United States Department of Labor
Employees' Compensation Appeals Board

R.B., Appellant	)	
and	)	**Docket No. 23-0144**
	)	**Issued: June 21, 2023**
DEPARTMENT OF AGRICULTURE, FOOD SAFETY & INSPECTION SERVICE, West Caldwell, NJ, Employer	)	

Appearances:
James Muirhead, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On November 7, 2022 appellant, through counsel, filed a timely appeal from a May 17, 2022 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 a back condition causally related to the accepted March 22, 2020 employment incident.

FACTUAL HISTORY

On April 21, 2020 appellant, then a 58-year-old consumer safety inspector, filed a traumatic injury claim (Form CA-1) alleging that on March 22, 2020 he sustained a lower back injury as a result of a motor vehicle incident while in the performance of duty. He did not initially stop work.[3]

In a development letter dated May 15, 2020, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of evidence needed, and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond. By letter dated June 18, 2020, it afforded him an additional 30 days to respond.

Appellant subsequently submitted progress notes from Dr. Roy Eriksen, a Board-certified internist dated June 23, 2020, which noted appellant's history of injury and indicated a diagnosis of lumbar sprain/strain.

By decision dated July 21, 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 March 22, 2020 employment incident. It concluded, therefore, that the requirements had not been met to establish that he sustained an injury and/or medical condition causally related to the accepted employment incident.

On August 10, 2020 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on December 16, 2020.

In a report dated November 9, 2020, Dr. Eriksen diagnosed back pain. He opined that appellant's back pain was a direct result of the motor vehicle incident of March 22, 2020.

By decision dated February 24, 2021, OWCP's hearing representative affirmed the July 21, 2020 decision.

On February 14, 2022 appellant, through counsel, requested reconsideration of OWCP's February 24, 2021 decision. With the request, counsel submitted progress notes from Dr. Eriksen dated June 23, 2020 through November 11, 2021. Dr. Eriksen continued to note that appellant was involved in a motor vehicle incident in March 2020. He continued to diagnose lumbar sprain/strain.

Counsel also submitted a December 27, 2021 report from Dr. Albert Johnson, a Board-certified orthopedic surgeon. Dr. Johnson related that he had examined appellant and reviewed

[3] Appellant was involved in another motor vehicle accident in the performance of duty on November 1, 2020. OWCP assigned File No. xxxxxx087 and accepted the claim for displaced fracture of the proximal phalanx of the left middle finger, and contracture of the right hand.

medical records. He noted that on March 22, 2020 appellant was involved in a motor vehicle incident when he was rear-ended at a stoplight in the performance of duty. Appellant underwent chiropractic treatment as of April 10, 2020. X-rays of his lumbar spine obtained on May 22, 2020 demonstrated degenerative changes of the hip and lumbar spine without fracture. Appellant was involved in another work-related motor vehicle incident on November 1, 2020 when he was involved in a head-on collision while in the performance of duty. A magnetic resonance imaging (MRI) scan of appellant's lumbar spine obtained on October 25, 2021 demonstrated herniated nucleus pulposus at L5-S1 and bulge at L3-L4 and L4-L5. Dr. Johnson performed a physical examination and diagnosed post-traumatic strain/sprain syndrome of the lumbar spine, post-traumatic aggravation due to two motor vehicle incidents in a short duration; post-traumatic aggravation of multilevel facet arthropathy, post-traumatic disc bulges at L3-L4 and L4-L5, and post-traumatic disc herniation at the L5-S1 levels.

Dr. Johnson explained that during a rear-end collision, such as the incident of March 22, 2020, the body propels forward and then immediately slams backward, causing a whiplash injury. He noted that low back pain occurs in approximately fifty-five percent of patients with whiplash injury and that these forces cause the muscles, tendons, and ligaments in the low back to overstretch or tear. Dr. Johnson stated that appellant was asymptomatic with regards to his lower back prior to the March 22, 2020 motor vehicle incident, but was unable to seek care at that time due to concern over COVID-19. He opined that it was difficult to attribute causation to either one of the incidents individually, noting that he probably had back pain with the first incident, aggravated by the second incident. Dr. Johnson opined that the incident of March 22, 2020 was the competent producing factor for appellant's subjective and objective symptoms and findings. He stated that appellant reached maximum medical improvement (MMI) on December 27, 2021.

By decision dated March 8, 2022, OWCP denied modification of its February 24, 2021 decision.

Appellant subsequently submitted progress notes from Dr. Steven Lavitan, a chiropractor, dated April 20 through 30, 2020. In a letter dated December 8, 2021, Dr. Joseph Cioffi, a chiropractor, evaluated appellant for mid-back pain radiating into the left arm and bilateral low back pain. Based on appellant's physical examination, he diagnosed subluxation at C1-C7, as well as subluxations at the thoracolumbar midline structures.

By decision dated May 17, 2022, OWCP denied modification of its March 8, 2022 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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

[4] *Id*.

[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).

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.[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 incident identified by the employee.[10]

ANALYSIS

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

On December 27, 2021 Dr. Johnson related appellant's history of a March 22, 2020 motor vehicle incident. He reviewed appellant's diagnostic studies including x-rays of the lumbar spine obtained on May 22, 2020 which demonstrated degenerative changes of the hip and lumbar spine without fracture. Dr. Johnson also noted that appellant was involved in another work-related motor vehicle incident on November 1, 2020 in the performance of duty. A magnetic resonance imaging (MRI) scan of the lumbar spine obtained on October 25, 2021 demonstrated herniated nucleus pulposus at L5-S1 and bulge at L3-L4 and L4-L5. Dr. Johnson diagnosed post-traumatic strain/sprain syndrome of the lumbar spine, post-traumatic aggravation due to two motor vehicle incidents in a short duration; post-traumatic aggravation of multilevel facet arthropathy, post-traumatic disc bulges at L3-L4 and L4-L5, and post-traumatic disc herniation at the L5-S1 levels. Dr. Johnson explained that during a rear-end collision, such as the incident of March 22, 2020, the body propels forward and then immediately slams backward, causing a whiplash injury. He noted that low back pain occurs in approximately fifty-five percent of patients with whiplash injury and

[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).

that these forces cause the muscles, tendons, and ligaments in the low back to overstretch or tear. He opined that it was difficult to attribute causation to either one of the incidents individually, noting that he probably had back pain with the first incident, aggravated by the second incident. However, Dr. Johnson opined that the incident of March 22, 2020 was the competent producing factor for appellant's subjective and objective symptoms and findings.

The Board finds that this report from Dr. Johnson is sufficient to require further development of the medical evidence. Dr. Johnson's report relates a pathophysiological mechanism as to how the motor vehicle incident of March 22, 2020 resulted in his diagnosed conditions. 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.[11] Accordingly, Dr. Johnson's medical opinion is sufficient to require further development of appellant's claim.[12]

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.[13] OWCP has an obligation to see that justice is done.[14]

On remand, OWCP shall refer appellant to a specialist in an 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 appellant's diagnosed conditions as related by Dr. Johnson were causally related to or aggravated by the accepted employment incident of March 22, 2020, or any other factors of his federal employment. If the physician opines that the diagnosed conditions are not causally related, he or she must explain with rationale how or why the opinion differs from that of Dr. Johnson. After this and other such further development of the case record as deemed necessary, OWCP shall issue a *de novo* decision.[15]

[11] *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) and cases cited therein.

[12] *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

[13] *See id*. *See also A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

[14] *See B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, *supra* note 8.

[15] The Board notes that in its decision of May 17, 2022, OWCP made reference to medical evidence submitted under OWCP File No. xxxxxx087. OWCP's procedures provide that cases should be administratively combined when correct adjudication depends on frequent cross-referencing between files and where two or more injuries occur to the same part of the body. Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the May 17, 2022 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: June 21, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board