United States Department of Labor
Employees' Compensation Appeals Board

R.B., Appellant	)	
and	)	**Docket No. 19-0810**
	)	**Issued: January 2, 2020**
DEPARTMENT OF THE ARMY, CIVILIAN PERSONNEL ADVISORY CENTER, Fort McCoy, WI, Employer	)	

Appearances:
Brett Elliot Blumstein, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 6, 2019 appellant, through counsel, filed a timely appeal from a January 15, 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish a back injury causally related to the accepted March 20, 2017 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

On March 28, 2017 appellant, then a 58-year-old heavy mobile equipment repairer supervisor, filed a traumatic injury claim (Form CA-1) alleging that on March 20, 2017 he herniated a disc in his back and pain after he slipped on ice in the parking lot of the employing establishment. The employing establishment did not controvert the claim.

The record contains one page of a report dated March 23, 2017 from Dr. Michael Ayers, a Board-certified orthopedic surgeon, who evaluated appellant for low back pain after he slipped on ice at work on March 20, 2017.

In a report dated March 31, 2017, Dr. Jason P. Rahal, a neurosurgeon, noted that appellant had experienced severe pain in his left leg and low back after he slipped and fell on ice on March 20, 2017 on his way to work. Emergency services transported him to a hospital because he could not stand or walk after his fall. Dr. Rahal indicated that appellant had a history of a herniated disc at L4-5 around 28 years earlier. He reviewed the results of a March 2017 magnetic resonance imaging (MRI) scan, finding "severe lateral recess stenosis due to disc and osteophyte complexes with nerve impingement at L4-5 and L5-S1…." Dr. Rahal diagnosed displacement of a lumbar disc and referred appellant for physical therapy.

On April 11, 2017 Dr. Craig Warnick, Board-certified in family medicine, found that appellant was unable to work from March 27 to April 28, 2017.

In a development letter dated April 25, 2017, OWCP advised appellant that the evidence then of record was insufficient to establish his claim. It informed him of the type of medical and factual evidence needed, including a detailed description of the March 20, 2017 employment incident and a narrative report from his physician explaining the relationship between the incident and any diagnosed condition. OWCP afforded appellant 30 days to submit the necessary evidence.

Thereafter, OWCP received a March 20, 2017 emergency department report from Dr. Walter J. Grabowski, Board-certified in emergency medicine. Dr. Grabowski obtained a history of appellant having experienced severe back pain radiating into his leg such that he was unable to stand after he fell on ice in the parking lot at work on that date. He reviewed his history of a herniated lumbar disc a long time ago and a herniated cervical disc. Dr. Grabowski diagnosed left sciatica and intractable back pain and admitted appellant to the hospital.

A lumbar spine MRI scan obtained on March 20, 2017 revealed an L4-5 left lateral recess disc bulge and left paracentral annular tear causing stenosis and contact with the L5 nerve root, and a left lateral recess disc osteophyte complex causing significant stenosis of the left lateral recess and posterior displacement of the left S1 nerve root origin.

On March 20, 2017 Dr. Sonjay B. Shrinivas, an osteopath, indicated that appellant had fallen on ice while walking into work, landing on his hands, knees, and right side. He had experienced severe pain when he tried to rise and was taken by ambulance to the hospital. Dr. Shrinivas noted that appellant was currently receiving treatment for cervical radiculopathy. He diagnosed sciatica of the left side likely due to recent fall.

In a progress report dated April 28, 2017, Dr. Rahal discussed appellant's history of severe back pain radiating into his left lower extremity after a March 20, 2017 fall on ice. He noted that appellant had a six-week history of pain in his left leg and low back "most consistent with left L5

radiculopathy, in the setting of a fall on the ice." Dr. Rahal diagnosed displacement of a lumbar introvert disc and referred appellant for physical therapy.

On May 1, 2017 the employing establishment advised that appellant had fallen on premises that it owned, operated, or controlled within 30 minutes of his usual work hours and while engaged in his official duties. On May 2, 2017 it specified that it owned the parking lot and that it was not open to the public.

On May 2, 2017 Dr. Warnick opined that appellant remained disabled pending an evaluation on May 16, 2017. On May 16, 2017 Dr. Suresh Gundaji, Board-certified in family medicine, found that he could resume work on May 17, 2017.

By decision dated May 26, 2017, OWCP denied appellant's traumatic injury claim. It found that the medical evidence submitted was insufficient to establish a diagnosed condition causally related to the accepted March 20, 2017 employment incident.

On June 12, 2017 Dr. Warnick advised that appellant had a history of intermittent lower back pain that flared once or twice per year that was unlike the symptoms for which he had received treatment at the hospital. He related, "This is a new injury with significant findings on MRI [scan], some of which are very likely related to his fall. The findings on MRI [scan] correlate to the significant symptoms for which he has been receiving treatment over the past few months. The fall was a direct cause of his pain and likely the causative factor in the disc herniation."

On June 13, 2017 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated September 25, 2017, OWCP's hearing representative affirmed the May 26, 2017 decision.

On August 21, 2018 Dr. John W. Ellis, Board-certified in family medicine, noted that appellant had injured his back at work in the early 1990's, but had not filed a claim. His condition resolved with physical therapy such that he only had occasional minor low back pain. Dr. Ellis discussed appellant's history of a March 20, 2017 fall on ice and subsequent hospitalization. He reviewed the medical records, including the results of diagnostic studies. On examination Dr. Ellis found a positive straight leg raise on examination with decreased sensation at the L4 and L5 nerve dermatome distributions. He diagnosed a disc herniation, radiculopathy, and spondylosis of the lumbar spine. Dr. Ellis opined that the "injuries to his lumbar spine and sequelae are a direct result of his fall on March 20, 2017…." He related:

> "[Appellant's] fall onto the ice was so severe that he had an acute disc herniation at the L4-5 level as demonstrated by the MRI [scan]. The sudden force of his fall caused compression of the discs causing the L4-5 disc to herniate. The disc herniation caused compression of the L5 nerve root as it exits the neuroforamen causing his severe radiculopathy. When he fell, the L5-S1 was compressed so severely that he had bulging of the disc compressing the S1 nerve root on the left side…. The disc herniation and disc bulge were so severe that they have continued to put pressure on the left L5 and S1 nerves as they exit the neuroforamen causing his severe radicular symptoms and weakness in his left lower extremity as demonstrated on physical examination."

On August 29, 2018 appellant, through counsel, requested reconsideration.

By decision dated January 15, 2019, OWCP denied modification of the September 25, 2017 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,[3] 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.[4] 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.[5] 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. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.[6] Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[7]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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.[8]

ANALYSIS

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

In support of his claim, appellant submitted a report dated March 20, 2017 from Dr. Grabowski, who evaluated him after he was transported to the hospital by ambulance on that date after his fall at work. Dr. Grabowski discussed appellant's history of severe back pain

[3] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

[5] *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).

[6] *See V.J.*, Docket No. 18-0452 (issued July 3, 2018); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[7] *Id*.

[8] *See H.B.*, Docket No. 18-0781 (issued September 5, 2018).

radiating into his leg after he slipped on ice in the parking lot at work. He diagnosed left sciatic and intractable back pain and admitted him to the hospital.

On March 20, 2017 Dr. Shrinivas reviewed appellant's history of a slip and fall on ice walking into work and diagnosed sciatic likely due to the fall. On April 28, 2017 Dr. Rahal found that appellant had pain in his left leg and lower back consistent with radiculopathy at L5 after a fall on ice. He diagnosed lumbar disc displacement.

In a report dated June 12, 2017, Dr. Warnick noted that appellant had a history of intermittent back pain unlike the symptoms he experienced that led to his hospital treatment. He advised that he had sustained a new injury and that the fall directly caused his pain and likely resulted in his herniated disc.

On August 21, 2018 Dr. Ellis reviewed appellant's history of a prior back injury, his fall on ice on March 20, 2017, and the medical reports of record. He provided findings on examination and diagnosed a lumbar disc herniation, radiculopathy, and spondylosis. Dr. Ellis attributed the diagnosed conditions to his March 20, 2017 fall on ice, finding that the force of the fall compressed his discs and resulted in herniation of the disc at L4-5, and severe compression of the disc at L5-S1. He opined that the herniated L4-5 disc compressed the L5 nerve root and that the L5-S1 disc compression affected the S1 nerve root resulting in left lower extremity radiculopathy and weakness.

The Board finds that Dr. Ellis' opinion is sufficient, given the absence of any opposing medical evidence, to require further development of the record.[9] Dr. Ellis' report is not contradicted by any substantial medical or factual evidence of record. Further, his opinion is based upon a complete factual history and medical background, is supported by reasonable medical certainty, and contains a sufficient level of medical rationale explaining the nature of the relationship between the diagnosed conditions and the accepted employment incident.[10] While Dr. Ellis' report is insufficiently rationalized to meet appellant's burden of proof to establish his claim, it raises an uncontroverted inference between his current back condition and the accepted employment incident and, therefore, is sufficient to require OWCP to further develop the medical evidence and the case record.[11]

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[12] The nonadversarial policy of proceedings under FECA is reflected in OWCP's regulations at section 10.121.[13]

The Board will, therefore, remand the case to OWCP for further development of the medical evidence. On remand OWCP shall refer appellant, a statement of accepted facts, and the medical evidence of record to an appropriate Board-certified physician. The chosen physician

[9] *D.C.*, Docket No. 18-1664 (issued April 1, 2019).

[10] *S.C.*, Docket No. 19-0920 (issued September 25, 2019).

[11] *K.S.*, Docket No. 19-0506 (issued July 23, 2019); *D.W.*, Docket No. 17-1884 (issued November 8, 2018).

[12] *W.C.*, Docket No. 18-1386 (issued January 22, 2019).

[13] 20 C.F.R. § 10.121.

shall provide a rationalized opinion as to whether the accepted March 20, 2017 employment incident resulted in the diagnosed conditions. If the physician opines that the diagnosed conditions are not causally related, he or she must explain with rationale how or why the causation opinion differs from that of Dr. Ellis. Following this and any other further development deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the January 15, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: January 2, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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