

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

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B.F., Appellant)	
)	
and)	Docket No. 20-0990
)	Issued: January 13, 2021
U.S. POSTAL SERVICE, CROWN POINT POST)	
OFFICE, Crown Point, IN, Employer)	
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Appearances:
Alan J. Shapiro, Esq., for the appellant¹
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 April 9, 2020 appellant, through counsel, filed a timely appeal from a March 6, 2020 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 medical condition causally related to the accepted May 16, 2019 employment incident.

FACTUAL HISTORY

On May 20, 2019 appellant, then a 56-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 16, 2019 he injured his left shoulder when reaching for mail with his left hand while in the performance of duty. He indicated that he felt a sharp pain in the left shoulder that radiated down into his left arm and hand. Appellant noted that he was diagnosed with a pinched nerve. He did not stop work.

In a May 16, 2019 statement, appellant explained that he was delivering mail that day when he grabbed mail from a tray table with his left hand. He asserted that he felt something pull in his shoulder, but was able to complete his route. Appellant noted that he did not want to seek medical treatment at that time.

A May 19, 2019 after visit summary indicated that appellant was seen that day by a nurse practitioner who diagnosed a pinched nerve.

In a July 11, 2019 medical report, Dr. Mukund Komanduri, a Board-certified orthopedic surgeon, noted that appellant presented with left shoulder pain after injuring it at work on May 16, 2019. He further noted that appellant suffered from two months of chronic motor wasting of the left arm and hand with severe wrist drop and inability to extend his fingers. Dr. Komanduri observed that he also had intermittent numbness in his hand. He indicated that appellant previously underwent a C6-7 cervical fusion. Dr. Komanduri noted appellant's belief that work activity, such as grabbing the mail, caused his injury. He diagnosed left shoulder pain, cervicgia, cervical radiculopathy, and instability of joint of left wrist. Dr. Komanduri recommended that appellant undergo a magnetic resonance imaging (MRI) scan of his cervical spine and upper extremity electromyogram (EMG) study. He also prescribed physical therapy. Appellant underwent physical therapy treatment that day.³

A July 12, 2019 MRI scan of the cervical spine demonstrated minimal disc bulges with annular tears at C2-3 and C3-4 and disc protrusion at C4-5, C5-6, and C7-T1. It also revealed disc degeneration, subarticular recess, and foraminal narrowing at C4-5.

In a July 29, 2019 development letter, OWCP advised appellant that when his claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work. The claim was administratively approved to allow payment of a limited amount of medical expenses, but the merits of the claim had not been formally adjudicated. OWCP advised that, because appellant had filed a claim for wage-loss compensation, his claim would now be formally adjudicated. It requested that he submit factual and medical information including a comprehensive report from his physician regarding how a specific work incident contributed to

³ On July 20, 2019 appellant filed a claim for wage-loss compensation (Form CA-7) for the period July 16 through 19, 2019.

his claimed injury. OWCP provided appellant with a questionnaire for his completion and afforded him 30 days to submit the necessary evidence.

OWCP subsequently received additional medical evidence, including treatment notes indicating that appellant had undergone additional physical therapy treatment on August 1 and 23, 2019.⁴

In an August 2, 2019 medical report, Dr. Komanduri noted that appellant returned for a follow up on his acute cervical radiculopathy. He again noted the date of injury as May 16, 2019. Dr. Komanduri reviewed appellant's MRI scan and diagnosed cervical radiculopathy. He observed that there was a significant risk of complete loss of function in appellant's left upper extremity. Dr. Komanduri concluded that this was a surgical emergency and needed to be addressed as soon as possible. In a narrative report of even date, he reiterated his findings and diagnosis. In a work status report of even date, Dr. Komanduri indicated that appellant was off work.⁵

In an August 16, 2019 medical report, Dr. Komanduri observed that appellant had muscle atrophy, weakness, and loss of function in the left arm. He diagnosed cervical disc herniation. Dr. Komanduri reiterated that appellant's injury occurred while at work on May 16, 2019, noting that appellant was repetitively lifting and delivering mail that day. He noted that when appellant reached out in an awkward position to get mail, he felt an audible pop in his neck, experiencing a sharp pain on the left side of the neck. Dr. Komanduri explained that the active leaning to the side and reaching overhead put appellant's brachial plexus on traction and irritated his neck. He noted that appellant was also aggressively rotating to the left to allow him to see the mailboxes. Dr. Komanduri further explained that such repetitive rotating, lifting, and twisting of appellant's neck on May 16, 2019 put his cervical disc at risk. He found that there was clear evidence of an acute injury with severe muscle atrophy and weakness to the point that appellant no longer could utilize his left arm. Dr. Komanduri again indicated that appellant previously underwent a cervical fusion in 2003. He opined that, while appellant probably had chronic degenerative disease given his age, appellant "clearly" sustained an acute injury from the accepted May 16, 2019 employment incident, which was "clearly" a reasonable cause for his cervical disc herniation. Dr. Komanduri noted that appellant needed medical treatment right away. He concluded that there was a causal connection consistent with lifting, twisting, and repetitive use of the neck and shoulder and that he believed that appellant was telling the truth. In a narrative report of even date, Dr. Komanduri reiterated his findings and conclusions.⁶

By decision dated September 4, 2019, OWCP denied appellant's traumatic injury claim, finding that he had not established causal relationship between his diagnosed conditions and the accepted May 16, 2019 employment incident.

⁴ On August 2, 2019 appellant filed a Form CA-7 for the period July 20 through August 2, 2019.

⁵ On August 16, 2019 appellant filed a Form CA-7 for the period August 3 through 16, 2019.

⁶ On August 30, 2019 appellant filed a Form CA-7 for the period August 17 through 30, 2019.

OWCP subsequently received additional medical evidence. In an August 16, 2019 work status report, Dr. Komanduri indicated that appellant remained off work. On September 18, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. During the hearing, held on January 15, 2020, appellant explained that he previously had a cervical fusion in 2003, but that his preexisting neck condition was not work related and had fully resolved. The hearing representative held the record open for 30 days for the submission of additional evidence. No further evidence was received.

By decision dated March 6, 2020, OWCP's hearing representative affirmed the September 4, 2019 decision, finding that the evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted May 16, 2019 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁷ 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,⁸ 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.⁹ 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.¹⁰

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. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.¹¹

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.¹² The opinion of

⁷ *Id.*

⁸ *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).

⁹ *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).

¹⁰ *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).

¹¹ *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).

¹² *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).

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.¹³

ANALYSIS

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

In reports dated August 16, 2019, Dr. Komanduri provided a detailed physiological explanation of how the accepted May 16, 2019 employment incident resulted in appellant's diagnosed cervical disc herniation. He stated that appellant was aggressively rotating to the left on May 16, 2019 to see the mailboxes and repetitively reaching out in an awkward position to lift mail. Dr. Komanduri explained that this activity of leaning to the side and reaching overhead put his brachial plexus on traction, irritating the neck. He further explained that such combination of repetitive rotating, lifting, and twisting of appellant's neck put tension on his brachial plexus, causing muscle atrophy and weakness to the point that he no longer could utilize his left arm. Dr. Komanduri concluded that appellant's cervical disc herniation was, therefore, causally related to the accepted May 16, 2019 employment incident.

The Board finds that, although Dr. Komanduri's reports are insufficient to discharge appellant's burden of proof that his diagnosed conditions were caused or aggravated by the accepted May 16, 2019 employment incident, his reports constitute substantial, uncontroverted evidence in support of the claim, and provide sufficient rationale to require further development of the case record by OWCP.¹⁴ Dr. Komanduri provided a detailed history of injury, referenced objective medical reports demonstrating injury, expressed his opinion on causal relationship within a reasonable degree of medical certainty, and provided a pathophysiologic explanation as to the mechanism by which repetitive rotating, lifting, and twisting while grabbing mail on May 16, 2019 resulted in appellant's diagnosed cervical disc herniation.

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.¹⁵

The case shall therefore be remanded for OWCP to refer appellant, the case record, and a statement of accepted facts to a specialist in the appropriate field of medicine for an evaluation and a rationalized medical opinion on whether the accepted May 16, 2019 employment incident caused, contributed to, or aggravated his diagnosed conditions. If the physician opines that the diagnosed condition is not causally related to the employment incident, he or she must explain

¹³ *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).

¹⁴ *Y.D.*, Docket No. 19-1200 (issued April 6, 2020).

¹⁵ *K.P.*, Docket No. 18-0041 (issued May 24, 2019).

with rationale how or why their opinion differs from that of Dr. Komanduri. Following this and other such further development as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the March 6, 2020 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: January 13, 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