

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

J.C., Appellant

and

**U.S. POSTAL SERVICE, SAYREVILLE POST
OFFICE, Sayreville, NJ, Employer**

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**Docket No. 20-0432
Issued: November 4, 2020**

Appearances:

Robert D. Campbell, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 17, 2019 appellant, through counsel, filed a timely appeal from an August 19, 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 a cervical condition causally related to an accepted July 18, 2013 employment incident.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decision is incorporated herein by reference. The relevant facts are as follows.

On July 18, 2013 appellant, then a 34-year-old carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained swelling on the back of his head, a possible concussion, and neck stiffness when empty tubs stacked too high fell on his neck and head while in the performance of duty. Appellant stopped work that day.

Initially, by decision dated September 6, 2013, OWCP denied appellant's claim finding that the medical evidence did not establish a diagnosed condition causally related to the accepted July 18, 2013 employment incident.

Appellant, through counsel, requested reconsideration on September 8, 2014 and submitted additional evidence.

OWCP received progress reports from Dr. Faheem A. Abbasi, a Board-certified physiatrist, dating from August 5, 2013, wherein he diagnosed cervical disc displacement, cervicalgia, nonallopathic lesion of the cervical region, cervical sprain, and lumbar facet disease. Dr. Abbasi continued to submit a series of progress reports to the record, through November 13, 2013, wherein he repeated appellant's history of injury and diagnoses.

Dr. Arthur Becan, a Board-certified orthopedic surgeon, in a report dated July 22, 2014, related appellant's diagnoses of chronic post-traumatic cervical strain/sprain, herniated cervical discs, left C5-7 cervical radiculopathy, aggravation of preexisting lumbosacral facet degeneration, chronic post-traumatic lumbosacral strain/sprain, and right L5 radiculopathy. He opined that the July 18, 2013 employment incident was the competent producing factor of appellant's objective and subjective findings.

By decision dated December 2, 2014, OWCP modified the September 6, 2013 decision, finding that the evidence established diagnosed conditions, but denied the claim finding that causal relationship to the accepted July 18, 2013 employment incident had not been established.

On May 27, 2015 counsel again requested reconsideration and submitted additional evidence. In a February 20, 2015 report, Dr. Becan again related appellant's diagnoses and explained that, while appellant likely had preexisting pathology at the C5-7 levels, as seen on a December 11, 2014 magnetic resonance imaging (MRI) scan, there was no evidence of preexisting

³ Docket No. 15-1957 (issued February 23, 2016).

pathology at C3-5. He concluded that appellant certainly would not have developed radiculopathy without some type of significant injury as appellant was only 35 years of age.

By decision dated August 20, 2015, OWCP denied modification of the prior decision.

On September 25, 2015 counsel filed an appeal with the Board. By decision dated February 23, 2016, the Board found that appellant had not submitted rationalized medical evidence to establish that he sustained lumbar and cervical conditions causally related to the accepted July 18, 2013 employment incident.⁴

On February 14, 2017 counsel requested reconsideration and submitted medical evidence, including a May 13, 2016 report from Dr. Becan. Counsel noted that appellant was not pursuing a claim for lumbar conditions, but was pursuing the denial of his claim for cervical conditions due to the accepted July 18, 2013 employment incident.

In his May 13, 2016 report, Dr. Becan summarized findings from his prior reports. He noted that appellant's injury sustained on July 18, 2013 was sufficient to be the cause of appellant's current pathology. Dr. Becan diagnosed chronic post-traumatic cervical sprain and strain, herniated cervical discs, left C5-7 cervical radiculopathy, chronic post-traumatic lumbosacral sprain and strain, aggravation of preexisting lumbosacral facet degenerative disc disease, and right L5 radiculopathy.

By decision dated May 12, 2017, OWCP denied modification.

On May 7, 2018 counsel requested reconsideration and submitted reports from Dr. Becan previously of record, as well as a new December 19, 2017 report.

In the December 19, 2017 report, Dr. Becan noted that appellant sustained an employment injury on July 18, 2013. Based on appellant's July 22, 2014 examination, he diagnosed chronic post-traumatic cervical sprain and strain, herniated cervical discs, left C5-7 cervical radiculopathy, chronic post-traumatic lumbosacral sprain and strain, aggravation of preexisting lumbosacral facet degenerative disc disease, and right L5 radiculopathy. Dr. Becan reviewed the medical reports of record, and reported no evidence of a cervical injury prior to the accepted July 18, 2013 employment incident. He described the accepted July 18, 2013 employment incident and noted that appellant felt the immediate onset of left upper extremity and neck pain. Dr. Becan explained that appellant's December 11, 2014 MRI scan of the cervical spine showed C3-4 and C4-5 bulging discs and C5-6 and C6-7 disc osteophyte complexes. He explained that, while the disc osteophyte complexes were indicative of degenerative changes, there was no evidence that appellant experienced any pain prior to the accepted July 18, 2013 employment incident. Dr. Becan further explained that the degenerative cervical changes represented increased vulnerability to trauma. At the time of the accepted July 18, 2013 employment incident appellant's cervical spine was compromised and the tub of mail striking his head caused a cervical spine injury and activation of neurogenic neuron and nonneurogenic mediators resulting in an inflammatory response. This inflammatory response in turn led to radicular symptomatology and cervical spine pain. Dr. Becan

⁴ *Supra* note 3.

concluded that the accepted July 18, 2013 employment incident was a direct cause of appellant's cervical symptoms.

By decision dated July 19, 2018, OWCP denied modification of the prior decision.

On May 29, 2019 counsel again requested reconsideration and submitted additional medical evidence.

Dr. Becan, in an April 19, 2019 report, diagnosed chronic post-traumatic cervical strain and sprain, herniated cervical discs, and left C5, C6, and C7 cervical radiculopathy. He opined that appellant's cervical radicular symptoms and pain were due to the accepted July 18, 2013 employment incident based on his examination findings and the lack of any symptoms prior to the incident.

By decision dated August 19, 2019, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim, including 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 of FECA,⁶ 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.⁷ 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.⁸

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. Second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁹

⁵ *Supra* note 2.

⁶ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *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).

⁸ *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).

⁹ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.¹⁰ 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 specific employment factors identified by the employee.¹¹

ANALYSIS

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

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence that was previously considered in its February 23, 2016 decision. Findings made in prior Board decisions are *res judicata*, absent any further review by OWCP under section 8128 of FECA.¹²

In support of his requests for reconsideration, appellant submitted additional reports from Dr. Becan dated May 13, 2016, December 19, 2017 and April 19, 2019 addressing the issue of causal relationship between his accepted employment incident of July 18, 2013 and his diagnosed cervical conditions. Dr. Becan described the July 18, 2013 employment incident and opined that the mechanism of injury resulted in appellant's diagnosed conditions. He explained that due to appellant's cervical degenerative changes his cervical spine was vulnerable to trauma and that the July 18, 2013 incident further compromised his cervical spine. Dr. Becan explained that being struck on the head by a falling stack of mail tubs activated neurogenic chemical mediators resulting in an inflammatory response leading to cervical pain and radicular symptomatology. He concluded that appellant's cervical conditions were directly caused and related to the accepted July 18, 2013 employment incident.

The Board finds that although Dr. Becan's reports are insufficient to discharge appellant's burden of proving that his cervical conditions were caused or aggravated by the accepted July 18, 2013 employment incident, his opinion is of sufficient probative value to require further development of the case record by OWCP, and is uncontroverted in the record.¹³

Dr. Becan is a Board-certified physician in orthopedics who is qualified in his field of medicine to render rationalized opinions on the issue of causal relationship and he provided a comprehensive understanding of the medical record and case history. His report provides a pathophysiological explanation as to how appellant sustained cervical injury when empty tubs fell

¹⁰ *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).

¹¹ *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹² *C.D.*, Docket No. 19-1973 (issued May 21, 2020); *M.D.*, Docket No. 20-0007 (issued May 13, 2020).

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(e) (January 2013); *C.D.*, Docket No. 19-1973 (issued May 21, 2020); *A.J.*, Docket No. 19-1167 (issued November 8, 2019); *R.A.*, Docket No. 19-0423 (issued August 7, 2019); *D.S.*, Docket No. 17-1359 (issued May 3, 2019).

on his head. The Board has long held that it is unnecessary that the evidence of record in a case be so conclusive as to suggest causal connection beyond all possible doubt. Rather, the evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound, and logical.¹⁴ Accordingly, Dr. Becan's medical opinion is well rationalized and logical and is therefore sufficient to require further development of appellant's claim.¹⁵

On remand, OWCP should refer appellant to a specialist in the appropriate field of medicine, along with the case record and a statement of accepted facts. The referral physician should provide an evaluation and a rationalized medical opinion as to the causal relationship of the claimed conditions to the accepted July 18, 2013 employment incident. If the physician opines that the diagnosed conditions are not causally related, he or she must explain with rationale how or why the opinion differs from that of Dr. Becan. After such further development of the case record as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

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

¹⁴ *S.M.*, Docket No. 19-1634 (issued August 25, 2020).

¹⁵ *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

ORDER

IT IS HEREBY ORDERED THAT the August 19, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 4, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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