United States Department of Labor
Employees' Compensation Appeals Board

A.S., Appellant	)	
and	)	**Docket No. 18-1684**
	)	**Issued: January 23, 2020**
DEPARTMENT OF JUSTICE, U.S. MARSHALS SERVICE, Covington, KY, 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, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 6, 2018 appellant, through counsel, filed a timely appeal from a June 20, 2018 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish a lumbar injury causally related to the accepted May 15, 2015 employment incident.

[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.*

FACTUAL HISTORY

This case has been previously before the Board.[3] The facts and circumstances as set forth in the prior Board decision are incorporated herein by reference. The relevant facts are as follows.

On May 18, 2015 appellant, then a 38-year-old deputy marshal, filed a traumatic injury claim (Form CA-1) alleging that, on May 15, 2015 when lifting and carrying cases of ammunition, he strained his groin area while in the performance of duty. He did not stop work.

Appellant was treated by Dr. Dean D. Skinner, a chiropractor, from May 18 to July 20, 2015, and reported that he sustained a work injury on May 15, 2015 while he was lifting and carrying boxes of ammunition at work.

On May 20, 2015 Dr. Onassis A. Caneris, a Board-certified neurologist, treated appellant for right lower abdominal and right groin pain. Appellant reported an onset of back pain that radiated to the inguinal area and posterior aspect of the hip a year prior. He was treated conservatively, but continued to have refractory problematic pain which interfered with his ability to perform his work. Appellant related it to a work-related incident. Dr. Caneris diagnosed lumbar spondylosis, degenerative disc disease, and lumbar radiculopathy and recommended right-sided, two level transforaminal injections at L4 and L5.

Appellant was treated by Dr. G. Stephen Cleves, a Board-certified internist, on May 22, 2015, for low back pain and stiffness which began one month prior. Dr. Cleves diagnosed backache, unspecified. In a June 10, 2015 addendum, he noted that appellant had a history of ongoing back pain and on May 15, 2015 appellant aggravated his back and pulled something in his groin area while lifting boxes at work.

In a development letter dated February 8, 2016, OWCP noted the deficiencies in appellant's claim and requested that he submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors. It afforded him 30 days for submission of the necessary evidence. Appellant did not respond.

By decision dated March 15, 2016, OWCP denied appellant's claim for compensation finding that the medical evidence of record was insufficient to establish a medical condition causally related to the accepted employment incident.

On March 21, 2016 appellant, through counsel, requested a telephonic hearing which was held before an OWCP hearing representative on December 19, 2016.

Appellant was treated by Dr. Mathew A. Hazzard, a Board-certified neurosurgeon, on August 24, 2016, who performed a bilateral percutaneous sacroiliac joint fixation, intraoperative fluoroscopy, and intraoperative neuromonitoring. Dr. Hazzard diagnosed bilateral sacroiliac joint fixation.

On November 9, 2016 Dr. Neil Allen, a Board-certified neurologist and internist, performed a records review for purposes of providing a medical opinion limited to the issue of

[3] Docket No. 17-0868 (issued October 19, 2017).

causal relationship between the accepted employment incident and the diagnosed back condition. His review indicated that appellant sustained a low back injury as a result of repetitive lifting and carrying boxes of ammunition. Dr. Allen noted appellant's history was significant for a low back injury in 2007, which was refractive to conservative measures and he eventually required a lumbar fusion at L5-S1 in 2008. He diagnosed strain/sprain of the lumbar spine. Dr. Allen noted the repetitive, forceful muscle contraction required to perform the task described by appellant on May 15, 2015 resulted in the overstretching and microscopic tearing of the ligaments and musculature of the lumbar spine resulting in the injury. He indicated that the surrounding soft tissues reacted and became inflamed, painful, and stiff, restricting both function and mobility within the affected area with radiating symptoms to the buttocks and thighs. Dr. Allen opined that appellant's injury, resulting from the repetitive occupational trauma on May 15, 2015 was both reasonable and expected based upon the mechanism described by appellant and the medical records.

By decision dated January 30, 2017, an OWCP hearing representative affirmed the March 15, 2016 decision.

On March 13, 2017 appellant appealed to the Board. By decision dated October 19, 2017,[4] the Board affirmed OWCP's January 30, 2017 decision. The Board found that appellant had not met his burden of proof to establish a lumbar injury causally related to the accepted May 15, 2015 employment incident as the evidence of record did not contain a sufficiently rationalized opinion on the issue of causal relationship.

On March 22, 2018 appellant, through counsel, requested reconsideration.

Appellant submitted an August 24, 2016 operative report from Dr. Hazzard, previously of record.

In a November 29, 2016 note, Dr. Hazzard noted that appellant had reported experiencing low back and sacroiliac joint issues beginning in 2014 and that while lifting 50 pounds of ammunition boxes at work on May 15, 2015 appellant had aggravated his sacroiliac joint pain leaving him disabled for three to four months due to sacroiliac joint dysfunction. He reported 22 months of pain, burning, and aching localized to his S1 joints. Appellant underwent conservative care including physical therapy, injections, acupuncture, chiropractic care, and pain medicines without relief. Findings on physical examination revealed intact motor strength in the bilateral lower extremities, muscle groups in the upper and lower extremities were equal in bulk and tone, normal sensory examination, and reflexes were even and symmetric in the lower extremities. Dr. Hazzard noted that a June 22, 2016 x-ray of the lumbar spine revealed prior L5-S1 instrumentation in place with no evidence of spondylolisthesis and that a June 24, 2016 magnetic resonance imaging (MRI) scan of the lumbar spine revealed moderate L4-5 broad-based disc extrusion, mild central spinal stenosis, narrowing of the left lateral recess, and prior L5-S1 instrumentation. He diagnosed bilateral sacroiliac joint dysfunction and opined that the incident of May 5, 2015, in which appellant reported lifting heavy boxes, aggravated his sacroiliac joint dysfunction. Dr. Hazzard noted conservative treatment failed and appellant elected to proceed with surgical fixation. He noted that lifting, bending, twisting, and traumatic movements can aggravate symptoms in patients with underlying sacroiliac dysfunction. Appellant described

[4] *Id.*

aggravating his sacroiliac joint dysfunction on May 15, 2015 while lifting heavy boxes at work. He opined that there was reasonable medical certainty to support causal relationship based on the information available.

On March 8, 2018 Dr. Allen again reviewed the medical file and opined that the repetitive, forceful muscle contraction required to perform the task of extending from a bent position to lift ammunition on May 15, 2015 resulted in overstretching and microscopic tearing of the ligaments and musculature of the lumbar spine resulting in injury. He explained that the surrounding soft tissues reacted and become inflamed, painful, and stiff, restricting both function and mobility within the affected area. Dr. Allen indicated that with lifting, bending, and carrying the core muscles begin to fatigue. He noted that normally these muscles work to stabilize the spine and maintain a proper lordotic curvature. The positioning reduces the stress applied to the joints and muscles of the back. As the core muscles fatigue the body compensates and recruits outside muscle groups to perform the abdominal musculature's job. The musculature of the lumbar spine contract and spasm in order to stabilize the spine. This puts strain on these muscle groups as they are not performing the function of their design. The tightening of the lumbar musculature also increases the lordotic curvature of the lumbar spine, increasing load and stress applied to the facet joints, spinal ligaments, and joint capsules. Dr. Allen opined that appellant's injury resulted from the repetitive occupational trauma on May 15, 2015. He opined that the injury was both reasonable and expected based upon the mechanism described by appellant and documented within the medical records from May 18, 2015.

By decision dated June 20, 2018, OWCP denied modification of the prior decision.

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 filed within the applicable time limitation of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury.[6] 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.[7]

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.[8] First, the employee must submit sufficient evidence to establish that the employee actually experienced the employment incident

[5] *Supra* note 2.

[6] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[7] *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).

[8] *J.F.*, Docket No. 18-0904 (issued November 27, 2018); *Gary J. Watling*, 52 ECAB 278 (2001).

at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[9]

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.[10] Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[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 factors identified by the employee.[12]

Where there is medical evidence of a preexisting condition involving the same part of the body as the claimed employment injury, the issue of causal relationship invariably requires inquiry into whether there was employment-related aggravation, acceleration or precipitation of the underlying condition.[13] Accordingly, the physician must provide a rationalized medical opinion which differentiates between the effects of the work-related injury or disease and the preexisting condition. Such evidence will permit the proper kind of acceptance, such as whether the employment-related aggravation was temporary or permanent.

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a lumbar condition causally related to the accepted May 15, 2015 employment incident.

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of OWCP's January 30, 2017 merit decision because the Board considered that evidence in its October 19, 2017 decision. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP, under section 8128 of FECA.[14]

Following the Board's October 19, 2017 decision, appellant requested reconsideration of his claim with OWCP and submitted additional medical evidence. First, he submitted a November 29, 2016 note from Dr. Hazzard who noted that appellant had reported experiencing low back and sacroiliac joint issues beginning in 2014, a date prior to the accepted employment incident. The history provided to Dr. Hazzard included an aggravation of sacroiliac joint dysfunction following lifting 50 pounds of ammunition boxes at work on May 15, 2015. He noted that a June 22, 2016 x-ray of the lumbar spine revealed prior L5-S1 instrumentation in place with

[9] *S.S.*, Docket No. 17-1106 (issued June 5, 2018)*; T.H.*, 59 ECAB 388 (2008).

[10] *J.L.*, Docket No. 18-0698 (issued November 5, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

[11] *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[12] *L.D., id.; see also Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

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

[14] *J.T.*, Docket No. 18-1757 (issued April 19, 2019).

no evidence of spondylolisthesis and that a June 24, 2016 MRI scan revealed a moderate L4-5 broad-based disc extrusion, mild central spinal stenosis, narrowing of the left lateral recess, and prior L5-S1 instrumentation. Dr. Hazzard described that appellant had aggravated his sacroiliac joint dysfunction on May 15, 2015 while lifting heavy boxes at work. The Board has held that a medical opinion should reflect a correct history and offer a medically sound explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions.[15] The Board finds that the October 19, 2017 report of Dr. Hazzard fails to address the noted deficiencies of the claim by failing to address appellant's initial claim of developing groin pain due to his employment duties on May 15, 2015 and how that claimed condition either caused or aggravated a lumbar condition. In addition Dr. Hazzard failed to discuss whether appellant's preexisting injury and prior postsurgical condition had progressed beyond what might be expected from the natural progression of that condition.[16] The Board therefore finds that this report of Dr. Hazzard is insufficient to establish appellant's claim that he sustained a lumbar condition causally related to the accepted May 15, 2015 employment incident.

Second, appellant submitted a supplemental report from Dr. Allen dated March 8, 2018. In his latest report, Dr. Allen provided additional narrative to explain how the accepted employment incident was of sufficient force to have resulted in the development of a lumbar condition. The Board finds that his March 8, 2018 report also failed to address the noted deficiencies of the claim as it did not address appellant's initial claim of developing groin pain due to his employment duties on May 15, 2015 or how the accepted employment incident had caused appellant's preexisting lumbar condition to have progressed beyond what might be expected from the natural progression of that condition. Thus, the Board finds that this supplemental report of Dr. Allen is insufficient to establish appellant's claim.

Due to appellant's history of prior injury and the lack of clarity between his claim for groin pain and the development of new or worsening back pain, OWCP properly requested further medical evidence as to the specific history and date of his back conditions. As previously discussed above, appellant failed to submit a narrative medical report containing a complete and accurate history of injury and a physician's opinion relative to same. The Board therefore finds that he has not submitted sufficient medical evidence to establish that his accepted employment incident on May 15, 2015 caused or aggravated a lumbar condition as alleged.

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.

[15] *See J.M.*, Docket No. 17-1002 (issued August 22, 2017).

[16] *R.E.*, Docket No. 14-0868 (issued September 24, 2014).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a lumbar condition causally related to the accepted May 15, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the June 20, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 23, 2020
Washington, DC

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

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

Alec J. Koromilas, Alternate Judge, concurring:

I concur with the denial of the claim as appellant has failed to meet his burden of proof, however, I disagree with giving any weight to Dr. Neil Allen, a Board-certified neurologist and internist, as he did not conduct an in person physician examination.[1]

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

[1] *See S.M.*, Docket No. 18-1195 (issued January 6, 2020) (Alec J. Koromilas, dissenting).