United States Department of Labor
Employees' Compensation Appeals Board

C.S., Appellant	)	
and	)	**Docket No. 20-0305**
	)	**Issued: November 16, 2022**
U.S. POSTAL SERVICE, BUDD LAKE POST OFFICE, Budd Lake, NJ, Employer	)	

Appearances:
Thomas R. Uliase, 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, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 25, 2019 appellant, through counsel, filed a timely appeal from a June 27, 2019 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.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish disability from work for the period March 1 through 4, 2016 causally related to her accepted January 15,

[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*.

2016 employment injury; and (2) whether appellant has established that the acceptance of her claim should be expanded to include additional conditions causally related to the accepted January 15, 2016 employment injury.

FACTUAL HISTORY

On January 20, 2016 appellant, then a 50-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on January 15, 2016 she sustained lower extremity injuries when an oncoming vehicle collided with her vehicle, striking the driver's-side door, while in the performance of duty. She stopped work on January 16, 2016.

In an attending physician's report, Part B of an authorization for examination and/or treatment (Form CA-16) dated January 22, 2016, Dr. Gary J. Arvary, Board-certified in family medicine, noted appellant's history of injury and diagnosed multiple contusions and hematoma and indicated that her condition was caused or aggravated by a motor vehicle accident (MVA) in a work vehicle. He indicated that appellant was totally disabled from work during the period January 16 through February 8, 2016 and advised that she would be able to resume light work on February 8, 2016 with restrictions of no lifting over 20 pounds.

In a report dated February 11, 2016, Dr. Manik Singh, Board-certified in family practice and sports medicine, noted that appellant was injured on January 15, 2016 when she was involved in an MVA. Appellant had not returned to work since the injury and she noted intermittent pain in her left thigh, right knee, bilateral upper extremities, and the left side of her neck. Dr. Singh diagnosed right knee and left thigh pain, left hip trochanteric bursitis, and cervicalgia. He advised that appellant could return to work on February 11, 2016 and perform light duty with restrictions of no carrying, lifting, and/or pushing/pulling more than 15 pounds.

By decision dated March 2, 2016, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between a diagnosed medical condition and the accepted January 15, 2016 employment incident.

OWCP continued to receive medical evidence. In a report dated February 25, 2016, Dr. Singh noted that appellant was seen in follow-up for persistent pain. On physical examination, he observed left paraspinal cervical tenderness, left hip tenderness to palpation at the trochanteric bursa with decreased range of motion and strength, diffuse tenderness to palpation of the right knee with decreased range of motion and strength. Dr. Singh recommended a return-to-work date of February 25, 2016 with the same restrictions he noted in his previous February 11, 2016 report.

In an attending physician's report (Form CA-20) dated March 2, 2016, Dr. Daryl Kim, an internist, noted that appellant's physical examination findings included myofascial tenderness, stiffness, and reduced range of motion. He diagnosed myofascial pain and fibromyalgia and checked a box marked "Yes" indicating that appellant's fibromyalgia was aggravated by an MVA. Dr. Kim opined that appellant was totally disabled from work commencing January 15, 2016.

In a report dated March 3, 2016, Dr. Kim related that appellant had continued issues with her neck, right knee, and left thigh. He indicated that appellant had aggravated her fibromyalgia as a result of the MVA on January 15, 2016. Appellant described her fibromyalgia manifesting in

shoulder, hip, and lower back pain. On physical examination, Dr. Kim observed trigger points, soft tissue myofascial and muscle tenderness of the trunk and extremities, and generalized stiffness with decreased range of motion. He diagnosed fibromyalgia, myofascial pain, and insomnia. Appellant's treatment goal was noted as "improve symptoms and return to work."

On March 4, 2016 appellant filed a claim for compensation (Form CA-7) for disability from work for the period March 1 through 4, 2016.

On March 18, 2016 Dr. Kim treated appellant in follow-up for diagnoses of fibromyalgia, insomnia, and myofascial pain. On physical examination, he observed trigger points, soft tissue myofascial and muscle tenderness of the trunk and extremities, and generalized stiffness with decreased range of motion. Dr. Kim recommended follow up with physical therapy and a rheumatologist in order to improve symptoms and return to work.

Appellant, on March 28, 2016, requested a hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on June 23, 2016.

OWCP subsequently received a report dated June 1, 2016, wherein Dr. Arvary, noted that appellant had been diagnosed with fibromyalgia in 2012 and that, subsequent to the January 15, 2016 MVA, her fibromyalgia symptoms had worsened, as she still experienced intermittent left thigh, right knee, and bilateral hip, arm, and leg pain. Dr. Arvary stated that appellant could not perform her activities of daily living without pain and exhaustion, which did not occur prior to the incident. He opined that as appellant described her symptoms as severe enough that it precluded her ability to function on a daily basis, it was unlikely that appellant would be employable.

By decision dated July 28, 2016, OWCP's hearing representative affirmed the March 2, 2016 decision.

On May 1, 2017 appellant, through counsel, requested reconsideration and submitted additional evidence.

In a report dated March 19, 2017, Dr. Arvary related that appellant's preexisting conditions had been chronic but she was still able to work. He noted that when seen on March 3, 2017, it was apparent that appellant had been disabled since the MVA of January 15, 2016, as her neck and arms were in constant pain with paresthesias, and she had upper extremity weakness. Dr. Arvary opined that she could not return to work as she had limitations in sitting, walking, standing, lifting, and concentration; and she could not drive alone but for short distances due to her loss of concentration. He noted that appellant's fibromyalgia had worsened since the January 15, 2016 incident. Dr. Arvary summarized medical reports from February 23, 2016. He explained that the first time he treated appellant was on October 20, 2016, at that time appellant complained of fatigue. Physical examination on that date indicated decreased neck range of motion, left neck tenderness, and bilateral grasp weakness. On December 30, 2016 appellant was seen by another provider in his office for follow up for the post-concussion syndrome diagnosis. She related that she had pain in every joint of her body and stated that she was unable to accomplish any activities of daily living. Dr. Arvary recommended physical therapy, but on January 25, 2017, appellant indicated to him that physical therapy had worsened her pain. He diagnosed depression, anxiety, post-concussion syndrome, nonspecific inflammatory response of the hands, shoulders,

supraclavicular areas, and sternoclavicular joint, memory loss, and insomnia. Dr. Arvary observed that tests included an electroencephalogram, which was negative. A bone scan performed on February 14, 2017 demonstrated degenerative changes in the shoulders, sternoclavicular joints, spine, and mildly symmetric periarticular activity in the joints of the hands bilaterally. A magnetic resonance imaging scan of the brain was negative. Dr. Arvary noted that a previous x-ray of appellant's cervical spine demonstrated multilevel disc space narrowing with associated anterior and posterior spurring resulting in mild bilateral neural foraminal narrowing at those levels. He opined that it was difficult to imagine that appellant's motor vehicle incident did not aggravate this type of pathology. Dr. Arvary opined that the MVA on January 15, 2016 had worsened appellant's preexisting conditions and had directly caused her inability to work since January 15, 2016. He further opined that he could not render a prognosis on her ongoing care except for the fact that she remained unable to work or function at home normally due to her level of pain, loss of concentration, and lack of memory. Dr. Arvary concluded that appellant was totally disabled from work as the MVA had aggravated preexisting conditions.

In a decision dated July 28, 2017, OWCP modified the prior decision to find that the medical evidence of record was sufficient to establish contusions of the left front wall of the thorax, left thigh, right hand, and right knee as causally related to the accepted employment injury. It further found, however, that the medical evidence of record was insufficient to establish depression, anxiety, post-concussion syndrome, non-specific inflammatory response of the hands, shoulders, and supraclavicular areas and sternoclavicular joint, memory loss, insomnia, loss of ability to perform daily activities, spinal stenosis, cervicalgia, post-traumatic headache, dizziness, and aggravation of fibromyalgia as causally related to the accepted employment injury. OWCP noted that Dr. Arvary had not explained how appellant's aggravation of fibromyalgia was directly caused or aggravated by the January 15, 2016 incident.

By decision dated July 31, 2017, OWCP formally accepted the conditions of contusions of the left front wall of the thorax, left thigh, right hand, and right knee as causally related to the accepted January 15, 2016 employment incident.

In a development letter dated July 31, 2017, OWCP informed appellant of the deficiencies of her claim for wage-loss compensation. It advised her of the type of medical evidence needed and afforded her 30 days to submit the necessary evidence.

In a letter dated August 9, 2017, counsel clarified that appellant had been off work continuously since January 15, 2016 and noted that additional CA-7 forms would be processed through the employing establishment.

By decision dated September 1, 2017, OWCP denied appellant's claim for compensation, finding that she had not established disability from work for the period March 1 through 4, 2016.

On September 7, 2017 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on February 27, 2018.

By decision dated May 11, 2018, OWCP's hearing representative affirmed the September 1, 2017 decision.

On June 12, 2018 appellant, through counsel, requested reconsideration of the May 11, 2018 decision. Attached to the request was an April 22, 2018 report from Dr. Arvary. Dr. Arvary noted that appellant was involved in an MVA on January 15, 2017 while working for the employing establishment and was not wearing a seatbelt. At the time of the incident, appellant lived and worked with chronic conditions that did not affect her life either personally or at work. Dr. Arvary stated that the force of the impact was so severe that it caused her body to be forcibly jolted inside the vehicle, which caused her chronic condition of fibromyalgia to worsen. He opined that after the accident appellant was unable to complete any duties of her employment. Dr. Arvary noted that she still experienced chronic pain in her neck, arms, right knee, right hand, and left leg, with paresthesias and weakness in her upper extremities. He opined that these symptoms stemmed from the vehicle being struck with such great force that caused appellant to be thrown into the steering wheel and for her leg to be stressed under the dashboard. Dr. Arvary also diagnosed post-concussion syndrome and attributed it to the contusion of the left frontal wall of her thorax, noting that she did not need to suffer direct head trauma to sustain the condition, as she struck the steering wheel, was thrust backwards in her seat, then again struck the steering wheel. He stated that, due to this motion, appellant sustained brain trauma without direct impact to her head, as the sudden jarring back and forth caused her brain to impact her skull. Dr. Arvary explained that while the injury did not appear on imaging studies, the resultant inflammatory changes resulted in neurological symptoms. He noted that appellant still suffered from chronic pain from her left thigh, right hand, and left knee contusions, which were chronic injuries due to her immune system causing chronic changes in those areas. Dr. Arvary opined that she would not ever be able to return to her preinjury position as city carrier assistant.

By decision dated June 27, 2019, OWCP denied modification of the May 11, 2018 decision.[3]

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including that any disability for which compensation is claimed is causally related to the employment injury.[4]

Under FECA the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.[5]

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is

[3] It noted that the June 27, 2019 decision superseded a September 6, 2018 decision.

[4] *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989); *see also Nathaniel Milton*, 37 ECAB 712 (1986).

[5] *See B.K.*, Docket No. 18-0386 (issued September 14, 2018).

claimed. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.[6]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish disability from work for the period March 1 through 4, 2016 causally related to her accepted January 15, 2016 employment injury.

Appellant was first seen following March 1, 2016 by Dr. Kim. In a Form CA-20 dated March 2, 2016, Dr. Kim noted diagnoses of myofascial pain and fibromyalgia and opined that appellant was totally disabled from work commencing January 15, 2016. In reports dated March 3 and 18, 2016, Dr. Kim repeated his diagnoses and continued to opine that appellant was disabled from work. Medical evidence that does not address the specific claimed dates of disability are of no probative value.[7] This evidence is therefore insufficient to establish appellant's disability claim.

Dr. Arvary discussed appellant's fibromyalgia condition in his June 1, 2016 report. In his March 19, 2017 and April 22, 2018 reports, he related that prior to the employment injury appellant's preexisting conditions had been chronic, but had allowed her to work. He further reported that after appellant was seen on March 3, 2017 it was apparent that she had been disabled since the employment injury due to constant neck and arm pain, with paresthesias and weakness of her upper extremities. Dr. Arvary indicated that appellant could not return to work as she had limitations sitting, walking, standing, lifting and concentration. In his April 22, 2018 report, he further explained that appellant's fibromyalgia and her post-concussion syndrome would not allow her to return to her position as a city carrier assistant. The reports of Dr. Arvary did not provide a rationalized medical opinion explaining why appellant was disabled due to her accepted employment injury. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how the claimed disability was related to the employment injury.[8] Thus, this evidence is also insufficient to establish the claim.

As the medical evidence of record is insufficient to establish causal relationship between appellant's claimed disability and the accepted employment injury, the Board finds that appellant has not met her burden of proof.

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[6] *B.M.*, Docket No. 19-1075 (issued February 10, 2021); *R.A.*, Docket No. 19-1752 (issued March 25, 2020); *A.W.*, Docket No. 18-0589 (issued May 14, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[7] *E.B.*, Docket No. 19-1390 (issued May 7, 2020); *K.D.*, Docket No. 19-0628 (issued November 5, 2019); *A.T.*, Docket No. 19-0410 (issued August 13, 2019).

[8] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining causal relationship between the accepted work factors and a diagnosed condition/disability).

LEGAL PRECEDENT -- ISSUE 2

When 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.[9]

To establish causal relationship between the condition as well as any additional conditions claimed and the employment injury, an employee must submit rationalized medical evidence.[10] 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 factors identified by the claimant.[11]

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish that the acceptance of her claim should be expanded to include additional conditions causally related to the accepted January 15, 2016 employment injury.

In his reports, Dr. Arvary described that the force of the impact on January 15, 2016 was so severe that it caused appellant's body to be forcibly jolted inside the vehicle, which caused her chronic condition of fibromyalgia to worsen. In this report he also further addressed appellant's post-concussion syndrome and attributed it to her left frontal thorax contusion. Dr. Arvary explained that appellant did not need direct head trauma to sustain the condition, as she struck the steering wheel, was thrust backwards, and then again struck the steering wheel. This motion caused brain trauma without direct impact and the resulting inflammatory changes resulted in neurologic symptoms. While Dr. Arvary attempted to explain a possible mechanism of injury for a concussion during the accepted incident, the contemporaneous medical evidence from March 2016 does not establish that appellant was treated for concussion at that time. The Board has previously explained that medical reports which contain an incorrect history of injury are of limited probative value.[12] This evidence is therefore insufficient to establish expansion of the claim.

In Form CA-20 dated March 2, 2016, Dr. Kim noted that appellant's physical examination findings included myofascial tenderness, stiffness, and reduced range of motion. He diagnosed

[9] *V.S.*, Docket No. 19-1370 (issued November 30, 2020); *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[10] *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

[11] *T.K.*, *id.*; *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[12] *D.G.*, Docket No. 22-0109 (issued May 17, 2022); *M.G.*, Docket No. 18-1616 (issued April 9, 2020); *see J.M.*, Docket No. 17-1002 (issued August 22, 2017) (a medical opinion must reflect a correct history and offer a medically sound explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions).

myofascial pain and fibromyalgia and checked a box marked "Yes" indicating that appellant's fibromyalgia was aggravated by an MVA. In a report dated March 3, 2016, Dr. Kim related that appellant had continued issues with her neck, right knee, and left thigh. He indicated that appellant had aggravated her fibromyalgia as a result of the MVA on January 15, 2016. Appellant described her fibromyalgia manifesting in shoulder, hip, and lower back pain. On physical examination, Dr. Kim observed trigger points, soft tissue myofascial and muscle tenderness of the trunk and extremities, and generalized stiffness with decreased range of motion. He diagnosed fibromyalgia, myofascial pain, and insomnia. Appellant's treatment goal was noted as "improve symptoms and return to work." On March 18, 2016 Dr. Kim treated appellant in follow up for diagnoses of fibromyalgia, insomnia, and myofascial pain. On physical examination, he observed trigger points, soft tissue myofascial and muscle tenderness of the trunk and extremities, and generalized stiffness with decreased range of motion. Dr. Kim recommended follow up with physical therapy and a rheumatologist in order to improve symptoms and return to work. However, these reports do not provide a rationalized medical opinion explaining how the accepted employment injury physiologically caused or aggravated appellant's additional conditions.[13] As such, the Board finds that this evidence is insufficient to establish expansion of the claim.

As the medical evidence of record is insufficient to establish causal relationship between appellant's additional conditions and the January 15, 2016 employment injury, the Board finds that appellant has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish disability from work for the period March 1 through 4, 2016 causally related to her accepted January 15, 2016 employment injury. The Board further finds that appellant has not met her burden of proof to establish that the acceptance of her claim should be expanded to include additional conditions causally related to the accepted January 15, 2016 employment injury.

[13] *Id*.

ORDER

IT IS HEREBY ORDERED THAT the June 27, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 16, 2022
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board