United States Department of Labor
Employees' Compensation Appeals Board

C.J., Appellant	)	
and	)	**Docket No. 19-1446**
	)	**Issued: June 30, 2020**
U.S. POSTAL SERVICE, BROOKLYN PROCESSING & DISTRIBUTION CENTER, Brooklyn, NY, 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
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On June 24, 2019 appellant, through counsel, filed a timely appeal from a June 6, 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.[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 June 6, 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 right leg condition causally related to the accepted September 27, 2017 employment incident.

FACTUAL HISTORY

On October 4, 2017 appellant, then a 64-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on September 27, 2017 he sustained injury to his right leg while in the performance of duty. He asserted that he pulled a muscle in his right leg due to lifting and pulling a pallet of mail. Appellant stopped work on September 28, 2017.

On September 27, 2017 the employing establishment properly executed an authorization for examination and/or treatment form (Form CA-16) which indicated that appellant was authorized to receive treatment for his claimed right leg condition.

In a September 28, 2017 report, Dr. Brian Zwern, Board-certified in emergency medicine, indicated that appellant visited the emergency department on September 27, 2017 and that he advised appellant that he could return to work on October 9, 2017. Appellant also submitted administrative documents from his September 27, 2017 emergency department visit.

In a development letter dated October 20, 2017, OWCP requested that appellant submit additional evidence in support of his claim for a September 27, 2017 traumatic injury, including a physician's opinion supported by a medical explanation as to how the reported employment incident caused or aggravated a medical condition. It provided a questionnaire for his completion which posed questions regarding the reported September 27, 2017 employment incident. OWCP afforded appellant 30 days to respond.

Appellant subsequently submitted an October 24, 2017 report from Dr. John J. Pellegrini, a Board-certified internist, who indicated that appellant was totally incapacitated commencing October 24, 2017 until an undetermined time due to a work-related injury sustained on September 27, 2017. In a duty status report (Form CA-17) dated October 24, 2017, he listed the date of injury as September 27, 2017 and provided a diagnosis "due to injury" of right calf muscle tear. Dr. Pellegrini opined that appellant was unable to work as he could not stand and could only engage in limited ambulation.

By decision dated December 1, 2017, OWCP accepted that the September 27, 2017 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim finding that he had not submitted any evidence "containing a medical diagnosis in connection with the injury and/or event(s)." Consequently, OWCP found that appellant failed to establish the medical component of fact of injury.

On December 22, 2017 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant submitted an October 24, 2017 electromyogram and nerve conduction velocity (EMG/NCV) study which revealed neuropathy and lumbar spine radiculopathy. An October 28, 2017 x-ray of the right knee/tibia noted unremarkable findings.

In a report dated December 7, 2017, Dr. Russell H. Silver, a Board-certified physiatrist, noted that appellant reported low back pain and detailed his performance of an ultrasound-guided lumbar injection. In an attending physician's report (Form CA-20) dated December 7, 2017, he diagnosed right capsulitis and traumatic arthritis.[4] Dr. Silver checked a box marked "Yes" indicating that the diagnosed conditions were caused or aggravated by the reported employment activity. He further noted that appellant was totally disabled from work commencing September 27, 2017.

OWCP also received a report of a December 18, 2017 x-ray of the lumbar spine, which revealed grade 1 anterolisthesis of L4, bilateral erosive facet degeneration, and mild right convexity thoracolumbar.

In January 11 and 25, 2018 reports, Dr. Silver noted that he treated appellant's low back pain with ultrasound guided injections. In an attending physician's report (Form CA-20) dated January 11, 2018, he diagnosed capsulitis and traumatic arthritis. Dr. Silver checked a box marked "Yes" indicating that the diagnosed conditions were caused or aggravated by the reported employment incident on September 27, 2017. He noted that appellant was disabled from work.

In a January 25, 2018 report, Dr. Silver noted that appellant reported muscle spasm and pain in the right leg and right knee. He indicated that appellant was undergoing physical therapy and injections and would be off work from September 27, 2017 through February 15, 2018.

In a March 27, 2018 report, Dr. Silver noted appellant's history of injury and referenced his findings from examination on October 24, 2017 which had revealed ecchymosis and pain in the right gastrocsoleus region and right knee. He indicated that appellant's diagnosis of right muscle tear in the right calf was a direct result of the accident that occurred on September 27, 2017. Dr. Silver noted that appellant continued to be partially disabled and required continuing physical therapy treatments and medication.[5]

A hearing was held on April 26, 2018, during which appellant testified regarding the claimed September 27, 2017 employment injury and the medical treatment he received for his right leg condition.

By decision dated July 9, 2018, OWCP's hearing representative affirmed the December 1, 2017 decision.

On March 15, 2019 appellant, through counsel, requested reconsideration of the July 9, 2018 decision. In support thereof, he submitted an undated report from Dr. Silver who noted that while performing his work duties on September 27, 2017 appellant "sustained an injury to his right calf and knee which has proven to be debilitating, preventing him from performing work." Appellant reported joining a steel handle to an industrial tool which aided him in pulling a metal container weighing over 1,000 pounds and that he experienced pain and a pop in his right leg. Dr. Silver noted that appellant was off work for one month with severe ecchymosis.

[4] Dr. Silver listed the reported history of injury as injury to the right knee and leg.

[5] Appellant also submitted administrative documents from visits to healthcare providers in 2017 and 2018.

He noted that appellant remained partially disabled and was unable to lift, push, or pull heavy objects. Dr. Silver continued medications and physical therapy.

By decision dated June 6, 2019, OWCP denied modification of the July 9, 2018 decision.

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 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]

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.[11] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[12]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right leg condition causally related to the accepted September 27, 2017 employment incident.

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[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] *B.P.,* Docket No. 16-1549 (issued January 18, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[10] *M.H.,* Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[11] *S.S.,* Docket No. 18-1488 (issued March 11, 2019).

[12] *J.L.,* Docket No. 18-1804 (issued April 12, 2019).

Appellant submitted an October 24, 2017 report from Dr. Pellegrini who indicated that appellant was totally incapacitated commencing October 24, 2017 until an undetermined time due to a work-related injury sustained on September 27, 2017. In a March 27, 2018 report, Dr. Silver noted that appellant was involved in a work-related injury on September 27, 2017 while pushing a heavy object at work and that he reported he felt a sharp pull in the right lower extremity. He indicated that appellant's diagnosis of right muscle tear of the right calf was a direct result of the accident that occurred on September 27, 2017. In an undated report, Dr. Silver noted that while performing his work duties on September 27, 2017 appellant "sustained an injury to his right calf and knee which has proven to be debilitating, preventing him from performing work." He noted that appellant reported joining a steel handle to an industrial tool which aided him in pulling a metal container weighing over 1,000 pounds and that he was off work for one month with severe ecchymosis. Although Dr. Pellegrini and Dr. Silver provided opinions that appellant sustained injury on September 27, 2017 due to performing work duties, neither physician provided a rationalized medical opinion explaining how the diagnosed medical conditions were causally related to the accepted September 27, 2017 employment incident. They did not explain the medical mechanics of how the accepted September 27, 2017 employment incident, *i.e.*, lifting and pulling a pallet of mail, was competent to cause the diagnosed conditions. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.[13] Therefore, these reports of Dr. Pellegrini and Dr. Silver are insufficient to establish appellant's claim.

Appellant submitted Form CA-20 attending physician's reports dated December 7, 2017 and January 11, 2018 from Dr. Silver who listed the date of injury as September 27, 2017 and diagnosed right capsulitis and traumatic arthritis. Dr. Silver checked a box marked "Yes" indicating that the diagnosed conditions were caused or aggravated by the reported employment activity. However, these reports are of limited probative value with respect to appellant's claim for a September 27, 2017 traumatic injury. Appellant's burden of proof includes the necessity of furnishing an affirmative opinion from a physician who supports his or her conclusion with sound medical reasoning.[14] Dr. Silver provided no rationale for his opinion on causal relationship. The Board has held that when a physician's opinion on causal relationship consists only of checking "Yes" to a form question, without more by the way of medical rationale, that opinion is of limited probative value and is insufficient to establish causal relationship.[15] As such, these reports of Dr. Silver are insufficient to meet appellant's burden of proof.

Appellant also submitted a September 28, 2017 report from Dr. Zwern who indicated that appellant visited the emergency department on September 27, 2017 and advised that he could return to work on October 9, 2017. In a Form CA-17 duty status report dated October 24, 2017, Dr. Pellegrini listed a date of injury of September 27, 2017 and provided a diagnosis due to injury of right calf muscle tear. In reports dated December 7, 2017, and January 11 and 25, 2018, Dr. Silver noted that he treated appellant's low back pain with ultrasound-guided injections. In another January 25, 2018 report, he indicated that appellant would be off work from September 27, 2017 through February 15, 2018. However, in these reports, Dr. Zwern, Dr. Pellegrini, and

[13] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[14] *J.A.,* Docket No. 18-1586 (issued April 9, 2019); *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

[15] *Id.*

Dr. Silver did not provide a clear opinion that appellant sustained a diagnosed medical condition casually related to the accepted September 27, 2017 employment incident. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.[16] Therefore, these reports are of no probative value regarding appellant's claim for a September 27, 2017 traumatic injury and they are insufficient to establish his claim.

Appellant submitted an October 24, 2017 EMG/NCV study of the lower extremities, October 28, 2017 x-ray of the right knee/tibia, and December 18, 2017 x-ray of the lumbar spine. The Board has held, however, that reports of diagnostic tests standing alone lack probative value as they do not provide an opinion on causal relationship between an employment incident and a diagnosed condition.[17]

On appeal counsel argues that OWCP did not give due deference to the opinions of appellant's attending physicians. However, as explained above, OWCP properly found that the medical evidence of record is insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence establishing causal relationship between his right leg condition and the accepted September 27, 2017 employment incident, the Board finds that he has not met his burden of proof to establish his claim.[18]

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 an injury to his right leg causally related to the accepted September 27, 2017 employment incident.

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[16] *See L.B.,* Docket No. 18-0533 (issued August 27, 2018); *D.K.,* Docket No. 17-1549 (issued July 6, 2018). Appellant also submitted administrative documents regarding visits to healthcare providers in 2017 and 2018, but such nonmedical documents do not constitute relevant medical evidence, as lay persons are not competent to render medical opinion. *See B.R.,* Docket No. 17-1661 (issued January 4, 2018); *James A. Long,* 40 ECAB 538 (1989).

[17] *See J.M.,* Docket No. 17-1688 (issued December 13, 2018).

[18] The Board notes that the case record contains an authorization for examination and/or treatment (Form CA-16) dated September 27, 2017. 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 June 6, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 30, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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