

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

C.J., Appellant)

and)

U.S. POSTAL SERVICE, BROOKLYN)
PROCESSING & DISTRIBUTION CENTER,)
Brooklyn, NY, Employer)

**Docket No. 22-1015
Issued: March 31, 2023**

Appearances:

*Alan J. Shapiro, 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
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On June 21, 2022 appellant, through counsel, filed a timely appeal from a May 31, 2022 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.

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 right leg condition causally related to the accepted September 27, 2017 employment incident.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On October 4, 2017 appellant, then a 64-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on September 27, 2017 he pulled a muscle in his right leg when lifting and pulling a pallet of mail while in the performance of duty. He stopped work on September 28, 2017.

By decision dated December 1, 2017, OWCP accepted that the September 27, 2017 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that he did not submit evidence containing a medical diagnosis in connection with the accepted employment incident. OWCP concluded, that the requirements had not been met to establish an injury as defined by FECA.

On December 22, 2017 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on April 26, 2018.

Appellant submitted a March 27, 2018 report by Dr. Russell H. Silver, a Board-certified physiatrist, who diagnosed a muscle tear in the right calf and opined that it was "a direct result of the accident that occurred on September 27, 2017," and that he continued to be partially disabled.

By decision dated July 9, 2018, OWCP's hearing representative modified the December 1, 2017 decision, finding that appellant had established a medical diagnosis in connection with the accepted September 27, 2017 employment incident. However, the hearing representative affirmed the December 1, 2017 decision as modified, finding that the medical evidence of record was insufficiently rationalized to establish causal relationship between a diagnosed medical condition and the accepted September 27, 2017 employment incident.

On March 15, 2019 appellant, through counsel, requested reconsideration of the July 9, 2018 decision.

By decision dated June 6, 2019, OWCP denied modification of the July 9, 2018 decision.

On June 24, 2019 appellant, through counsel, appealed to the Board. By decision dated June 30, 2020, the Board affirmed the June 6, 2019 decision, finding that appellant had not met

³ Docket No. 21-1086 (issued January 28, 2022); Docket No. 19-1446 (issued June 30, 2020).

his burden of proof to establish a right leg condition causally related to the accepted September 27, 2017 employment incident.⁴

On August 20, 2020 Dr. Silver treated appellant for right knee, right leg, and right shoulder pain. His findings on examination revealed ecchymosis and pain in the right gastrosoleus area, limited range of motion of the right ankle and knee, and right lower extremity weakness. Dr. Silver diagnosed lumbosacral radiculopathy, cervical spine radiculopathy, bilateral carpal tunnel syndrome, bilateral tibial neuropathy, and right knee and ankle pain.

On September 22, 2020 appellant requested reconsideration.

By decision dated December 15, 2020, OWCP denied modification of the June 6, 2019 decision.

In a duty status report (Form CA-17) dated January 17, 2020, Dr. Silver diagnosed neck and shoulder pain, and advised that appellant could not resume work. On February 25, 2021 he evaluated appellant for back pain radiating into the bilateral lower extremity with numbness and tingling. Dr. Silver noted appellant's history was significant for traumatic injury at work. He diagnosed low back pain, neck pain, bilateral hand/wrist pain, right hip pain, right knee pain, right shoulder pain, and right-hand pain. On March 4, 2021 Dr. Silver noted that appellant would remain off work for an additional three weeks due to right shoulder pain and low back pain.⁵

In a November 27, 2020 report, Dr. Warren Lyons, a family practitioner, advised that appellant would remain off work due to severe degenerative arthritis complicated by multiple injuries to the neck, back, and shoulders.

OWCP received an unsigned attending physician's report (Form CA-20).

On March 11, 2021 appellant, through counsel, requested reconsideration.

By decision dated June 4, 2021, OWCP denied modification of the December 15, 2020 decision.

On July 12, 2021 appellant, through counsel, appealed to the Board. By decision dated January 28, 2022, the Board affirmed the June 4, 2021 decision, finding that appellant had not met

⁴ *Id.*

⁵ A November 7, 2020 x-ray of the cervical spine revealed severe degenerative change at C5-7, moderate degenerative change at C3-4, and mild degenerative change at C2-3 and C4-5. An x-ray of the lumbar spine dated November 11, 2020 revealed dextroscoliosis, L4-5 degenerative anterolisthesis, marked disc space narrowing, associated degenerative change at L5-S2, and bullet fragments. A computerized tomography scan of the lumbar spine dated November 17, 2020 revealed dextroscoliosis, L4-5 degenerative anterolisthesis, marked disc space narrowing, associated degenerative change at L5-S1, and bullet fragments. A magnetic resonance imaging scan of the cervical spine dated November 23, 2020 revealed disc osteophyte complexes, uncovertebral spurring from C3-4 through C7-T1, mild canal stenosis at C4-5 and C5-6, severe left-sided foraminal encroachment at C5-6, moderate left-sided foraminal narrowing at C3-4, and mild-to-moderate right-sided foraminal narrowing at C4-5.

his burden of proof to establish a right leg condition causally related to the accepted September 27, 2017 employment incident.⁶

On March 2, 2022 appellant requested reconsideration.

Appellant submitted additional evidence. On November 27, 2021 Dr. Silver treated appellant for back, neck, bilateral hand, right knee, hip, and right shoulder pain. He noted that appellant's history was significant for a traumatic injury at work. Physical examination revealed radiating back pain into the bilateral lower extremities, positive Hoover test, trigger points and spasm in the cervical and lumbosacral spine, decreased sensation of the left L4-5 and L5-S1 distribution, neck pain radiating to the right upper extremity, and elbow associated with numbness and tingling, positive Spurling test in the cervical spine, diminished grip strength in both hands, SI joint point tenderness, right greater trochanter hip point tenderness, and bilateral paraspinal tenderness of the cervical to lumbar spine. Dr. Silver diagnosed low back pain with sciatica, bilateral hand/wrist, right hip, right knee, right shoulder, and right hand pain. He referred appellant for physical therapy.

By decision dated May 31, 2022, OWCP denied modification of the prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 and that the claim was filed within the applicable time limitation period of FECA,⁷ that an injury was sustained while in the performance of duty as alleged; and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁸ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁹

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment

⁶ *Supra* note 3.

⁷ See *R.B.*, Docket No. 18-1327 (issued December 31, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁸ *Y.K.*, Docket No. 18-0806 (issued December 19, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁹ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

incident which is alleged to have occurred.¹⁰ The second component is whether the employment incident caused a personal injury.¹¹

Rationalized medical opinion evidence is required to establish causal relationship. 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.¹² Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that a disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹³

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right leg condition causally related to the accepted September 27, 2017 employment incident.

On prior appeal, the Board reviewed the evidence before OWCP at the time it issued its June 4, 2021 decision, and found that it was insufficient to establish that appellant sustained an injury causally related to the accepted September 27, 2017 employment incident. The Board's review of the previously submitted medical evidence of record is *res judicata* absent further review by OWCP under section 8128 of FECA, and therefore, the prior evidence need not be addressed again in this decision.¹⁴

In a November 27, 2021 report, Dr. Silver treated appellant for back, neck, bilateral hand, right knee, hip, and right shoulder pain. He noted appellant's history was significant for a traumatic injury at work. Dr. Silver noted positive physical findings on examination, and diagnosed low back pain with sciatica, bilateral hand/wrist, right hip, right knee, right shoulder, and right hand pain. However, in this report, he did not provide an opinion regarding whether a diagnosed medical condition was causally related to the accepted September 27, 2017 employment incident. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹⁵ Therefore, this report is of no probative value regarding appellant's claim for a September 27, 2017 traumatic injury, and is insufficient to establish his claim.

¹⁰ *R.E.*, Docket No. 17-0547 (issued November 13, 2018); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹¹ *D.C.*, Docket No. 18-1664 (issued April 1, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

¹² *H.B.*, Docket No. 18-0781 (issued September 5, 2018).

¹³ *D.H.*, Docket No. 18-1410 (issued March 21, 2019).

¹⁴ *S.C.*, Docket No. 19-0920 (issued September 25, 2019); *W.C.*, Docket No. 18-1386 (issued January 22, 2019); *see also G.W.*, Docket No. 19-1281 (issued December 4, 2019).

¹⁵ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

As the medical evidence of record is insufficient to establish a right leg condition causally related to the accepted September 27, 2017 employment incident, the Board finds that appellant has not met his burden of proof to establish his claim.

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 established an injury to his right knee causally related to the accepted September 27, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the May 31, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 31, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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