

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

S.H., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
MICHAEL E. DEBAKEY VA MEDICAL)
CENTER, Houston, TX, Employer)
-----)

**Docket No. 20-1345
Issued: February 2, 2022**

Appearances:

Roman Rozkov, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On June 23, 2020 appellant, through counsel, filed a timely appeal from a December 30, 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish a medical condition causally related to the accepted May 31, 2017 employment incident.

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.*

FACTUAL HISTORY

On June 9, 2017 appellant, then a 61-year-old housekeeping aid, filed a traumatic injury claim (Form CA-1) alleging that on May 31, 2017 he experienced pain and swelling in his head, neck, back, and abdomen after slipping and falling from a rolling stool when collecting trash while in the performance of duty. On the reverse side of the claim form, the employing establishment controverted his claim, asserting that he was not injured in the performance of duty as he was not using standard operating procedures while collecting trash. Appellant did not stop work.

In a development letter dated June 19, 2017, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of medical evidence needed, including a narrative report from his physician explaining how the reported employment incident caused or aggravated a medical condition. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP subsequently received emergency department notes, dated June 2, 2017, from Dr. Kamel Sadat, a Board-certified cardiologist, who noted that appellant hit his head while working. Dr. Sadat examined appellant and reviewed a computerized tomography (CT) scan of his head. He found an incidental mass on appellant's head, which was likely a meningioma.

In a June 12, 2017 duty status report (Form CA-17), a physician assistant noted that appellant was injured when he slipped while emptying trash. The physician assistant indicated that appellant could resume work with restrictions on June 12, 2017.

On June 12, 2017 appellant accepted a light-duty assignment as a housekeeping aid.

On a June 20, 2017 Form CA-17 a provider with an illegible signature advised that appellant could not resume work.

By decision dated July 20, 2017, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted May 31, 2017 employment incident. It concluded therefore that the requirements had not been met to establish an injury as defined by FECA.

OWCP subsequently received treatment notes from Dr. Cheng Lee, a chiropractor, dated June 15 through September 15, 2017.

In a June 20, 2017 report, Dr. Dominic Sreshta, a Board-certified specialist in internal medicine, noted that appellant fell backward and hit his head, neck, and back on a table after slipping from a rolling stool while picking up trash. He examined appellant and diagnosed head trauma, abdominal muscle strain, thoracic spine sprain, lumbar spine sprain, dizziness, cervical spine sprain, and muscle spasm.

In a July 25, 2017 report, Dr. Sreshta noted that appellant experienced some improvement in his back and neck pain. He examined appellant and diagnosed cervical spine sprain, lumbar spine sprain, thoracic spine sprain, head trauma, closed traumatic brain injury, abdominal muscle strain, dizziness, and muscle strain. Dr. Sreshta indicated that appellant also had ankylosing spondylitis in the spine, which was complicating his treatment program.

Appellant submitted Form CA-17 reports from Dr. Sreshta, dated July 25, 2017 through June 12, 2018, noting that appellant had decreased range of motion (ROM) in his neck and back. Dr. Sreshta listed appellant's work restrictions and ability to resume work.

In an August 22, 2017 report, Dr. Sreshta noted that appellant's neck pain has slightly decreased, but his ROM remained stiff. He examined appellant and diagnosed cervical spine sprain, lumbar spine sprain, thoracic spine sprain, head trauma, closed traumatic brain injury, and abdominal muscle strain.

A September 15, 2017 functional improvement measures report from Dr. Paul Raymond, a chiropractor, showed the results of ROM, muscle strength, and grip strength testing.

In a report dated September 19, 2017, Dr. Sreshta examined appellant and diagnosed cervical spine sprain, lumbar spine sprain, thoracic spine sprain, head trauma, closed traumatic brain injury, abdominal muscle strain, dizziness, and muscle spasm. He noted that appellant would continue physical therapy treatment.

On October 20, 2017 Dr. Sreshta examined appellant and again diagnosed cervical spine sprain, lumbar spine sprain, thoracic spine sprain, head trauma, closed traumatic brain injury, abdominal muscle strain, dizziness, and muscle spasm.

A November 21, 2017 report by Dr. Sreshta indicated that appellant experienced continued low back pain. He reviewed a magnetic resonance imaging (MRI) scan of appellant's lumbar spine and noted that he had failed conservative treatment.

In reports dated December 19, 2017 through June 12, 2018, Dr. Sreshta reiterated appellant's history of injury and treatment plan. He provided physical examination findings and diagnosed cervical spine sprain, lumbar spine sprain, thoracic spine sprain, head trauma, closed traumatic brain injury, abdominal muscle strain, dizziness, and muscle spasm.

A March 6, 2018 functional capacity evaluation by Dr. Raymond showed the results of ROM, muscle strength, and grip strength testing. He diagnosed lumbar spine sprain, lumbar radiculopathy, thoracic spine sprain, cervical spine sprain, and cervical radiculopathy. Dr. Raymond found that appellant was unable to perform the usual duties of his job. He noted that appellant demonstrated restricted ROM in his cervical spine and thoracic spine. Dr. Raymond further indicated that appellant had a strength deficit in his right elbow, right wrist, and left grip. He noted that appellant could only safely perform work at the sedentary physical demand level.

In a May 14, 2018 behavioral evaluation, Dr. Carey Fiegel-Jackson, a licensed professional counselor, reviewed appellant's medical history. She examined him and found that he was experiencing feelings of depression, anxiety, and somatization related to his pain. Dr. Fiegel-Jackson recommended that appellant participate in a behavioral multidisciplinary chronic pain management program.

On July 19, 2018 appellant requested reconsideration.

Appellant submitted records, dated July 20, 2018, which showed his active health problems.

By decision dated October 9, 2018, OWCP modified its July 20, 2017 decision to find that appellant had established a diagnosed condition. However, the claim remained denied, as the evidence of record was insufficient to establish causal relationship between appellant's diagnosed condition(s) and the accepted May 31, 2017 employment incident.

OWCP subsequently received a January 14, 2019 report from Dr. Joan Appleyard, a Board-certified rheumatologist, who noted that appellant had been experiencing back and neck pain since November 1974. She indicated that he fell and hit his neck in May 2017. Dr. Appleyard examined appellant and reviewed x-rays of his spine. She diagnosed ankylosing spondylitis and opined that the employment incident exacerbated his symptoms of his underlying spinal spondylitis.

On September 30, 2019 appellant, through counsel, requested reconsideration and submitted additional evidence.

In a July 8, 2019 report, Dr. Sreshta described the May 31, 2017 employment incident and diagnosed lumbar spine sprain, thoracic spine sprain, cervical spine sprain, abdominal muscle strain, low back muscle spasm, and chronic pain syndrome. He opined that appellant's conditions were directly caused by the employment incident. Dr. Sreshta noted that appellant had preexisting ankylosing spondylitis, which made him more susceptible to spine and back injuries. He explained that ankylosing spondylitis caused vertebrae in the spine to fuse, which made the spine less flexible and in turn caused the muscles, ligaments, and tendons in the back and neck to become overworked. Dr. Sreshta noted that these muscles, ligaments, and tendons were highly susceptible to damage or sprain. He found that the employment incident of falling and colliding with a table exerted a rapid straining force onto appellant's cervical, thoracic, and lumbar spine, which caused the sprains of the ligaments. Dr. Sreshta opined that the force of the fall caused tiny tears to develop in the soft tissues of appellant's neck and back, which caused the sprains. He further opined that the overstretching and pressure from the employment incident caused appellant's low back muscle spasms. Dr. Sreshta explained that the combination of lifting trash from a seated position and suddenly falling caused appellant's abdominal strain. He noted that appellant had been experiencing pain for more than six months and therefore had chronic pain. Dr. Sreshta indicated that appellant had chronic pain syndrome as he developed symptoms beyond chronic pain, including depression and anxiety. He noted that on May 14, 2018 appellant was given a behavioral evaluation, which showed that he was in the severe range for depression and anxiety. Dr. Sreshta, therefore, opined that appellant's diagnosed conditions were directly caused by the May 31, 2017 employment incident.

By decision dated December 30, 2019, OWCP denied modification of its October 9, 2018 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

³ *Id.*

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

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

In a case in which a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, 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 support of his claim, appellant submitted a July 8, 2019 report from Dr. Sreshta who accurately described the history of the accepted May 31, 2017 employment incident. Dr. Sreshta diagnosed lumbar spine sprain, thoracic spine sprain, cervical spine sprain, abdominal muscle strain, low back muscle spasm, and chronic pain syndrome and opined that appellant's conditions were directly caused by the employment incident. He explained that appellant's preexisting ankylosing spondylitis caused vertebrae in the spine to fuse, which made the spine less flexible

⁴ *M.O.*, Docket No. 19-1398 (issued August 13, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *J.R.*, Docket No. 20-0496 (issued August 13, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *B.M.*, Docket No. 19-1341 (issued August 12, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *Delores C. Ellyett*, 41 ECAB 992 (1990); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *D.M.*, Docket No. 20-0386 (issued August 10, 2020); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *A.R.*, Docket No. 19-0465 (issued August 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁰ *W.L.*, Docket No. 19-1581 (issued August 5, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *C.C.*, Docket No. 19-1071 (issued August 26, 2020); *V.W.*, Docket No. 19-1537 (issued May 13, 2020).

and caused the muscles, ligaments, and tendons in the back and neck to become overworked, making them highly susceptible to damage or sprain. Dr. Sreshta opined that the employment incident of falling and colliding with a table exerted a rapid straining force on appellant's cervical, thoracic, and lumbar spine, which caused tiny tears to develop in the soft tissues of appellant's neck and back, causing his ligament sprains. He further opined that the overstretching and pressure from the employment incident caused appellant's low back muscle spasms. Dr. Sreshta also explained that the combination of lifting trash from a seated position and suddenly falling caused appellant's abdominal strain. He finally noted that appellant had chronic pain as he had been experiencing pain for more than six months. Dr. Sreshta opined that appellant had chronic pain syndrome as appellant developed symptoms beyond pain, including depression and anxiety, which interfered with his daily life. He indicated that on May 14, 2018 appellant was given a behavioral evaluation which showed that appellant was in the severe range for depression and anxiety.

The Board finds that the July 8, 2019 report of Dr. Sreshta is sufficient to require further development of the medical evidence. Dr. Sreshta is a Board-certified physician who is qualified in his field of medicine. He reviewed appellant's medical records and provided a comprehensive understanding of the case history. Dr. Sreshta provided a pathophysiological explanation as to how the mechanism of the accepted employment incident was sufficient to cause appellant's diagnosed conditions. His opinion is not contradicted by any substantial medical or factual evidence of record.¹² The Board has long held that it is unnecessary that the evidence of record in a case be so conclusive as to suggest causal connection beyond all possible doubt. Rather, the evidence is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound, and logical.¹³ Following review of Dr. Sreshta's July 8, 2019 report, the Board finds that his medical opinion is rationalized and logical and is therefore sufficient to require further development of appellant's claim.¹⁴

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹⁵ OWCP has an obligation to see that justice is done.¹⁶

On remand OWCP shall refer appellant to a specialist in the appropriate field of medicine, along with the case record and a statement of accepted facts. Its referral physician shall provide a well-rationalized opinion as to whether the accepted May 31, 2017 employment incident caused, contributed to, or aggravated appellant's diagnosed conditions. If the physician opines that the diagnosed conditions are not causally related to the employment incident, he or she must explain

¹² See *A.M.*, Docket No. 18-1656 (issued October 23, 2020).

¹³ See *J.S.*, Docket No. 20-0379 (issued October 28, 2020); *W.M.*, Docket No. 17-1244 (issued November 7, 2017); *E.M.*, Docket No. 11-1106 (issued December 28, 2011); *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983).

¹⁴ See *S.J.*, Docket No. 19-1029 (issued October 22, 2020).

¹⁵ See *A.M.*, *supra* note 12; see also *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

¹⁶ See *J.S.*, *supra* note 13; *B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

with rationale how or why their opinion differs from that of Dr. Sreshta. 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 December 30, 2019 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: February 2, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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