

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

_____)	
T.G., Appellant)	
)	
and)	Docket No. 19-1930
)	Issued: January 8, 2021
U.S. POSTAL SERVICE, HODGE PARK)	
CARRIER ANNEX, Kansas City, MO, Employer)	
_____)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
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
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On September 17, 2019 appellant, through counsel, filed a timely appeal from a June 28, 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 her burden of proof to establish a neck, back, rib, shoulder, or wrist condition causally related to the accepted November 25, 2018 employment incident.

FACTUAL HISTORY

On November 26, 2018 appellant, then a 48-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on November 25, 2018 she suffered a left neck strain when her vehicle slid off the road and parcels slid within the vehicle striking her left side while in the performance of duty. On the reverse side of the claim form the employing establishment acknowledged that she was injured in the performance of duty. Appellant stopped work on November 26, 2018 and returned to work on November 28, 2018.

In a November 26, 2018 supplemental statement, appellant explained that on November 25, 2018 she lost control of her work vehicle while driving over ice. She reported that, as she lost control of the vehicle, it landed sideways in bushes covered with snow. Appellant indicated that she called the police who arrived to the scene 25 minutes later. She stated that they assisted her in climbing out of the vehicle and that she was transported to the hospital.

November 25, 2018 hospital discharge notes signed by Natalie Bazalgette, a physician assistant, noted that appellant was seen for a cervical strain, back pain, and rib pain following a motor vehicle collision on even date.

In a November 25, 2018 work excuse note, a physician with an illegible signature confirmed that appellant was seen for an appointment and could return to work without restrictions on November 29, 2018.

An authorization for examination and/or treatment (Form CA-16) dated November 26, 2018 from the employing establishment indicated that appellant was authorized to receive medical treatment for neck strain at St. Mary's Hospital.

In a November 30, 2018 development letter, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of medical evidence needed, including a medical opinion from a qualified physician as to how the employment incident caused or aggravated a diagnosed condition. OWCP afforded appellant 30 days to submit the necessary evidence.

Appellant submitted hospital discharge notes, dated December 2, 2018, from Ms. Bazalgette.

In a December 2, 2018 work excuse note, a physician with an illegible signature noted that appellant could return to light-duty work on December 9, 2018 and could return to full-duty work on December 16, 2018.

In a December 11, 2018 report, Dr. Dorothy Jennings, an osteopath specializing in family medicine, noted that appellant injured her neck, back, right shoulder, and right hand after losing

control of her work vehicle on an icy road. She examined appellant and diagnosed a right rotator cuff injury, a right wrist sprain, a back strain, and a neck strain. In an accompanying work activity status report, Dr. Jennings listed appellant's work restrictions and indicated that appellant could return to work on December 11, 2018. She referred appellant for physical therapy treatment.

In a December 14, 2018 report, Dr. Jennings diagnosed a right rotator cuff injury, a right wrist sprain, a back strain, and a neck strain. In an accompanying work activity status report, she listed appellant's work restrictions and indicated that appellant could return to work on December 14, 2018.

Appellant submitted physical therapy treatment notes dated December 11 through 20, 2018.

In a December 20, 2018 report, a nurse practitioner examined appellant and diagnosed a right rotator cuff injury, a neck strain, a back strain, and a right wrist sprain. In an accompanying work activity status report, she listed appellant's work restrictions and indicated that appellant could return to work on December 20, 2018.

In a December 26, 2018 work activity status report, Dr. Michael Khadavi, a Board-certified specialist in physical medicine, diagnosed a right rotator cuff injury and a lower back strain. He also listed appellant's work restrictions.

In a January 2, 2019 work activity status report, Dr. Khadavi diagnosed a right wrist sprain and a right rotator cuff injury and listed appellant's work restrictions.

By decision dated January 2, 2019, OWCP denied appellant's traumatic injury claim finding that the medical evidence of record was insufficient to establish a causal relationship between her diagnosed conditions and the accepted November 25, 2018 employment incident.

In a December 3, 2018 report, Dr. Mark Ditzenberger, a chiropractor, reviewed x-rays of appellant's spine and diagnosed a sprain of the cervical spine, subluxation of the cervical spine, a sprain of the thoracic spine, subluxation of the thoracic spine, a sprain of the lumbar spine, subluxation of the lumbar spine, a sprain of the pelvis, subluxation of the pelvis, and a sprain of the right shoulder.

In a December 7, 2018 work excuse note, a physician with an illegible signature noted that appellant could return to work on December 12, 2018.

In a December 26, 2018 report, Dr. Khadavi noted that appellant was experiencing right shoulder pain that began on November 25, 2018 after the vehicle she was driving flipped on its side. He reported her complaints of pain in the right shoulder, back, ribs, wrist, and neck. Dr. Khadavi examined appellant and reviewed an x-ray of her right shoulder. He indicated that her pain was most consistent with a full-thickness right rotator cuff tear or a partial-thickness right rotator cuff tear and a discogenic back injury and radiculitis radiating around the rib cage.

In a January 2, 2019 narrative statement, appellant clarified that, in addition to her wrist and shoulder pain, she was experiencing pain in her back, neck, ribs, right leg, and right wrist.

In a January 2, 2019 report, Dr. Khadavi noted that appellant was still experiencing shoulder, back, rib, and right wrist pain. He diagnosed likely wrist sprain or scapholunate partial tear, likely full-thickness right rotator cuff tear or a partial-thickness right rotator cuff tear, and back pain with radiculitis radiating around the rib cage.

A January 8, 2019 magnetic resonance imaging (MRI) scan of appellant's right shoulder revealed supraspinatus tendinosis with a superimposed small intrasubstance tear of the mid fibers and mild acromioclavicular joint osteoarthritis. It showed no full-thickness rotator cuff tear. A thoracic spine MRI scan of the same date revealed mild degenerative disc disease in the thoracic spine and a probable cyst in the right kidney.

A January 9, 2019 MRI scan of appellant's right wrist revealed probable complex tear of the scapholunate ligament, a small ganglion cyst volar to the distal radius, and degenerative cyst formation involving the proximal pole scaphoid with associated mild sclerosis.

In a January 16, 2019 report, Dr. Khadavi indicated that appellant's right shoulder pain had not improved. He noted that she also had right wrist and back pain. Dr. Khadavi diagnosed a partial rotator cuff tear, a partial scapholunate ligament tear, and a likely facet joint sprain. He performed right radiocarpal and subacromial bursa injections and ordered physical therapy treatment. In an accompanying work activity status report, Dr. Khadavi listed appellant's work restrictions.

In an undated attending physician's report (Form CA-20), a physician with an illegible signature diagnosed scapholunate ligament tear and rotator cuff tear and checked a box marked "yes" indicating that the diagnosed conditions were caused or aggravated by an employment activity.

On January 18, 2019 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative.

In a February 6, 2019 report, Dr. Khadavi indicated that, since he last saw her, appellant's right shoulder was 50 percent improved and her right wrist was 98 percent improved. He diagnosed a partial right rotator cuff tear. Dr. Khadavi recommended continued physical therapy treatment. In an accompanying work activity status report, he listed appellant's work restrictions.

In a March 13, 2019 report, Dr. Khadavi noted that appellant's wrist pain was improved, but she was still experiencing right shoulder and back pain. He diagnosed a strain of the lower back and recommended continued physical therapy treatment.

A telephonic hearing was held on May 15, 2019. At the hearing, appellant testified that she had not been treated for her rib or back pain and that she was still experiencing pain throughout her right arm. The hearing representative held the record open for 30 days for the submission of additional evidence.

November 25, 2018 x-rays of appellant's cervical spine, lumbar spine, chest, and left ribs revealed no fractures or listhesis. They showed straightening of the cervical spine, which may have been positional or due to muscle spasm.

In a November 25, 2018 report, Dr. Dinesh J. Patel, a general medical practitioner, noted that appellant presented with neck pain, left rib pain, and lower back pain after sliding on ice in her work vehicle. He reviewed x-rays of her cervical spine, lumbar spine, chest, and left ribs and diagnosed a cervical strain, back pain, and rib pain.

December 2, 2018 x-rays of appellant's right lower leg, thoracic spine, right wrist, and sacrum revealed no significant abnormalities. X-rays of her right shoulder revealed evidence of chronic rotator cuff pathology and mild acromioclavicular joint disease.

In a December 2, 2018 report, Dr. Robert Henley, a Board-certified specialist in internal medicine, noted that appellant was experiencing pain in the right side of her body after her work vehicle flipped on its side. He reviewed x-rays of her right lower leg, thoracic spine, right wrist, sacrum, and right shoulder and diagnosed back pain, bilateral contusion of the ribs, leg pain, shoulder pain, and a wrist sprain.

By decision dated June 28, 2019, OWCP's hearing representative affirmed the January 2, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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,⁴ 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.⁵ 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.⁶

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.⁷ The second component is whether the employment incident caused a personal injury.⁸

³ *Id.*

⁴ *G.L.*, Docket No. 18-1057 (issued April 14, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *M.G.*, Docket No. 18-1616 (issued April 9, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ 20 C.F.R. § 10.115; *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *R.K.*, Docket No. 19-0904 (issued April 10, 2020); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *Y.D.*, Docket No. 19-1200 (issued April 6, 2020); *John J. Carlone*, 41 ECAB 354 (1989).

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

Under section 8101(2) of FECA, chiropractors are only considered physicians to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.¹¹ OWCP's regulation provides that reimbursable chiropractic services are limited to physical examinations (and related laboratory tests), x-rays performed to diagnose a subluxation of the spine, and treatment consisting of manual manipulation of the spine to correct a subluxation.¹²

ANALYSIS

The Board has duly considered the matter and finds that the case is not in posture for a decision. In the case of *William A. Couch*,¹³ the Board held that, when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued.

While OWCP is not required to list every piece of evidence submitted to the record, the record is clear that the documents, which appellant submitted, were not properly or fully reviewed by OWCP in its June 28, 2019 decision. OWCP erroneously determined that it could not evaluate reports from Dr. Khadavi because they were unsigned. The Board finds that his reports, dated December 26, 2018 through March 13, 2019, were electronically signed, and he can be properly identified as a physician under FECA.¹⁴ As such, they are subject to review. Additionally, OWCP's June 28, 2019 decision failed to reference or address reports from Drs. Patel, Henley, and Ditzenberger, dated November 25 and December 2 and 3, 2018 respectively. It further failed to reference or address physical therapy treatment notes, dated December 11 through 20, 2018, and reports from a physician assistant and a nurse practitioner.

It is crucial that OWCP address all evidence received prior to the issuance of its final decision, as the Board's decisions are final with regard to the subject matter appealed.¹⁵ The Board finds that this case is not in posture for decision as OWCP did not review the above-noted evidence

⁹ *L.F.*, Docket No. 19-1905 (issued April 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁰ *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹¹ 5 U.S.C. § 8101(2); *see D.J.*, Docket No. 19-1494 (issued March 11, 2020).

¹² 20 C.F.R. § 10.5(o).

¹³ 41 ECAB 548 (1990); *see also R.D.*, Docket No. 17-1818 (issued April 3, 2018).

¹⁴ *T.W.*, Docket No. 17-1819 (issued March 14, 2018).

¹⁵ *See C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); *see also William A. Couch*, *supra* note 13.

in its June 28, 2019 decision.¹⁶ On remand OWCP shall review all evidence of record, and following any further development as it deems necessary, it shall issue an appropriate decision.¹⁷

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the June 28, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further action consistent with this decision of the Board.

Issued: January 8, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁶ See *V.C.*, Docket No. 16-0694 (issued August 19, 2016).

¹⁷ The Board notes that the employing establishment issued a Form CA-16. A properly completed CA-16 form authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. See 20 C.F.R. § 10.300(c); *L.F.*, *supra* note 9; *Tracy P. Spillane*, 54 ECAB 608 (2003).