United States Department of Labor
Employees' Compensation Appeals Board

M.F., Appellant	)	
and	)	**Docket No. 21-0390**
	)	**Issued: August 23, 2021**
DEPARTMENT OF VETERANS AFFAIRS, ATLANTA VETERANS AFFAIRS 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
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 26, 2021 appellant, through counsel, filed a timely appeal from a December 21, 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 medical condition causally related to the accepted April 20, 2017 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 are incorporated herein by reference. The relevant facts are as follows.

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 when 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 hospital discharge instructions and a work release form, dated September 16, 2017, a nurse practitioner, who noted that he was treated 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 through 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. No response was received.

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 telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

On October 10, 2018 OWCP received appellant's response to its development questionnaire, dated August 17, 2018. Appellant noted that he was working alone on April 20, 2017, when he sustained an injury lifting dental bins of contaminated surgical instrumentation. He reported 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.

Appellant also submitted a series of medical reports dated May 11, 2017 through March 5, 2018 from a physician assistant who reported appellant's complaints of neck pain and noted his

[3] Docket No. 19-1573 (issued March 16, 2020).

continued treatment. She diagnosed cervical radiculopathy, cervical spondylosis, cervical disc displacement, 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 noted degenerative marrow changes at C5-6 and multilevel degenerative disc height loss and desiccation. Dr. Mullins diagnosed cervical spondylosis.

In a July 20, 2017 report, Dr. Keith 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 September 15 and October 6, 2017 reports, Dr. Howard Levy, a Board-certified specialist in physical medicine and rehabilitation, noted that he administered epidural steroid injections at appellant's left C5-6 and C6-7 neural foramen. He diagnosed cervical radiculopathy.

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.[4] The hearing representative found that the medical evidence of record was insufficient to establish how the accepted April 20, 2017 employment incident caused or aggravated appellant's diagnosed medical conditions.

Appellant, through counsel, appealed to the Board on July 18, 2019.

By decision dated March 16, 2020,[5] the Board affirmed OWCP's April 29, 2019 decision.

On October 14, 2020 appellant, through counsel, requested reconsideration and submitted an August 31, 2020 report from Dr. Ralph D'Auria, a Board-certified physical medicine and rehabilitation specialist. Dr. D'Auria noted appellant's history of treatment and provided physical examination findings. He diagnosed cervical radiculopathy. Dr. D'Auria opined that appellant's condition was directly related to the accepted April 20, 2017 employment incident. He based his opinion on appellant's medical history, the mechanism of injury, the absence of any previous injury to the cervical region, appellant's condition, and findings on physical examination.

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

[5] *Supra* note 3.

By decision dated December 21, 2020, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA[6] 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,[7] 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.[8] 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.[9]

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. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[10]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[11] 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 incident identified by the employee.[12]

[6] *Supra* note 2.

[7] *S.O.*, Docket No. 21-0002 (issued April 29, 2021); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[8] *R.J.*, Docket No. 20-1630 (issued April 27, 2021); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[9] *J.C.*, Docket No. 20-1584 (issued April 23, 2021); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[10] *K.M.*, Docket No. 21-0016 (issued April 21, 2021); *Elaine Pendleton*, 40 ECAB 1143 (1989); *John J. Carlone*, 41 ECAB 354 (1989).

[11] *J.B.*, Docket No. 21-0011 (issued April 20, 2021); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[12] *P.C.*, Docket No. 20-0855 (issued November 23, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

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.

Preliminarily, the Board notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of OWCP's April 29, 2019 merit decision because the Board considered that evidence in its March 16, 2020 decision. Findings made in prior Board decisions are *res judicata* absent further review by OWCP under section 8128 of FECA.[13]

On October 14, 2020 appellant, through counsel, requested reconsideration and submitted an August 31, 2020 report from Dr. D'Auria. Dr. D'Auria provided physical examination findings and diagnosed cervical radiculopathy. He opined that appellant's condition was directly related to the accepted April 20, 2017 employment incident. Dr. D'Auria based his opinion on appellant's medical history, the mechanism of injury, the absence of any previous injury to the cervical region, appellant's condition, and findings on physical examination. While he supported causal relationship, he offered only a conclusory statement devoid of medical rationale. Dr. D'Auria did not explain the medical mechanics of how the accepted employment incident of lifting dental bins from a pallet was competent to cause 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.[14] Consequently, Dr. D'Auria's opinion is insufficient to meet appellant's burden of proof to establish his claim.

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.

[13] *P.B.*, Docket No. 20-0124 (issued March 10, 2021); *J.S.*, Docket No. 19-0022 (issued November 4, 2020); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

[14] *P.C.*, *supra* note 12.

ORDER

IT IS HEREBY ORDERED THAT the December 21, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 23, 2021
Washington, DC

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

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

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