United States Department of Labor
Employees' Compensation Appeals Board

M.F., Appellant	)	
and	)	**Docket No. 19-1573**
	)	**Issued: March 16, 2020**
DEPARTMENT OF VETERANS AFFAIRS, ATLANTA VETERANS ADMINISTRATION MEDICAL CENTER, Decatur, GA, 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:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 18, 2019 appellant, through counsel, filed a timely appeal from an April 29, 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 cervical condition causally related to the accepted April 20, 2017 employment incident.

FACTUAL HISTORY

On May 16, 2017 appellant, then a 50-year-old supervisor, filed a traumatic injury claim (Form CA-1) alleging that on April 20, 2017 he sustained injuries to his cervical spine and left arm as he was lifting dental bins from a pallet while in the performance of duty. He stopped work on May 10, 2017.

In support of his claim, appellant submitted discharge instructions and a work release form dated September 16, 2017 from Leslie Singleton, a nurse practitioner, who noted that he was seen for neck and head pain and had been advised to remain off work for 24 hours.

On December 15, 2017 appellant filed a claim for compensation (Form CA-7) for leave without pay for the period June 1 to December 15, 2017.

In a development letter dated July 23, 2018, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence. In a separate letter of even date, it notified him that action could not be taken on a wage-loss compensation claim until his case had been adjudicated.

By decision dated September 11, 2018, OWCP denied appellant's claim finding that the factual evidence of record was insufficient to establish that the April 20, 2017 incident occurred as alleged. It concluded, therefore, that the requirements had not been met to establish injury as defined by FECA.

On September 19, 2018 appellant, through counsel, requested a hearing before an OWCP hearing representative.

Thereafter, OWCP received appellant's response to its development questionnaire dated August 17, 2018. Appellant reported that he was working alone on April 20, 2017 when he sustained an injury lifting dental bins of contaminated surgical instrumentation. He noted that the weight of the bins was unknown, but estimated that there were approximately 12 to 15 bins that needed to be processed. Appellant explained that there were issues between his supervisor and the workers' compensation representative which delayed the filing of his Form CA-1. He indicated that he tried to continue working as he thought his injury was not serious. However, after receiving an epidural injection that provided no relief, appellant stopped work on May 10, 2017 noting that he could no longer deal with the pain.

OWCP also received a series of medical reports in support of appellant's claim. In a May 11, 2017 report, Diane B. Butler, a physician assistant, noted that on April 20, 2017 appellant lifted bins of medical equipment at work and experienced cervical pain radiating to the left arm. In a May 12, 2017 report, she reviewed anteroposterior and lateral view radiographs of his cervical spine. Ms. Butler opined that there was some loss of the normal lordosis, disc space narrowing

with spondylitic changes at C5-6, and early ossification of the anterior disc margin at both levels. She diagnosed cervical radiculopathy and cervical spondylosis.

In a June 6, 2017 report, Dr. Mark E. Mullins, a Board-certified diagnostic radiologist, reviewed a magnetic resonance imaging (MRI) scan of appellant's cervical spine. He compared the MRI scan to May 12, 2017 radiographs of appellant's cervical spine and found degenerative marrow changes at C5-6 and multilevel degenerative disc height loss and desiccation. Dr. Mullins diagnosed cervical spondylosis.

In a June 7, 2017 report, Ms. Butler reviewed the MRI scan of appellant's cervical spine. She again diagnosed cervical radiculopathy and cervical spondylosis. Ms. Butler noted appellant's complaints of neck and upper left extremity pain and reported his reluctance to consider invasive treatment.

In a July 20, 2017 report, Dr. Keith Walter Michael, a Board-certified orthopedic surgeon, noted that appellant had developed neck and left upper extremity pain after lifting medical equipment at work in April 2017. He reviewed appellant's May 12, 2017 x-ray and the June 6, 2017 MRI scan of his cervical spine. Dr. Michael found moderate-to-severe disc degeneration at C5-6 and bilateral moderate foraminal stenosis at C6-7. He diagnosed cervical disc displacement, cervical spondylosis with radiculopathy, and multilevel foraminal stenosis at C5-6 and C6-7.

In an August 9, 2017 report, Ms. Butler noted that she saw appellant in follow up on July 7, 2017. She also noted that he had not demonstrated significant improvement with his left upper extremity weakness and recommended a surgical consult. Ms. Butler diagnosed cervical disc displacement and cervical spondylosis with radiculopathy.

In an August 15, 2017 report, Ms. Butler reported that she saw appellant in follow up on August 14, 2017. Appellant had informed her that he had not returned to work as he believed that he would not be able to perform his duties due to pain. Ms. Butler indicated that he had not considered an injection or surgical intervention and again diagnosed cervical disc displacement and cervical spondylosis with radiculopathy.

In a September 15, 2017 report, Dr. Howard Ira Levy, a Board-certified specialist in physical medicine and rehabilitation, indicated that he administered an epidural steroid injection (ESI) at appellant's left C6-7 neural foramen. He diagnosed cervical radiculopathy. In an October 6, 2017 report, Dr. Levy noted that he administered ESI's at the left C5-6 and C6-7 neural foramen. He again diagnosed cervical radiculopathy.

In a February 20, 2018 report, Ms. Butler noted that she saw appellant in follow up on September 22, 2017. She also noted that appellant had received a cervical ESI, but experienced no significant improvement in pain. Ms. Butler again diagnosed cervical disc displacement and cervical spondylosis with radiculopathy.

In a March 5, 2018 report, Ms. Butler reported that she saw appellant for a final visit on March 2, 2018. She noted that appellant continued to experience neck pain, but was not interested in surgical intervention or other treatment options.

A telephonic hearing was held before a hearing representative of OWCP's Branch of Hearings and Review on February 12, 2019. Appellant provided testimony, and the hearing representative held the case record open for 30 days for the submission of additional evidence. No further evidence was submitted.

By decision dated April 29, 2019, OWCP's hearing representative affirmed the September 11, 2018 decision.[3] The hearing representative found that the medical evidence of record was insufficient to establish how the April 20, 2017 employment incident caused or aggravated appellant's diagnosed medical conditions.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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,[5] 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.[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 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.[8] The second component is whether the employment incident caused a personal injury.[9]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[10] 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

[3] The Board notes that while the hearing representative asserted that he had affirmed the September 11, 2018 decision, the decision was actually modified to accept that the April 20, 2017 employment incident occurred as alleged.

[4] *Id.*

[5] *R.S.*, Docket No. 19-1484 (issued January 13, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *T.G.*, Docket No. 19-0904 (issued November 25, 2019); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[7] 20 C.F.R. § 10.115; *M.S.*, Docket No. 19-1096 (issued November 12, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[8] *T.G.*, Docket No. 19-1441 (issued January 28, 2020); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *D.L.*, Docket No. 19-1053 (issued January 8, 2020); *John J. Carlone*, 41 ECAB 354 (1989).

[10] *J.S.*, Docket No. 19-1356 (issued January 8, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident identified by the claimant.[11]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a cervical condition causally related to the accepted April 20, 2017 employment incident.

In his June 6, 2017 report, Dr. Mullins diagnosed cervical spondylosis. However, he offered no history of injury and provided no opinion as to whether the diagnosed condition was causally related to the accepted employment incident. The Board has held that medical evidence that does not offer an opinion regarding the cause of a diagnosed condition is of no probative value on the issue of causal relationship.[12] This report is therefore insufficient to establish appellant's claim.

In his July 20, 2017 report, Dr. Michael diagnosed cervical disc displacement, cervical spondylosis with radiculopathy, and multilevel foraminal stenosis at C5-6 and C6-7. While he identified the accepted employment incident, he offered only a conclusory statement regarding causal relationship and failed to provide medical rationale as to how the employment incident was causally related to appellant's diagnosed condition. The Board has held that a medical report is of limited probative value on a given medical issue if it contains an opinion which is unsupported by medical rationale.[13] As such, this report is also insufficient to establish appellant's claim.

In reports dated September 15 and October 6, 2017, Dr. Levy indicated that he treated appellant with ESI's and diagnosed cervical radiculopathy. He offered no history of injury and provided no opinion as to whether the diagnosed condition was causally related to the accepted employment incident. As explained above, since this report does not offer an opinion regarding the cause of a diagnosed condition, it is of no probative value on the issue of causal relationship and is thus insufficient to establish appellant's claim.[14]

OWCP also received a series of reports from Ms. Butler, a physician assistant, as well as a report from nurse practitioner Ms. Singleton. The Board has held that medical reports signed solely by a physician assistant or a nurse practitioner are of no probative value as these care

[11] *R.S.*, *supra* note 5; *Leslie C. Moore*, 52 ECAB 132 (2000).

[12] *T.G.*, *supra* note 8; *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[13] *S.P.*, Docket No. 19-0819 (issued January 10, 2020); *J.D.* Docket No. 19-0382 (issued January 3, 2020).

[14] *Supra* note 8.

providers are not considered physicians as defined under FECA.[15] These reports are therefore insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence explaining the causal relationship between his cervical conditions and the accepted April 20, 2017 employment incident, 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 a cervical condition causally related to the accepted April 20, 2017 employment incident.

[15] Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2). *See also David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *J.M.*, Docket No. 19-1517 (issued January 29, 2020) (physician assistants are not considered physicians under FECA); *S.L.*, Docket No. 19-0607 (issued January 28, 2020) (nurse practitioners are not considered physicians under FECA).

ORDER

IT IS HEREBY ORDERED THAT the April 29, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 16, 2020
Washington, DC

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

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

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