United States Department of Labor
Employees' Compensation Appeals Board

K.C., Appellant	)	
and	)	**Docket No. 20-0683**
	)	**Issued: September 23, 2020**
DEPARTMENT OF VETERANS AFFAIRS, MILWAUKEE VETERANS AFFAIRS MEDICAL CENTER, Milwaukee, WI, 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
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On February 7, 2020 appellant, through counsel, filed a timely appeal from a January 2, 2020 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 diagnosed medical condition causally related to the accepted April 15, 2019 employment incident.

FACTUAL HISTORY

On April 18, 2019 appellant, then a 61-year-old food service worker, filed a traumatic injury claim (Form CA-1) alleging that on April 15, 2019 he strained his back and sustained injuries to his neck and shoulder while in the performance of duty. He explained that he was carrying a tray to a tray-carrier when his left foot struck the lip of a metal plate bolted to the floor and caused him to fall to his knees and then on his face. The nursing staff then arrived and called the fire department which provided attention to appellant's lower back pain, as well as pain in his neck and shoulder. Appellant stopped work on the date of the alleged injury day.

In a May 3, 2019 development letter, OWCP informed appellant that it had received no evidence in support of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond. No additional evidence was received.

In a June 3, 2019 letter, the employing establishment controverted appellant's claim.

By decision dated June 7, 2019, OWCP denied appellant's traumatic injury claim, finding that he had not submitted any medical evidence containing a diagnosis in connection with his injury. It concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

It subsequently received a May 16, 2019 letter, wherein Dr. Jennifer Martin, Board-certified in physical medicine and rehabilitation, indicated that appellant had been admitted to the hospital from April 22 to May 16, 2019 and was under strict restrictions from neurosurgery until further notice. She indicated that he would undergo outpatient follow up and neurosurgery would determine when his restrictions could be liberalized and when he could return to work.

On June 19, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

In April 15, 2019 diagnostic reports, Dr. Vivek Manchanda, a Board-certified radiologist, performed x-rays of appellant's thoracic and lumbar spine due to complaints of low back pain and lower extremity weakness after a fall forward. He noted no acute fracture, mild diffusely increased density of the thoracic spine and mild degenerative changes of the mid thoracic spine and moderate L5-S1 degenerative disease, mild L4-5 degenerative disc disease, and no acute fracture of the lumbar spine.

In a separate April 15, 2019 diagnostic report, Dr. Mario Laguna, a Board-certified diagnostic radiologist, performed a magnetic resonance imaging (MRI) scan of appellant's cervical spine, finding degenerative changes with associated compressive myelopathy at C3-4, C4-5 and

C5-6.[3] In a computerized tomography (CT) scan of even date, he found no evidence of a fracture in appellant's cervical spine.

In an April 15, 2019 medical report, Dr. Daniel Kopatich, Board-certified in emergency medicine, recounted appellant's history of injury in which appellant tripped in the kitchen at work and fell on his knees and face and noted his history of spinal stenosis. On review of the diagnostic reports of even date he admitted appellant to the hospital and scheduled him for neurosurgery the following week.

In a separate April 15, 2019 medical report, Dr. Karin Swartz, a Board-certified neurosurgeon, noted appellant's prior history of severe cervical stenosis and cervical myelopathy and found that the diagnostic reports of even date demonstrated that his unchanged when compared to reports dated August 11, 2017. Appellant informed her that he experienced pain and lower extremity weakness after falling at work that day. Dr. Swartz noted new leg weakness and reasoned that it appeared to be related to muscle spasms. She opined that appellant's fall likely caused muscle spasms and stated that there was limited suspicion for a spinal cord injury. In an April 16, 2019 report, Dr. Michael Gelsomino, a Board-certified neurosurgeon, noted that he also evaluated appellant the previous day and relayed that he had been trying to schedule appellant's surgery related to his advanced myelopathy for months. He noted that appellant had no fractures from his fall.

In another April 15, 2019 medical report, Dr. Andrew Scrima, Board-certified in pain medicine, evaluated appellant after his fall at work and noted his history of severe cervical stenosis with compressive myelopathy. Appellant reported increased intensity of the left lower arm, hand paresthesias, right leg weakness, and pain in the left side of his neck and lower back since his fall. On evaluation Dr. Scrima stated his concern for the worsening of appellant's cervical myelopathy and opined that this could be due to a muscular strain.

In an April 16, 2019 physical therapy report, Melanie Schultz, a physical therapist, met with appellant to review her treatment goals related to his cervical myelopathy and difficulty walking due to muscle spasms.

Appellant also submitted multiple medical reports dated April 15 and 16, 2019 signed by registered nurses.

A telephonic hearing was held before an OWCP hearing representative on October 17, 2019. Appellant recounted the events of the April 15, 2019 employment incident in which he was carrying trays to a tray carrier and his foot caught a metal plate bolted to the floor and caused him to fall to his knees and face. He was then taken by ambulance to the hospital after receiving assistance from some staff nurses. Appellant indicated that he stayed in the hospital for a week and that he was previously scheduled to undergo a cervical spinal cord fusion on April 22, 2019 prior to his fall. He discussed his lower back problems and stated that he was diagnosed with muscle spasms that he would have to deal with for at least six months. The hearing representative explained that appellant would need a narrative report from his treating physician providing this

[3] Dr. Laguna noted that his findings were similar to an August 11, 2017 MRI scan of appellant's cervical spine.

diagnosis with an explanation of how his injury was causally related to his employment incident. He held the case record open for 30 days for the submission of additional evidence.

Appellant submitted a copy of the April 15, 2019 medical report and April 16, 2019 addendum signed by Drs. Swartz and Gelsomino.

By decision dated January 2, 2020, OWCP's hearing representative affirmed the June 7, 2019 decision.

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 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 whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the 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, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[8]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[9] 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 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]

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[4] *Supra* note 2.

[5] *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[7] *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[8] *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q).

[9] *A.R.*, Docket No. 19-0465 (issued August 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[10] *W.L.*, Docket No. 19-1581 (issued August 5, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[11]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition causally related to the accepted April 15, 2019 employment incident.

In an April 15, 2019 medical report, Dr. Swartz noted appellant's prior history of severe cervical stenosis and cervical myelopathy and found that the diagnostic reports from April 15, 2019 were unchanged when compared to reports dated August 11, 2017. She noted new leg weakness and reasoned that it appeared to be related to muscle spasms. Dr. Swartz opined that appellant's fall likely caused muscle spasms and stated that there was limited suspicion for a spinal cord injury. The Board has found that pain and spasm are symptoms and not a specific medical diagnosis.[12] The Board has also held that a medical report lacking a firm diagnosis and a rationalized medical opinion regarding causal relationship is of no probative value.[13] For this reason, Dr. Swartz' April 15, 2019 medical report is insufficient to meet appellant's burden of proof.

Similarly, in Dr. Scrima's April 15, 2019 medical report, he evaluated appellant's symptoms after appellant's fall at work. He listed his concern of the worsening of appellant's cervical myelopathy and opined that it could be due to a muscle strain. As stated above, a medical report lacking a firm diagnosis and a rationalized medical opinion regarding causal relationship is of no probative value.[14] For this reason, Dr. Scrima's April 15, 2019 medical report is insufficient to establish appellant's burden of proof.

Appellant also submitted April 15, 2019 diagnostic reports, including x-rays, MRI and CT scans of his cervical, thoracic, and lumbar spine from Drs. Manchanda and Laguna. The physicians found no evidence of an acute fracture and mild degenerative changes with associated compressive myelopathy. The Board has held that diagnostic tests, standing alone, lack probative value as they do not provide an opinion on causal relationship between appellant's employment duties, and the diagnosed conditions.[15] Appellant also submitted medical reports from Drs. Kopatich, Gelsomino, and Martin. In an April 15, 2019 medical report, Dr. Kopatich reviewed appellant's history of injury relating to the employment incident and admitted him to the hospital for further treatment. In an April 16, 2019 report, Dr. Gelsomino evaluated appellant for

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *See R.D.*, Docket No. 18-1551 (issued March 1, 2019).

[12] *M.H.*, Docket No. 18-0873 (issued December 18, 2019); *J.S.*, Docket No. 19-0863 (issued November 4, 2019); *V.B.*, Docket No. 19-0643 (issued September 6, 2019).

[13] *P.C.*, Docket No. 18-0167 (issued May 7, 2019).

[14] *Supra* note 10.

[15] *See J.M.*, Docket No. 17-1688 (issued December 13, 2018).

his symptoms related to his fall and noted that he had suffered no acute fracture due to the incident. Additionally, Dr. Martin, in a May 16, 2019 letter, indicated that appellant had been admitted to the hospital from April 22 to May 16, 2019 and would be under strict restrictions from neurosurgery until further notice. As stated previously, medical evidence lacking a firm diagnosis and a rationalized medical opinion regarding causal relationship is of no probative value.[16] For this reason, this evidence is also insufficient to meet appellant's burden of proof.

Lastly, the remaining medical evidence consists of various medical reports and notes from physical therapists and registered nurses. The Board has held that certain healthcare providers, such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered physicians as defined under FECA.[17] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[18] Thus, this evidence is also insufficient to establish the claim.

The Board finds that appellant has not submitted rationalized, probative medical evidence sufficient to establish a diagnosed medical condition causally related to his April 15, 2019 employment incident.[19] Appellant, therefore, 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 diagnosed medical condition causally related to the accepted April 15, 2019 employment incident.

[16] *Supra* note 10.

[17] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[18] 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." *Id*. at § 8101(2); 20 C.F.R. § 10.5(t). *See also supra* note 11 at Chapter 2.805.3a(1) (January 2013); *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.F.*, Docket No. 19-1694 (issued March 18, 2020) (physical therapists are not considered physicians under FECA); *D.S.*, Docket No. 19-1657 (July 20, 2020) (nurse practitioners and registered nurses are not considered physicians under FECA).

[19] *See T.J.*, Docket No. 18-1500 (issued May 1, 2019); *see D.S.*, Docket No. 18-0061 (issued May 29, 2018).

ORDER

IT IS HEREBY ORDERED THAT the January 2, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 23, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board