

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

R.D., Appellant)	
)	
and)	Docket No. 19-1439
)	Issued: January 9, 2020
U.S. POSTAL SERVICE, BEAVERCREEK)	
POST OFFICE, Beaver creek, OH, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 24, 2019 appellant, through counsel, filed a timely appeal from a May 23, 2019 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 his burden of proof to establish the conditions of bilateral ulnar nerve entrapment at the elbows or chronic left radiculopathy stemming from C5, C6, or C7 as a consequence of his accepted March 12, 1999 employment injury.

FACTUAL HISTORY

On March 13, 1999 appellant, then a 51-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 12, 1999 he sustained injury to his neck, shoulders, and upper back due to loading mail into his postal vehicle while in the performance of duty. OWCP accepted his claim for cervical, thoracic, and left shoulder strains. It later expanded the accepted conditions to include herniated discs at C4, C5, and C6.³

On May 20, 1999 appellant underwent OWCP-authorized anterior cervical discectomy and disc fusion surgery at C4-5 and C5-6 with surgical hardware.

In a March 8, 2002 report, Dr. Gary E. Kraus, a Board-certified neurosurgeon, indicated that appellant was working with restrictions against lifting more than 25 pounds and engaging in pushing or pulling. He noted that his physical examination revealed that appellant had excellent strength without focal deficits and that he felt his strength was intact. Dr. Krauss advised that appellant could continue working with a restriction from lifting or carrying more than about 35 pounds.

In an October 21, 2011 report, Dr. Lynn J. Robbins, an attending Board-certified neurosurgeon, indicated that appellant reported doing well with respect to cervical symptoms until recently when he began to have symptoms in his neck and especially in both arms. He recommended that appellant undergo diagnostic testing.⁴

The findings of an October 25, 2011 magnetic resonance imaging (MRI) scan of the cervical spine contained an impression of postoperative changes of discectomy and anterior fusion from C4 through C6 with no significant residual disc or central spur with neural foraminal narrowing, as well as posterior disc complex at C3-4 and C6-7 resulting in central canal and neural foraminal narrowing.

In a November 4, 2011 report, Dr. Robbins reported physical examination findings and noted that diagnostic testing showed cord compression at C3-4 and C6-7 as well as foraminal narrowing. He indicated that appellant needed surgery at both those levels which most likely would require removing the old plates.

Counsel provided Dr. Robbins with a document which contained various questions regarding appellant's medical condition and he completed it on November 2, 2012. He noted that,

³ Appellant stopped work on May 20, 1999 and returned to modified work without wage loss on August 16, 1999. He began working as a modified city letter carrier on December 10, 2000 and a modified mail carrier on April 8, 2006.

⁴ The Board notes that the case record contains limited medical evidence between 2002 and 2011.

when he examined appellant on November 4, 2011, his subjective complaints consisted of neck pain, numbness, and tingling of the bilateral arms. Physical examination at that time revealed limited range of motion, neck pain, and weakness, and resulted in a diagnosis of compression at C3-4 and C6-7 with foraminal narrowing. In response to the question regarding whether the disc problems at C3-4 and C6-7 developed from the March 12, 1999 employment injury or May 20, 1999 surgery, Dr. Robbins indicated, “Unknown -- patient has n[o]t been seen in the office since [November 4, 2011].”

In a May 2, 2016 letter, counsel requested that OWCP accept that appellant sustained bilateral ulnar nerve entrapment at the elbows and chronic left radiculopathy stemming from C5, C6, and C7 as a consequence of his accepted March 12, 1999 employment injury.

Appellant submitted a March 17, 2016 MRI scan of the cervical spine which showed multilevel degenerative changes of the cervical spine, most severe at the C3-4 level (with severe neuro-foraminal narrowing), and redemonstration of C4-5 anterior cervical discectomy and fusion surgery with osseous fusion of the vertebral bodies and facets.

In a May 4, 2016 development letter, OWCP requested that appellant submit additional evidence in support of his consequential condition claim, including a physician’s opinion supported by a medical explanation as to how the claimed consequential conditions were causally related to the accepted March 12, 1999 employment injury.

Appellant submitted an October 13, 2015 report from Dr. Sally Niles, Board-certified in physical medicine and rehabilitation, who discussed the treatment for his complaints of neck and bilateral upper extremity pain. The findings of March 17, 2016 electromyogram and nerve conduction velocity (EMG/NCV) testing of the upper extremities revealed chronic left cervical radiculopathy affecting C5-6 and possibly C7, as well as moderate bilateral ulnar entrapment at the elbows.

Appellant also submitted medical reports of surgical procedures which were not authorized by OWCP. On April 10, 2017 he underwent left ulnar nerve anterior submuscular transposition. In reports dated April 18 and May 30, 2017, Dr. Nathan Enoki, a Board-certified orthopedic surgeon, described appellant’s follow-up care and diagnosed right ulnar entrapment at the elbow. On July 12, 2017 appellant underwent a C4 foraminotomy secondary to a C4 radiculopathy. On August 7, 2017 Dr. Enoki diagnosed cubital tunnel syndrome.

By decision dated December 18, 2018, OWCP denied appellant’s claim for consequential conditions related to the accepted March 12, 1999 employment injury. It discussed the medical evidence he submitted and advised that the claim was denied for bilateral ulnar nerve entrapment and left cervical radiculopathy because “the medical evidence is insufficient to support that those conditions are a medical consequence of your accepted work injury.”

On December 26, 2018 appellant, through counsel, requested a telephonic hearing with a representative of OWCP’s Branch of Hearings and Review. During the hearing held on March 26, 2019 counsel argued that appellant sustained bilateral ulnar nerve entrapment at the elbows and chronic left radiculopathy stemming from C5, C6, and C7 as a consequence of his accepted March 12, 1999 employment injury.

By decision dated May 23, 2019, OWCP's hearing representative affirmed the December 18, 2018 decision.

LEGAL PRECEDENT

When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to claimant's own intentional misconduct.⁵ Thus, a subsequent injury, be it an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.⁶ A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, he or she must present rationalized medical opinion evidence.⁷

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish the conditions of bilateral ulnar nerve entrapment at the elbows or chronic left radiculopathy stemming from C5, C6, or C7 as a consequence of his accepted March 12, 1999 employment injury.

Appellant submitted a document that counsel provided to Dr. Robbins, an attending physician, which contained various questions regarding appellant's medical condition. Dr. Robbins completed the document on November 2, 2012 noting that, when he examined appellant on November 4, 2011, his subjective complaints consisted of neck pain, numbness, and tingling of the bilateral arms. Physical examination at that time resulted in a diagnosis of compression at C3-4 and C6-7 with foraminal narrowing. In response to the question regarding whether the disc problems at C3-4 and C6-7 developed from the March 12, 1999 employment injury or May 20, 1999 surgery, Dr. Robbins indicated, "Unknown -- patient has n[o]t been seen in the office since [November 4, 2011]." This report is of no probative value to support appellant's consequential condition claim because it does not contain an opinion that he sustained bilateral ulnar nerve entrapment at the elbows or chronic left radiculopathy stemming from C5, C6, or C7 as a consequence of his accepted March 12, 1999 employment injury. 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.⁸ Therefore, this report is insufficient to establish appellant's claim.⁹

Appellant also submitted medical reports of surgical procedures which were not authorized by OWCP. On April 10, 2017 he underwent left ulnar nerve anterior submuscular transposition.

⁵ See *S.M.*, Docket No. 19-0397 (issued August 7, 2019); *Mary Poller*, 55 ECAB 483, 487 (2004); 1 Arthur Larson & Lex K. Larson, *Larson's Workers' Compensation Law* 10-1 (2006).

⁶ *A.T.*, Docket No. 18-1717 (issued May 10, 2019); *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139 (2001).

⁷ See *J.B.*, Docket No. 18-0522 (issued January 16, 2019); *Charles W. Downey*, 54 ECAB 421 (2003).

⁸ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

⁹ *Id.*

In reports dated April 18 and May 30, 2017, Dr. Enoki diagnosed right ulnar entrapment at the elbow. On July 12, 2017 appellant underwent a C4 foraminotomy secondary to C4 radiculopathy. The Board finds that these reports are of no probative value on the underlying issue of the present case because the reports do not contain an opinion regarding the cause of the diagnosed conditions.¹⁰

As the medical evidence of record does not contain a rationalized opinion establishing causal relationship between appellant's claimed consequential conditions and the accepted March 12, 1999 employment injury, the Board finds that he has not met his burden of proof.

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 the conditions of bilateral ulnar nerve entrapment at the elbows or chronic left radiculopathy stemming from C5, C6, or C7 as a consequence of his accepted March 12, 1999 employment injury.

¹⁰ See *supra* note 8. In an August 7, 2017 report, Dr. Enoki diagnosed cubital tunnel syndrome, but the report did not contain an opinion on the cause of the condition.

ORDER

IT IS HEREBY ORDERED THAT the May 23, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 9, 2020
Washington, DC

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

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

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