

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

Y.C., Appellant)	
)	
and)	Docket No. 19-1712
)	Issued: November 6, 2020
U.S. POSTAL SERVICE, VAN BRUNT)	
STATION POST OFFICE, Brooklyn, NY,)	
Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 27, 2019 appellant filed a timely appeal from a June 6, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ 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 The Board notes that OWCP received additional evidence following the June 6, 2019 decision. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish that acceptance of his claim should be expanded to include additional conditions causally related to his accepted September 27, 2016 employment injury.

FACTUAL HISTORY

On September 28, 2016 appellant, then a 39-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained injury to his left arm, shoulder, and right wrist on September 27, 2016 when he was delivering mail and two large dogs began chasing him, causing him to fall off of a porch from a 10-foot high ledge, hit the side of a wall and the ground. He reported landing on his left shoulder, neck, and head first, and then the rest of his body in an awkward position. Appellant stopped work on the date of the injury.

By decision dated November 16, 2016, OWCP accepted the claim for cervical sprain and left shoulder sprain. It paid appellant intermittent wage-loss compensation on the supplemental rolls commencing November 12, 2016.³

By decision dated November 21, 2016, OWCP denied the acceptance of appellant's claim to include the conditions of shoulder osteoarthritis, lumbar radiculopathy, lumbar herniation, lumbar subluxation, lumbar disc displacement, lumbar spondylolisthesis, lumbar retrolisthesis, lumbar osteoarthritis, lumbar scoliosis, right-side sciatica, cervical osteoarthritis, cervical subluxation, cervical radiculopathy, cervical disc displacement at C5-6, cervical spondylosis, cervical brachial neuralgia, and bilateral carpal tunnel syndrome finding that the medical evidence of record failed to establish that the conditions were causally related to the accepted September 27, 2016 employment injury.

Appellant continued to seek physical therapy and medical treatment for his work-related conditions. On October 31, 2018 OWCP referred appellant to Dr. Andrew Farber, a Board-certified orthopedic surgeon, for a second opinion evaluation and opinion on his work-related conditions and disability.

In a November 15, 2018 report and a March 5, 2019 addendum report, Dr. Farber opined that acceptance of appellant's left shoulder condition should be expanded to include rotator cuff tearing as the injury was directly caused by the September 27, 2016 employment incident. He explained that an August 4, 2018 magnetic resonance imaging (MRI) scan of the left shoulder

³ Appellant filed a notice of recurrence (Form CA-2a) on May 11, 2017, claiming disability as of May 8, 2017. On June 1, 2017 OWCP administratively converted the recurrence claim to a new claim under OWCP File No. xxxxxx113. By decisions dated July 12 and November 16, 2017, and October 12, 2018, it denied appellant's claim finding that the medical evidence of record failed to establish that the diagnosed medical conditions of right shoulder osteoarthritis, cervical osteoarthritis, lumbosacral osteoarthritis, lumbosacral radiculopathy, lumbosacral herniation, subluxation at L3-4, subluxation at C3-4, and right shoulder sprain were caused or aggravated by the May 8, 2017 work incident. OWCP has administratively combined File No. xxxxxx610 and File No. xxxxxx113, with the former serving as the master file.

revealed intermediate to high-grade partial thickness articular surface tear of the infraspinatus tendon, supraspinatus tendinosis, and partial thickness tear of the biceps anchor.

On March 7, 2019 Dr. Manoj Sadhnani, a Board-certified podiatrist, requested that OWCP expand acceptance of appellant's claim to include the additional condition of right ankle tenosynovitis.

By decision dated March 20, 2019, OWCP expanded acceptance of appellant's claim to include the additional condition of left shoulder rotator cuff tear, in addition to the previously accepted conditions of cervical sprain, and sprain of left shoulder joint. It further informed appellant that, if the current accepted conditions needed to be revised or additional complications related to the current conditions needed to be added, appellant's physician should explain in writing, with medical rationale, the relationship between the conditions and the work injury, or the current accepted conditions noted above.

On April 11, 2019 appellant indicated that he was still seeking expansion of the acceptance of his claim for approval of additional diagnoses. He reported that his right ankle injury occurred as a result of the accepted September 27, 2016 employment injury when he was chased by two dogs, causing him to flee over a 10-foot porch and land on the pavement.

In response to OWCP's March 20, 2019 decision, appellant submitted a number of medical reports in support of expansion of his claim.

In a February 19, 2019 report, Dr. Raymond Bartoli, a treating chiropractor, noted that appellant had injured his low back in a work-related accident. He diagnosed lumbar disc syndrome and radiculopathy, and segmental dysfunction of the lumbar spine. On May 23, 2019 Dr. Bartoli noted additional diagnoses including cervical disc syndrome, lumbar disc syndrome, segmental dysfunction of the cervical and lumbar spine, and subluxation of the cervical spine. In a separate report dated May 23, 2019, he requested that acceptance of appellant's claim be expanded to include his additional diagnoses.

Dr. Sadhnani reported on February 21, and March 7, 2019 that appellant had experienced a painful ankle since he fell off a porch on September 27, 2016 and landed with impact on pavement. He diagnosed right ankle sprain, osteochondritis of the right ankle, and tenosynovitis of the ankle.

In a narrative report dated March 20, 2019, Dr. Paul M. Brisson, a Board-certified orthopedic surgeon, related appellant's history of injury and noted that appellant felt immediate pain to his cervical and lumbar spine, as well as to his left shoulder. He explained that appellant's symptoms had remained severe and had limited his endurance and capacity to perform daily activities. Dr. Brisson concluded that appellant had sustained injury to his cervical and lumbar spine, and left shoulder on September 27, 2016. Appellant's diagnoses were listed as multilevel disc herniation from C4 through C7 resulting in central and uncinated stenosis as well as spondylosis at C4 through C6, and lumbar disc herniation at L2 and L3. In his report dated April 24, 2019, Dr. Brisson reiterated his prior findings and also noted that appellant had sustained a separate injury to his right foot.

Dr. Barry Katzman, a Board-certified orthopedic surgeon, noted on April 29, 2019 that appellant's diagnoses of right wrist sprain, right wrist tenosynovitis, and right wrist tendinitis with triangular fibrocartilage complex (TFCC) tear should be accepted. In a narrative report dated May 13, 2019, he noted appellant's history of injury on September 27, 2016 and that appellant was being evaluated for continued left shoulder pain, for which he was to undergo surgical repair. Dr. Katzman diagnosed left shoulder strain with left labral tear, impingement syndrome and partial rotator cuff tear; right wrist sprain, right TFCC tear, and right wrist tendinosis and tenosynovitis.

By decision dated June 6, 2019, OWCP denied expansion of the acceptance of appellant's claim to include the additional conditions of right ankle sprain, osteochondritis of the right ankle, right ankle tenosynovitis, and other specific joint derangements of the right ankle, finding that the medical evidence of record failed to establish that the conditions were causally related to the accepted September 27, 2016 employment injury. It also noted that medical reports had been received connecting additional diagnoses as causally related to his cervical and lumbar spine, left shoulder, and right wrist, but these conditions were not accepted conditions. OWCP found that appellant's claim remained accepted for sprain of left shoulder joint, cervical sprain, and left shoulder rotator cuff tear.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed are causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁶

The medical evidence required to establish causal relationship between a claimed specific condition or period of disability and an employment injury is rationalized medical opinion evidence.⁷ The opinion of the physician must be based on a complete factual and medical background of the employee, 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.⁸ Where an employee claims that a

⁴ *Supra* note 2.

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *Victor J. Woodhams*, 41 ECAB 345 (2005).

condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁹

ANALYSIS

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

OWCP denied expansion of the acceptance of appellant's claim finding that the medical evidence of record failed to establish a work-related right ankle injury. It did not, however, discuss whether the evidence submitted was sufficient to establish expansion of the acceptance of the claim for the additional conditions appellant alleged were causally related to the accepted employment injury.¹⁰ The Board notes that the medical reports submitted for expansion of the acceptance of the claim also included additional conditions related to the cervical spine, lumbar spine, left shoulder, and right wrist. The record reflects that the reports from Dr. Brisson discussed additional diagnoses of multilevel disc herniation from C4 through C7 resulting in central and uncinate stenosis, spondylosis at C4-5, C5, and C6, and lumbar disc herniation at L2-3 as a result of the September 27, 2016 employment injury. Dr. Katzman's reports addressed appellant's left shoulder, and right wrist conditions, while Dr. Bartoli's reports noted additional cervical and lumbar spine conditions including subluxation of the cervical spine. OWCP failed to review these medical reports and make proper findings with respect to the additional conditions described. Instead, it merely concluded that these were not accepted conditions. It, thus, failed to discharge its responsibility to set forth findings of fact and a clear statement of reasons explaining its disposition so that appellant could understand the basis for the decision, as well as the precise defect and the evidence needed to overcome the denial of his traumatic injury claim.¹¹

FECA provides that OWCP shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as OWCP considers necessary with respect to the claim.¹²

The Board, therefore, must set aside the June 6, 2019 decision of OWCP and remand the case so that it may make proper findings of fact and provide reasons for its decision, pursuant to the standards set forth in section 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.126.¹³ Following such further development as it deems necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

⁹ *S.M.*, Docket No. 20-0241 (issued August 25, 2020); *see D.M.*, Docket No. 18-0757 (issued November 14, 2018); *JaJa K. Asaramo*, 55 ECAB 200, 204 (2004).

¹⁰ *See L.B.*, Docket No. 19-0775 (issued January 16, 2020).

¹¹ *M.J.*, Docket No. 18-0605 (issued April 12, 2019); *R.M.*, Docket No. 16-0532 (issued August 9, 2017).

¹² 5 U.S.C. § 8124(a)(2).

¹³ *C.M.*, Docket No. 20-0428 (issued August 25, 2020).

ORDER

IT IS HEREBY ORDERED THAT the June 6, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision.

Issued: November 6, 2020
Washington, DC

Christopher J. Godfrey, 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