

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

M.H., Appellant)	
)	
and)	Docket No. 21-0331
)	Issued: November 22, 2021
U.S. POSTAL SERVICE, RICHMOND POST OFFICE, Richmond, VA, Employer)	
)	

Appearances: *Case Submitted on the Record*
Erik B. Blowers, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 6, 2021 appellant, through counsel, filed a timely appeal from a December 10, 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.³

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.*

³ The Board notes that, following the December 10, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a medical condition causally related to the accepted January 14, 2020 employment incident.

FACTUAL HISTORY

On January 24, 2020 appellant, then a 39-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that, on January 14, 2020, he sustained neck, back, and leg pain when he was involved in a motor vehicle accident while in the performance of duty. On the reverse side of the claim form, a supervisor indicated that appellant was not in the performance of duty at the time of the injury as he noted that appellant had advised a coworker that he had sustained a flare-up from a prior injury.

In a duty status report (Form CA-17) dated January 29, 2020, Dr. Andrea Hall, a Board-certified family practitioner, diagnosed paraspinal/lumbar strain, noting an additional disabling condition of sciatica. She indicated that appellant had been involved in a rear-end motor vehicle collision on January 14, 2020 and advised that he could return to work on January 21, 2020 with restrictions.

In a development letter dated January 28, 2020, OWCP informed appellant that he had submitted insufficient medical evidence to establish his claim. It advised him of the type of evidence needed and provided a questionnaire for completion. OWCP afforded appellant at least 30 days to respond. In a letter of even date, it requested additional information regarding the circumstances of the January 14, 2020 incident from the employing establishment.

In an incident form report dated January 15, 2020, the incident of January 14, 2020 was described by an employing establishment representative as involving a motor vehicle bumping appellant's postal vehicle from behind with no damage to either vehicle. The representative noted that appellant stated that he was not hurt, but that the incident brought on a recurring injury.

In a note dated February 6, 2020, Dr. David Urquia, a Board-certified orthopedic surgeon, diagnosed cervicalgia and low back pain, and noted that therapy was indicated for cervical lumbar sprain.

On February 26, 2020 the employing establishment responded to OWCP's development letter. It confirmed that appellant was delivering mail as a rural carrier at the time of the motor vehicle accident.

By decision dated March 6, 2020, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed conditions and the accepted employment incident of January 14, 2020. It concluded, therefore, that the requirements had not been met to establish an injury causally related to the accepted employment incident.

Appellant submitted notes from a physical therapist dated from February 27 through April 8, 2020. In a physical therapy note dated February 27, 2020, the therapist noted that appellant explained to her that the January 14, 2020 employment incident was his third motor vehicle accident after incidents in 2011 and 2012. Appellant advised the therapist that he had

experienced low back pain for years, but that, prior to the most recent motor vehicle accident, he was mostly pain-free with intermittent flare-ups.

On June 25, 2020 appellant, through counsel, requested reconsideration. Enclosed with the request was a June 17, 2020 report from Dr. Dawn Quashie, a Board-certified family practitioner. Dr. Quashie noted that appellant was involved in an automobile accident on January 4, 2020, which resulted in cervical and lumbar pain. On physical examination of the lumbar and cervical spine, she observed reduced range of motion with pain. Cervical compression, maximal cervical compression, foraminal compression, and shoulder depression tests were positive. Lumbar, sacroiliac, and hip tests were positive. Dr. Quashie diagnosed muscle spasm of the back and sprains of the ligaments of the cervical, thoracic, and lumbar spine.

Dr. Quashie explained that, on January 4, 2020, appellant injured his neck and lower back when his mail truck was struck in the rear by another vehicle, and that he immediately began to feel pain in the neck and lower back, which intensified over time. She explained how during a motor vehicle collision, the vehicle's motion had the effect of moving the seatback/headrest into the lower lumbar, thoracic, and cervical spine area of the occupant, which upon deceleration of the cervical, thoracic, and lumbar area caused a rebounding effect off the seatback and headrest. Dr. Quashie noted that as the body began to accelerate forward, the seatbelt caused the body to become restrained and snap back into the seat, causing a hyperextension/flexion injury to the entire spine. She stated that under this scenario, the cervical, thoracic, and lumbar spine ligamentous tissues reached a point where they became mechanically stretched sufficient to produce trauma-induced injury, specifically sprain in the ligaments of the cervical, thoracic, and lumbar spine. Dr. Quashie noted that appellant suffered from a grade 2 sprain in which his injury to the neck, mid-back, and low back spinal ligaments resulted in sprain, inducing symptoms of pain from muscle and ligament tears radiating down the shoulder, upper back, and buttocks. She explained that his injury could be classified as a hyperextension/hyperflexion injury, commonly referred to as "whiplash." Dr. Quashie opined that, to a high degree of medical certainty, based on appellant's account of events, subjective and objective findings, and hospital records, that his cervical, thoracic, and lumbar injuries were directly and causally attributable to a January 4, 2020 rear-end automobile collision. She further explained that he experienced further exacerbations and pain that he would not have experienced if he had not been involved in this collision. Dr. Quashie stated that appellant was temporarily disabled from work at that time.

In a follow-up report dated June 17, 2020, Dr. Quashie clarified that the prior report incorrectly referenced the date of the accident as January 4, 2020, and that the actual date of the accident was January 14, 2020.

A magnetic resonance imaging (MRI) scan of appellant's cervical and lumbar spine obtained on April 24, 2020 demonstrated mild cervical spondylosis with severe left C5-6 neuroforaminal narrowing due to a combination of disc osteophyte complex and uncovertable hypertrophy, mild lumbar spondylosis with progression of disc bulge and extrusion at L4-5 resulting in possible impingement of the descending bilateral L5 nerve roots with possible impingement of the descending right S1 nerve root, seen previously, and prominent and mildly enlarged cervical lymph nodes.

By decision dated July 23, 2020, OWCP denied modification of its March 6, 2020 decision. It found that Dr. Quashie had failed to provide a thorough discussion of appellant's prior medical history and conditions, and any relationship, if any, to his present condition.

On September 23, 2020 appellant, through counsel, requested reconsideration. With his request, he submitted a letter of even date from Dr. Quashie. Dr. Quashie diagnosed muscle spasm of the back and sprain of the ligaments of the cervical, thoracic, and lumbar spine. She noted that the July 23, 2020 decision of OWCP found that she failed to discuss a complete and accurate medical and factual history along with an explanation of how the claimed work factors caused or contributed to appellant's diagnosed conditions. Dr. Quashie stated that it was absurd that her medical report was deemed insufficient because there was medical evidence on file suggesting his current condition was related to a previous injury that was not specifically referenced. She noted that she had reviewed and considered all pertinent medical evidence and stated unequivocally that her opinion regarding causation of his current diagnosed conditions had not been altered. Dr. Quashie explained that injuries from many years ago that were deemed fully resolved and were followed by periods of unrestricted work activities could not logically be considered as a causation factor or a significant contribution for a new acute spinal injury. She noted that she had detailed in her June 17, 2020 report the mechanism and etiology of appellant's injury, and that at present, she found that his past cervical/lumbar medical conditions had absolutely no bearing, impact, or influence upon his current diagnosed conditions with regard to onset.

Dr. Quashie explained that appellant was involved in a work-related incident on February 28, 2011 in which his postal vehicle was struck from behind, experiencing neck, shoulder, and back pain following that incident, which was treated with pain medications and physical therapy. She stated that in a medical note dated April 8, 2011, no prior pertinent history for a similar condition was indicated. Shortly thereafter, appellant was released to return to work at full duty as a rural carrier. Dr. Quashie explained that, on September 6, 2012, appellant was involved in another work-related incident in which he was struck from behind in his postal vehicle by another car. She noted that he was diagnosed with cervical sprain, referred to a neurologist for headaches, and subsequently released to full duty. Dr. Quashie further explained that in 2015 appellant filed a workers' compensation claim relating to a July 11, 2015 incident when he sustained back pain when existing his vehicle. She noted that contemporaneous medical evidence demonstrated that he was diagnosed with lumbar disc displacement and treated with epidural steroid injections at L5-S1 and physical therapy. Appellant was released to full duty on December 18, 2015.

Dr. Quashie opined that his current diagnoses clearly originated from the January 14, 2020 automobile accident at work. She noted that she had explained the nature of her diagnoses, supporting diagnostic studies, the mechanism and etiology of his diagnosed conditions, the known factors that caused these conditions, how his work activities and physical exertions caused his current diagnoses, and how the uncontroverted evidence of the facts surrounding his injury were consistent with her findings on examination. Dr. Quashie opined, to within a reasonable degree of medical certainty, that the work activities relating to the January 14, 2020 incident caused and led to his current diagnosed conditions. She recommended that he refrain from full-duty work until necessary medical care including physical therapy was provided.

By decision dated December 10, 2020, OWCP denied modification of its July 23, 2020 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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,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 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.⁸

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁹ 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.¹⁰

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,

⁴ *Supra* note 2.

⁵ *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).

⁶ *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).

⁷ *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).

⁸ *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).

⁹ *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).

¹⁰ *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).

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 this case is not in posture for decision.

In a June 17, 2020 report, Dr. Quashie conducted a physical examination and explained that, on January 14, 2020, appellant injured his neck and lower back when his mail truck was struck in the rear by another vehicle, and that he immediately began to feel pain in the neck and lower back, which intensified over time.¹² She further explained in pathophysiological terms how the incident of January 14, 2020 resulted in appellant's diagnosed muscle spasm of the back and sprain of the ligaments of the cervical, thoracic, and lumbar spine. Dr. Quashie opined that, to a high degree of medical certainty, based on appellant's account of events, subjective and objective findings, and hospital records, that his cervical, thoracic, and lumbar injuries were directly and causally attributable to a January 14, 2020 rear-end automobile collision while engaged in duties related to his role with the employing establishment. She further explained that appellant experienced further exacerbations and pain that he would not have experienced if he had not been involved in this collision. In a letter dated September 23, 2020, Dr. Quashie explained that with regard to appellant's alleged preexisting conditions, these had been injuries from many years ago that were deemed fully resolved and were followed by periods of unrestricted work activities, and as such could not logically be considered as a causation factor or a significant contribution for a new acute spinal injury. She noted that she had detailed in her June 17, 2020 report the mechanism and etiology of appellant's injury, and that at present, she found that his past cervical/lumbar medical conditions had absolutely no bearing, impact, or influence upon his current diagnosed conditions with regard to onset. Dr. Quashie opined, to within a reasonable degree of medical certainty, that the work activities relating to the January 14, 2020 incident caused and led to his current diagnosed conditions.

The Board finds that these reports from Dr. Quashie are sufficient to require further development of the medical evidence. Dr. Quashie provided a comprehensive understanding of the medical record and case history. She provided an extensive pathophysiological explanation as to how the incident of January 14, 2020 caused appellant's cervical, thoracic, and lumbar conditions, and in her letter dated September 23, 2020, differentiated the effects of appellant's preexisting conditions from the current diagnoses.

The Board finds that Dr. Quashie's opinion as expressed in her report and subsequent letter demonstrates her knowledge of appellant's preexisting neck and back conditions and, although her opinion is not sufficiently rationalized to meet appellant's burden of proof to establish his claim,

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *M.S.*, Docket No. 19-0913 (issued November 25, 2019).

¹² While Dr. Quashie's original report of June 17, 2020 referred to the date of the incident as January 4, 2020, she later submitted a June 17, 2020 follow-up report correcting the date of injury to January 14, 2020.

it is sufficient to require further development of the case by OWCP.¹³ It is well established that proceedings under FECA are not adversarial in nature, and while appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹⁴ OWCP has an obligation to see that justice is done.¹⁵

Therefore, the Board finds that the case shall be remanded to OWCP. On remand, OWCP shall prepare a statement of accepted facts and refer the matter to a medical specialist in the appropriate field of medicine. Upon referral, the physician shall conduct a physical evaluation and provide a rationalized medical opinion as to whether appellant's diagnosed conditions were caused or aggravated by the accepted January 14, 2020 employment incident. If the physician opines that appellant's cervical, lumbar and thoracic conditions are not causally related to the accepted employment incident, he or she must explain with rationale how or why their opinion differs from that of Dr. Quashie. After this and such other 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.

¹³ *J.P.*, Docket No. 19-1206 (issued February 11, 2020); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *C.W.*, Docket No. 17-1293 (issued February 12, 2018); *see also John J. Carlone, supra* note 8; *Horace Langhome*, 29 ECAB 820 (1978).

¹⁴ *See M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769, 770-71; *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985).

¹⁵ *See C.M.*, Docket No. 17-1977 (issued January 29, 2019); *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

ORDER

IT IS HEREBY ORDERED THAT the December 10, 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: November 22, 2021
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