United States Department of Labor
Employees' Compensation Appeals Board

S.B., Appellant	)	
and	)	**Docket No. 21-0398**
	)	**Issued: October 15, 2021**
U.S. POSTAL SERVICE, HOWELL POST OFFICE, Howell, NJ, Employer	)	

Appearances:
Robert D. Campbell, 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 28, 2021 appellant, through counsel, filed a timely appeal from a December 7, 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 that the acceptance of his claim be expanded to include additional conditions causally related to his January 9, 2018 accepted employment injury.

FACTUAL HISTORY

On January 9, 2018 appellant, then a 45-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his wrist and lower back when he slipped and fell while in the performance of duty. OWCP accepted the claim for a left wrist contusion. It subsequently expanded acceptance of the claim to include a left wrist triquetral fracture, a partial tear of the left scapholunate ligament, a contusion of the left back wall of the thorax, a sprain of the left wrist and hand, and a traumatic rupture of the left wrist ligament.[3] Appellant stopped work on January 9, 2018 and returned to his date-of-injury job on April 16, 2018. OWCP paid appellant wage-loss compensation on the supplemental rolls from February 24 to April 13, 2018.

In an emergency department report dated January 9, 2018, Dr. Bruce Bonanno, who specializes in emergency medicine, obtained a history of appellant injuring his left wrist and left side of back when he fell on ice while delivering mail. He diagnosed a sprain of the left wrist, left hand, and left shoulder.

On January 11, 2018 Dr. Teddy L. Atik, a Board-certified orthopedic surgeon, evaluated appellant for a hand injury sustained when he slipped and fell on ice while delivering mail at work. He discussed his complaints of left wrist pain with numbness and burning in the fingers. On examination Dr. Atik found a positive Tinel's sign and Phalen's test. He diagnosed acute carpal tunnel syndrome of the left wrist and a contusion of the left wrist. Dr. Atik submitted a progress report on February 1, 2018.

A magnetic resonance imaging (MRI) scan of the left shoulder, obtained on February 7, 2018, showed mild tendinosis of the distal infraspinatus tendon and early mild osteoarthritis of the acromioclavicular joint. A February 9, 2018 lumbar MRI scan revealed postsurgical changes at L5-S1 with a decompressed spinal canal, but no recurrent disc herniation.

In a report dated February 22, 2018, Dr. Nasser Ani, a Board-certified orthopedic surgeon, advised that he had evaluated appellant on January 15, 2018 and had diagnosed a left rotator cuff tear, impingement syndrome, a herniated cervical disc, cervical radiculopathy, a herniated lumbar disc with radiculopathy, and a lumbar spine fusion. He opined that the diagnoses were "directly caused by [appellant's] traumatic injury that occurred while he was delivering mail and he slipped on black ice landing on his left side." Dr. Ani related that the mechanism of injury and symptoms were consistent with a rotator cuff tear, which commonly occurred with "a jerking motion or high impact trauma." He further indicated that the mechanism of injury was consistent with the

[3] Appellant alleged that he sustained an injury to his strains to his rib and neck, and a shoulder contusion under OWCP File No. xxxxxx623 and a thoracolumbar sprain on May 1, 2012 under OWCP File No. xxxxxx167.

diagnosis of a disc herniation, noting that appellant's spine had jerked when he slipped on black ice and fell, causing the inner portion of the disc to move outward causing pain.

On March 14, 2018 appellant requested that OWCP expand the acceptance of his claim to include his left shoulder, left wrist, neck, and low back conditions.

By decision dated March 14, 2018, OWCP denied appellant's request to expand the acceptance of his claim to include additional left wrist conditions and lumbar, cervical, and left shoulder conditions.

Thereafter, OWCP received a March 22, 2018 letter from Dr. Atik.[4] Dr. Atik clarified that appellant had sustained an injury on January 9, 2018 when he slipped and fell on ice, landing on his outstretched left wrist. He advised that an MRI scan had revealed a chip fracture and partial tear of the scapholunate ligament of the left wrist. Dr. Atik asserted that a fracture could cause bruising of the median nerve and acute carpal tunnel syndrome and opined, "I believe with a reasonable degree of medical certainty that the accident that happened while at work when he was delivering the mail on January 9, 2018 when he had a slip and fall on his outstretched left wrist was causally related to him developing acute left carpal tunnel syndrome and a fracture of the left triquetrum and a contusion of the wrist and a partial scapholunate ligament tear."

In a report dated March 27, 2018, Dr. Ani diagnosed left shoulder impingement, tenopathy, and a rotator cuff tear, a lumbar spinal fusion at L5-S1 with multiple disc bulges, lumbar and cervical radiculopathy, and disc bulges at C3-4 and C5-6. He explained how the mechanism of injury was consistent with the diagnosed conditions. Dr. Ani advised that his review of the MRI scan showed a partially torn rotator cuff, "contrary to the radiology report." He further asserted that appellant's fall had aggravated a preexisting lumbar condition, noting that the MRI scan of the lumbar spine had shown "bulges at multiple levels above the level of the fusion, which are directly and causally related to the injury he sustained on January 9, 2018."

On March 28, 2018 appellant requested a review of the written record of the March 14, 2018 decision by a representative of OWCP's Branch of Hearings and Review.

Thereafter, appellant submitted an operative report regarding his July 19, 2011 lumbar fusion at L5-S1 and medical reports describing his treatment in 2011 and 2012.

By decision dated June 1, 2018, OWCP denied appellant's claim for wage-loss compensation beginning February 24, 2018.

On June 21, 2018 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review regarding the June 1, 2018 decision.

Following a preliminary review, by decision dated June 21, 2018, OWCP's hearing representative found the case not in posture for decision and vacated the March 14, 2018 decision. She found that the opinions of Dr. Atik and Dr. Ani were sufficient to warrant further development of the evidence. The hearing representative instructed OWCP to obtain information regarding

[4] Dr. Atik also submitted a progress report on April 12, 2018.

appellant's preexisting conditions and to refer him for a second opinion examination to determine whether the acceptance of his claim should be expanded to include additional conditions caused or aggravated by the January 9, 2018 employment injury and, if so, any periods of employment-related disability.

In a June 27, 2018 development letter, OWCP requested that appellant provide medical records describing his preexisting lumbar fusion and any surgical and hospital records. It advised that, following receipt of the requested information, it would refer him for a second opinion examination. OWCP afforded appellant 30 days to respond to its request.

Following a preliminary review, OWCP's hearing representative, in an August 30, 2018 decision, found the case not in posture for decision and vacated the June 1, 2018 decision pending further development of the issue of claim expansion.

By decision dated September 12, 2018, OWCP denied appellant's request to expand the acceptance of his clam to include additional conditions. It noted that he had not responded to its request for information regarding his preexisting lumbar condition.

In a report dated September 17, 2018, Dr. Ani repeated the same diagnoses as his prior reports and explained his belief that the conditions were causally related to the accepted employment injury. He recommended surgery to repair the rotator cuff tear.

On September 27, 2018 appellant, through counsel, requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

Thereafter, OWCP received an April 3, 2018 electromyogram (EMG) and nerve conduction velocity (NCV) study showing left elbow ulnar neuropathy, mild median neuropathy at the wrist and no evidence of cervical radiculopathy or brachial plexopathy.

Following a preliminary review, by decision dated December 18, 2018, OWCP's hearing representative found the case not in posture for decision and vacated the September 12, 2018 decision. The hearing representative found that appellant had submitted evidence from 2011 relevant to his preexisting spinal condition and instructed OWCP, on remand, to refer him to a second opinion examination. The hearing representative noted that he had two prior claims that had been administratively handled for medical care.

On January 29, 2019 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions to Dr. Paul Teja, an osteopath, for a second opinion examination.

On February 26, 2019 Dr. Teja discussed appellant's history of injury on January 9, 2018 and provided his review of the medical evidence. He provided range of motion measurements for the cervical and lumbar spine, and noted that he had complained of a loss of sensation in the left thigh down to the left foot. Dr. Teja found a negative straight leg raise bilaterally and full strength with no instability or loss of sensation and a negative impingement test for the left shoulder. For the left wrist, he found tenderness to palpation of the ulnar styloid with no instability, swelling, effusion, or loss of strength. Dr. Teja found a positive Tinel's sign on the left and a negative Phalen's test. He diagnosed a left wrist triquetral fracture, a contusion to the distal radius, and a

partial tear of the scapholunate ligament. Dr. Teja found that the accepted conditions had resolved. He opined that the evidence failed to support appellant's "continued complaints of pain in the cervical spine, lumbar spine, or left shoulder." Dr. Teja noted that a lumbar MRI scan had shown no recurrent disc herniation and that an MRI scan of the left shoulder had revealed minimal findings and no rotator cuff tear.

On March 12, 2019 OWCP expanded acceptance of appellant's claim to include a left wrist triquetral fracture and a partial tear of the left scapholunate ligament.

By decision dated March 20, 2019, OWCP denied appellant's request to expand acceptance of his claim to include a lumbar and lumbosacral fusion, left shoulder sprain, a cervical disc bulge with protrusion, lumbar and cervical radiculopathy, postsurgical lumbar changes, lumbar and cervical intervertebral disc displacement, lumbar herniation and disc bulge, tendinopathy with degeneration of the left rotator cuff, carpal tunnel syndrome, left shoulder impingement, other left shoulder legions, left wrist sprain, a contusion of the left thorax back wall, and a traumatic left wrist rupture.

On March 20, 2019 OWCP updated the accepted conditions, noting that appellant's left wrist triquetral fracture and a partial tear of the left scapholunate ligament had resolved.

On April 2, 2019 appellant, through counsel, requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.[5]

In a report dated May 30, 2019, Dr. Ani again diagnosed left shoulder impingement, a rotator cuff tear, and tenopathy, multiple lumbar disc bulges and L5-S1 fusion, lumbar and cervical radiculopathy, and cervical disc bulges at C3-4 and C5-6 causally related to the accepted employment injury. He explained that the mechanism of injury was consistent with the diagnosed conditions.

On June 4, 2019 counsel asserted that Dr. Teja had failed to provide any rationalized medical opinion supporting his causation finding. He maintained that the opinions of Dr. Atik and Dr. Ani were sufficient to meet appellant's burden of proof to establish a left shoulder, cervical spine, and left wrist conditions, ulnar neuropathy, and left carpal tunnel syndrome causally related to his January 9, 2018 employment injury.

Following a preliminary review, by decision dated July 1, 2019, OWCP's hearing representative vacated the March 20, 2019 decision. The hearing representative found that appellant had submitted sufficient evidence contemporaneous with his injury to establish a left thorax back wall contusion, left wrist/hand sprain, and a traumatic rupture of the left wrist ligament. OWCP's hearing representative noted that Dr. Teja had not addressed whether appellant sustained left carpal tunnel syndrome, a left shoulder condition, or cervical and lumbar conditions causally related to the accepted employment injury. The hearing representative instructed OWCP, on remand, to update the SOAF to include all accepted conditions and to request that Dr. Teja

[5] On May 3, 2019 OWCP advised that it had superseded the March 12, 2019 decision and advised that it had accepted the conditions of left wrist triquetral fracture and a partial tear of the left scapholunate ligament as resolved.

provide a reasoned opinion of whether appellant sustained a cervical lumbar, or left shoulder condition, or left carpal tunnel syndrome, due to his January 9, 2018 employment injury.

On July 16, 2019 OWCP expanded acceptance of appellant's claim to include a left wrist sprain, a contusion of the left back wall of the thorax, and a traumatic rupture of the left wrist ligament.

In a supplemental report dated July 25, 2019, Dr. Teja reviewed the updated SOAF. He related that at the time of his examination appellant had no objective evidence of difficulties with his cervical spine, lumbar spine, or left shoulder, and no clinical evidence of carpal tunnel syndrome. Dr. Teja advised that Dr. Ani had not diagnosed carpal tunnel syndrome in his May 30, 2019 report, and opined that "causality for this diagnosis cannot be established as it relates to the incident on January 9, 2018." He related, "In conclusion, based upon my review of the provided records, I am unable to determine that the January 9, 2018 injury contributed to the claimant's left carpal tunnel syndrome, left shoulder, cervical, and lumbar conditions either directly or by precipitation, acceleration, or aggravation."

On August 28, 2019 OWCP amended the SOAF to accurately reflect the current accepted conditions.

In a September 11, 2019 addendum, Dr. Teja reviewed the amended SOAF and advised that his opinion remained unchanged.

By decision dated September 18, 2019, OWCP denied appellant's request to expand acceptance of his claim to include additional conditions causally related to his January 9, 2018 employment injury.

On October 3, 2019 appellant, through counsel, requested a review of the written record before a representative of OWCP's Branch of Hearings and Review.

By decision dated December 7, 2020, OWCP's hearing representative affirmed the September 18, 2019 decision.

LEGAL PRECEDENT

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[6]

Causal relationship is a medical question that requires medical opinion evidence to resolve the issue.[7] The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable certainty, and must be supported by medical rationale

[6] *K.T.*, Docket No. 19-1718 (issued April 7, 2020); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[7] *E.M.,* Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris,* 48 ECAB 238 (1996).

explaining the nature of the relationship between the diagnosed condition and the accepted employment injury.[8]

Section 8123(a) of FECA which provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, OWCP shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.[9] This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[10]

ANALYSIS

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

OWCP accepted that appellant sustained a left wrist contusion, a triquetral fracture of the left wrist, a partial tear of the left scapholunate ligament, a contusion of the left back wall of the thorax, a sprain of the left wrist and hand, and a traumatic rupture of the left wrist ligament due to his January 9, 2018 employment injury.

On February 22, 2018 Dr. Ani diagnosed left rotator cuff syndrome, impingement syndrome, herniated lumbar and cervical discs with radiculopathy, and a history of a lumbar spinal fusion. He attributed the diagnosed conditions to appellant slipping on black ice while delivering mail and landing on his left side. Dr. Ani advised that the mechanism of injury, a jerking motion as he fell, was consistent with the diagnoses. In a March 27, 2018 report, he interpreted an MRI scan as showing a partially torn rotator cuff contrary to the radiologist's findings. Dr. Ani advised that appellant's fall had aggravated a preexisting lumbar condition and attributed bulging discs above and below the lumbar fusion as causally related to the January 9, 2018 employment injury. On September 17, 2018 he diagnosed same conditions as due to the accepted work injury and recommended rotator cuff surgery.

Dr. Atik, on March 22, 2018, discussed appellant's history of slipping on January 9, 2018 and landing on his outstretched left wrist. He indicated that an MRI scan had demonstrated a left wrist fracture and partial tear of the scapholunate ligament. Dr. Atik noted that injuries such as a fracture could result in bruising of the median nerve and acute carpal tunnel syndrome. He diagnosed acute left carpal tunnel syndrome causally related to appellant's January 9, 2018 work injury.

OWCP referred appellant to Dr. Teja for a second opinion examination. In a February 26, 2019 report, Dr. Teja found that the accepted conditions of a left wrist triquetral fracture, a contusion to the distal radius, and a partial tear of the scapholunate ligament had resolved and that there was no evidence supporting appellant's complaints of cervical, lumbar, or left shoulder pain. On July 25, 2019 he advised that appellant had no objective evidence of a cervical, lumbar, or left shoulder condition or of carpal tunnel syndrome. Dr. Teja found that the January 9, 2018

[8] *Id*.

[9] 5 U.S.C. § 8123(a); *L.S.*, Docket No. 19-1730 (issued August 26, 2020); *M.S.*, 58 ECAB 328 (2007).

[10] 20 C.F.R. § 10.321; *P.B.*, Docket No. 20-0984 (issued November 25, 2020); *R.C.*, 58 ECAB 238 (2006).

employment injury had not caused or aggravated his left carpal tunnel syndrome or a left shoulder, cervical, or lumbar condition. He reviewed an updated SOAF on September 11, 2019 and advised that his condition remained unchanged.

As noted above, if there is a disagreement between an employee's physician and an OWCP referral physician, OWCP will appoint a referee physician or impartial medical specialist who shall make an examination.[11] The Board finds that a conflict in medical opinion exists between Dr. Ani, Dr. Atik and Dr. Teja regarding whether the acceptance of appellant's claim should be expanded to include additional conditions causally related to the accepted January 9, 2018 employment injury.[12]

The Board, therefore, will remand the case for OWCP to refer appellant to an impartial medical examiner for resolution of the conflict in medical opinion evidence in accordance with 5 U.S.C. § 8123(a).[13] After 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.

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[11] *See S.S.*, Docket No. 19-1658 (issued November 12, 2020); *C.S.*, Docket No. 19-0731 (issued August 22, 2019).

[12] *S.M.*, Docket No. 19-0397 (issued August 7, 2019).

[13] *V.B.*, Docket No. 19-1745 (issued February 25, 2021).

ORDER

IT IS HEREBY ORDERED THAT the December 7, 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: October 15, 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