United States Department of Labor
Employees' Compensation Appeals Board

K.R., Appellant	)	
and	)	**Docket No. 19-1382**
	)	**Issued: January 6, 2020**
FEDERAL BUREAU OF PRISONS, FEDERAL CORRECTIONAL INSTITUTION, Estill, SC, 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:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 11, 2019 appellant, through counsel, filed a timely appeal from a May 3, 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.

[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 his burden of proof to establish a medical condition causally related to the accepted September 2, 2018 employment incident.

FACTUAL HISTORY

On September 20, 2018 appellant, then a 43-year-old correctional officer, filed a traumatic injury claim (Form CA-1) alleging that on September 2, 2018 he experienced shortness of breath and a rapid heart rate while in the performance of duty. He explained that he was dragging a bag of inmate property when he started to feel like he could not breathe. Appellant stopped work on September 3, 2018.

In a September 10, 2018 medical note, Dr. Yotam Papo, Board-certified in internal medicine, indicated that he treated appellant from September 5 to 11, 2018 and held him off work until September 17, 2018. He provided restrictions limiting appellant to lifting no greater than 10 pounds upon return to work.

In medical notes dated September 13 and 20, 2018, Dr. Malcolm Horry, Board-certified in family medicine, excused appellant from work until October 4, 2018.

In a September 26, 2018 development letter, OWCP notified appellant that the information he submitted was insufficient to support his claim. It advised him of the type of factual and medical evidence required to establish his traumatic injury claim and provided a factual questionnaire inquiring about the circumstances surrounding his claimed injury for his completion. OWCP afforded appellant 30 days to respond.

Appellant subsequently provided a September 2, 2018 staff injury assessment form with an illegible signature. The form noted that he was found to be breathing heavily with a rapid heart rate.

In a September 5, 2018 medical report, Dr. Robert Rhame, Board-certified in family medicine, noted that appellant was experiencing shortness of breath and chest pain since performing some heavy lifting at work on September 2, 2018. He also noted appellant's history of pulmonary embolus, sarcoidosis and an enlarged heart. Based on a computerized tomography (CT) scan of appellant's chest performed by Dr. Sandra Lawrence, a Board-certified radiologist, Dr. Rhame diagnosed appellant with bilateral pulmonary embolism and admitted him for further treatment.

In a September 10, 2018 medical report, Dr. Papo provided a discharge summary in which he recounted appellant's history of treatment in relation to his pulmonary embolism. He noted that appellant still experienced some nausea and shortness of breath, but that he had improved overall. Dr. Papo also made note of appellant's diagnosis of deep vein thrombosis (DVT) and pulmonary embolism in 2016. He recommended that appellant follow up with his primary care provider in one week.

In a September 13, 2018 duty status report (Form CA-17), Dr. Horry noted appellant's diagnosis of bilateral pulmonary embolus and DVT. He also indicated that appellant was unable to return to work.

In Part B of an authorization for examination and/or treatment form (Form CA-16) of even date, Dr. Horry noted that a September 5, 2018 CT scan of appellant's chest demonstrated a pulmonary embolism, the onset of which occurred after appellant experienced chest pain, palpitations and shortness of breath while lifting at work. He also indicated that appellant had a previous episode of pulmonary embolism prior to the September 2, 2018 employment incident. Dr. Horry checked a box marked "yes" indicating that the diagnosed condition had been caused or aggravated by an employment activity.

In an October 3, 2018 response to OWCP's September 26, 2018 questionnaire, appellant explained that he was moving inmate property, which was extremely heavy, from a housing unit to a special housing unit to be secured and that while dragging the bag, he began to feel short of breath, dizzy, weak and developed chest pain. He went into the medical unit afterwards, but did not immediately file a claim because he was still recovering in the intensive care unit (ICU). Appellant also explained that he was previously diagnosed with a pulmonary embolism four years prior.

In an October 4, 2018 narrative medical report, Dr. Horry explained that he first examined appellant on September 5, 2018 when he presented with chest pain that started on September 2, 2018 after lifting something heavy at work. He noted appellant's diagnosis of bilateral pulmonary embolism and reviewed his history of treatment from September 5 to October 4, 2018. Dr. Horry also noted that appellant had now experienced two episodes of pulmonary embolism without a recognized provoking cause. He held appellant off work until November 1, 2018.

Appellant also submitted an October 4, 2018 Form CA-17 from Dr. Horry, again noting his diagnosis of a pulmonary embolism affecting both of his lungs and that he was unable to work.

By decision dated October 29, 2018, OWCP denied appellant's claim. It found that the medical evidence of record was insufficient to establish causal relationship between his diagnosed medical condition and the accepted September 2, 2018 work incident.

OWCP continued to receive evidence. In an October 4, 2018 medical report, Dr. Horry noted that appellant's shortness of breath, exhaustion, fatigue and nausea continued. He indicated that appellant was slowly recovering and recommended that he remain off work for another month.

Appellant also provided a November 1, 2018 medical report from another follow-up appointment with Dr. Horry wherein he noted that while appellant still experienced shortness of breath and tiredness, he had some light improvement. Dr. Horry recommended that appellant remain off work for an additional month.

On November 15, 2018 appellant, through counsel, requested a telephonic hearing with a representative of OWCP's Branch of Hearings and Review.

Appellant subsequently provided a January 16, 2019 narrative medical report from Dr. Steve Akman, Board-certified in internal medicine. Dr. Akman indicated that he was aware

of appellant's prior history of pulmonary emboli and that the medical records from his fall 2018 pulmonary emboli were not available to him during his evaluation. He noted appellant's history of treatment and opined that he had multiple risk factors for developing multiple pulmonary emboli related to his obesity, proven pulmonary sarcoidosis and sleep apnea. Dr. Akman also opined that appellant should not perform work duties that might put him at risk for physical trauma, require heavy lifting or exertion or long periods of immobility.

In a January 18, 2018 letter, Dr. Brad Kelly, Board-certified in family medicine, noted that appellant was hospitalized from September 5 to 10, 2018 due to blood clots in his lungs. He opined that it was reasonable to assume that he became symptomatic of these clots due to overexerting himself while at work as a correctional officer.

On March 20, 2019 a telephonic hearing was held before an OWCP hearing representative. During the hearing, appellant explained that he was dragging a duffle bag full of inmate property to the special housing unit because it was too heavy to carry when he became dizzy and short of breath. He went to the emergency room the following day after his symptoms did not improve. Appellant contended that carrying the heavy duffle bag on September 2, 2018 caused blood clots to dislodge and migrate to his lungs, causing his condition. The hearing representative advised appellant of the medical evidence needed to establish his claim and kept the record open for 30 days for the submission of additional evidence.

By decision dated May 3, 2019, OWCP's hearing representative affirmed the prior decision, finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed conditions and the accepted September 2, 2018 employment incident.

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]

[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).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.[6] First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.[7] Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[8]

To establish causal relationship between the claimed condition and the employment incident, the employee must submit rationalized medical opinion evidence.[9] 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 identified by the claimant.[10]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted September 2, 2018 employment incident.

In his January 16, 2019 narrative medical report, Dr. Akman noted appellant's history of pulmonary emboli and history of treatment, but noted that he did not have access to appellant's medical records during his evaluation. He opined that appellant's multiple risk factors related to his obesity, proven pulmonary sarcoidosis and sleep apnea along with work duties requiring heavy lifting or exertion were factors for developing multiple pulmonary emboli. Dr. Akman's report, however, is not based on a complete factual and medical history of injury as he acknowledged that he did not have access to appellant's medical records at the time he made his evaluation. As noted above, the opinion of a physician must be based on a complete factual and medical background.[11] Furthermore, although his report contains an affirmative opinion on causal relationship, it is not sufficiently rationalized. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to the employment incident.[12] The need for a rationalized medical opinion is especially important in this case as the evidence suggests that appellant had preexisting

[6] *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

[7] *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[8] *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

[9] *See K.V.*, Docket No. 18-0723 (issued November 9, 2018).

[10] *I.J.*, 59 ECAB 408 (2008).

[11] *Id*.

[12] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition/disability).

medical conditions.[13] For these reasons, Dr. Akman's report is insufficient to meet appellant's burden of proof.

In his January 18, 2019 medical report, Dr. Kelly provided that it was "reasonable to assume" that appellant became symptomatic of the blood clots found in his lungs due to over-exerting himself while at work as a correctional officer. The Board has held, however, that medical opinions that are speculative or equivocal in character are of diminished probative value.[14] Therefore, Dr. Kelly's report is also insufficient to meet appellant's burden of proof.

In his October 4, 2018 narrative medical report, Dr. Horry indicated that appellant's pulmonary embolism started on September 2, 2018, after lifting something heavy at work, but he also provided that he did not recognize a provoking cause of appellant's condition. While he recognized that appellant's symptoms began on September 2, 2018 while at work, the Board has held that neither the mere fact that a disease or condition manifests itself during a period of employment is sufficient to establish causal relationship.[15] Dr. Horry did not otherwise sufficiently explain why his examination findings led him to conclude the September 2, 2018 employment incident caused or aggravated appellant's condition. Thus, his medical report is of limited probative value and insufficient to establish appellant's burden of proof.

In Part B of a September 13, 2018 Form CA-16, Dr. Horry provided that a September 5, 2018 CT scan of appellant's chest diagnosed appellant with a pulmonary embolism, the onset of which occurred after appellant experienced chest pain, palpitations and shortness of breath while lifting at work. He also checked a box marked "yes" indicating that appellant's diagnosed condition had been caused or aggravated by an employment activity. The Board has held that a checkmark or affirmative notation in response to a form question on causal relationship is insufficient, without medical rationale, to establish causal relationship.[16] Accordingly, the Board finds that Dr. Horry's September 13, 2018 report is insufficient to meet appellant's burden of proof.

The remaining medical evidence from Dr. Horry consists of medical reports, CA-17 forms and notes dated from September 13 to November 1, 2018. Dr. Horry's reports provided updates on appellant's condition from multiple follow-up appointments and recognized appellant's diagnosis of a pulmonary embolism. He also made note of his related symptoms, including shortness of breath and tiredness. However, nowhere within Dr. Horry's remaining medical evidence does he offer an opinion as to whether appellant's condition was work related. Medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no

[13] *See M.E.*, Docket No. 18-0940 (issued June 11, 2019); *E.V.*, Docket No. 17-0417 (issued September 13, 2017).

[14] *See D.D.*, 57 ECAB 734 (2006).

[15] *T.C.*, Docket No. 18-1767 (issued March 15, 2019).

[16] *See Y.T.*, Docket No. 17-1559 (issued March 20, 2018).

probative value on the issue of causal relationship.[17] Therefore, Dr. Horry's remaining medical evidence is also insufficient to establish the claim.

Similarly, in Dr. Papo's September 10, 2018 medical report he recounted appellant's history of treatment in relation to his pulmonary embolism and also his 2016 DVT and pulmonary embolism. However, he offered no opinion regarding the cause of appellant's medical conditions. As explained above, medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[18] Moreover, the need for rationalized medical opinion based on medical rationale is especially important in this case as the evidence suggests that appellant had preexisting medical conditions.[19] For this reason, Dr. Papo's report is insufficient to meet appellant's burden of proof.

In his September 5, 2018 medical report, Dr. Rhame noted that appellant had been experiencing shortness of breath and chest pain since performing some heavy lifting at work on September 2, 2018. Although his opinion generally supported causal relationship between the accepted employment incident and appellant's diagnosed condition, Dr. Rhame did not provide sufficient rationale explaining this conclusion. As noted above, a mere conclusion without the necessary rationale explaining how and why the physician believes that a claimant's accepted incident resulted in the diagnosed condition is insufficient to meet appellant's burden of proof.[20] Accordingly, Dr. Rhame's report is insufficient to meet appellant's burden of proof.

Finally, appellant submitted a September 2, 2018 staff injury assessment with an illegible signature. The Board has held, a report that is unsigned or bears an illegible signature lacks proper identification that the author is a physician and cannot be considered probative medical evidence.[21] Therefore, this report is of no probative value and is insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence establishing a medical condition causally related to the accepted September 2, 2018 employment incident, the Board finds that he has not met his burden of proof to establish his claim.

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 met his burden of proof to establish a medical condition causally related to the accepted September 2, 2018 employment incident.

[17] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[18] *Id*.

[19] *Supra* note 12.

[20] *Supra* note 15.

[21] *See L.M.*, Docket No. 18-0473 (issued October 22, 2018); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

ORDER

IT IS HEREBY ORDERED THAT the May 3, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 6, 2020
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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