilliant noted treating her in follow up for a three-year-old injury to her back and hips. Dr. Brilliant diagnosed lumbosacral disc disease, sprain, contusion, and arthritis. He continued with work restrictions.

By decision dated April 6, 2020, OWCP denied modification of the February 28, 2019 decision.

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 between the condition as well as any additional conditions claimed and the employment injury, an employee must submit rationalized medical 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 specific employment factors identified by the claimant.⁶

ANALYSIS

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

In an October 20, 2016 report, Dr. Ellis noted the history of injury and diagnosed sprain of the right and left shoulder, sprain of the thoracic and cervical spine, and contusion of the right wrist and left wrist, resolved. He explained that when the fall occurred she was very tight and bracing herself when she landed, straining the muscles at the base of her neck, thoracic spine, and shoulder girdle areas. Dr. Ellis further noted that appellant had asymmetrical tightness in the right levator scapulae, rhomboid, and shoulder girdle area, which was consistent with an acute strain on April 21, 2016.

⁴ *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁵ *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

⁶ *T.K., id.; I.J.*, 59 ECAB 408 (2008).

Dr. Brilliant, in undated report received on December 15, 2018, described appellant's April 21, 2016 injury, noting that she was stepping down from a platform at work when her right leg gave out resulting in her falling down on the hard concrete floor. He explained that the force of her body striking the concrete flooring caused the injury to the musculature tissue of her upper back and shoulder region. Dr. Brilliant diagnosed sprain of the ligaments of her thoracic spine, and chronic sprain and strain to the right shoulder girdle muscles. In conclusion, he opined that, within a degree of medical certainty, the injury to her thoracic spine and right shoulder were caused when she fell while stepping down from a platform at work on April 21, 2016.

The Board finds that these reports taken together are sufficient to require further development of the medical evidence. Drs. Ellis and Brilliant rendered rationalized opinions on the issue of causal relationship and provided a comprehensive understanding of the medical record and case history. Their reports provide a pathophysiological explanation as to how appellant's fall from a platform at work resulted in her diagnosed right shoulder conditions. 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.⁷ Accordingly, Drs. Ellis and Brilliant's medical opinions are rationalized and logical, and is therefore are sufficient to require further development of appellant's claim.⁸

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.⁹ OWCP has an obligation to see that justice is done.¹⁰

On remand OWCP shall refer appellant, a statement of accepted facts, and the medical record to an appropriate specialist. The chosen physician shall provide a rationalized opinion as to whether the diagnosed conditions are causally related to the accepted factors of appellant's federal employment. If the physician opines that the additional diagnosed conditions are not causally related, he or she must explain, with rationale, how or why the opinion differs from that of Drs. Ellis and Brilliant. Following this and such other further development as deemed necessary, OWCP shall issue a *de novo* decision regarding the expansion of appellant's claim.

⁷ *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.

⁸ *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *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).

⁹ *See id.* *See also A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

¹⁰ *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).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the April 6, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 31, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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