United States Department of Labor
Employees' Compensation Appeals Board

G.C., Appellant	)	
and	)	**Docket No. 15-1950**
	)	**Issued: June 13, 2016**
DEPARTMENT OF THE ARMY, TRAINING & DOCTRINE COMMAND, FORT RUCKER, AL, Employer	)	

Appearances:
Eric L. Pines, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 28, 2015 appellant, through counsel, filed a timely appeal from an April 1, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 traumatic injury causally related to the accepted December 13, 2010 work incident.

FACTUAL HISTORY

On November 6, 2012 appellant, then a 47-year-old air traffic control instructor, filed a traumatic injury claim (Form CA-1) alleging that on December 13, 2010 he received an electrical

[1] 5 U.S.C. § 8101 *et seq.*

shock and fell. He claimed a cervical disc disorder with myelopathy. Appellant did not stop work.

In a December 14, 2010 report, Dr. Norberto Rodriguez, a family practitioner, noted that appellant was seen for arm pain from an electric shock he had experienced the previous day. He indicated that appellant had a normal examination, but had residual muscle tenderness on his arm where the contact had occurred.

Appellant submitted a December 19, 2011 statement along with written statements dated December 16 and 19, 2011 from two coworkers, who indicated that he had received an electrical shock and was knocked off his feet in December 2010 while in Lab 4. One witness indicated that appellant's head snapped backwards.

In a February 17, 2012 report, Dr. Hassan Kesserwani, a Board-certified neurologist, who had treated appellant since July 23, 2008, noted that appellant had a complicated situation with multiple diagnoses, which included bilateral cervical radiculopathy, bilateral lumbar radiculopathy, myofascial pain syndrome/fibromyalgia, migraine, bilateral occipital neuralgia, sleep apnea with fatigue, and headaches. He noted a history of a prior head injury in January 1996 while appellant was in military service in Hungary, and a prior injury in 1995 as an air traffic controller, while trying to catch an azimuth-drive motor on an air traffic control radar. Dr. Kesserwani noted that on December 13, 2010 appellant was electrically shocked at work, fell, and landed on his buttocks. "Apparently, [appellant] developed a hyperextension injury of his neck, a stiff neck, and chronic pain." Dr. Kesserwani noted that appellant was currently working and that the use of the computer and simulator on a constant basis was aggravating his neck and back pain. He concluded that it was more than likely that appellant's injuries contributed to his medical diagnoses.

On November 19, 2012 OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical evidence to support his claim and was asked to submit a well-rationalized opinion from his physician regarding the cause of his condition. He was afforded 30 days to submit this evidence.

In a December 6, 2012 statement, appellant related that he had reported the injury immediately to his supervisor and that he saw a physician the next day due to neck and right arm pain. He also submitted copies of progress reports from Dr. Kesserwani from March 2009 through December 2012, which reflected diagnoses of low back pain, cervical radiculopathy, migraine, and pain in the occipital neck and shoulder regions.

OWCP received several additional reports from Dr. Kesserwani. On March 29, 2009 Dr. Kesserwani noted that appellant had fallen and smashed the right side of his jaw in Hungary during military service and had been experiencing neck pain into the right shoulder since then. He opined that there was a causal link between that injury and appellant's radicular pain involving his neck and right arm.

In a January 3, 2012 report, Dr. Kesserwani noted the results of diagnostic testing and diagnosed bilateral carpal tunnel syndrome and bilateral C5 radiculopathy. He noted that appellant was seeing a psychologist for his fatigue, headaches, and memory loss. In a

February 6, 2012 note, Dr. Kesserwani noted that the magnetic resonance imaging (MRI) scan of the C-cord showed a herniated disc at C6-7, which impacted the cord and went to the lateral neuroforamina.

In a November 26, 2012 report, Dr. Kesserwani noted that appellant had neck pain radiating into both shoulders since the December 13, 2010 work incident, during which he was electrically shocked, fell, and landed on his buttocks. He also referred to the MRI scan of the C-cord, which showed evidence of a herniated disc indenting the cervical cord at C5-6 and C6-7 with bilateral stenosis at C5-6, explained his symptoms of neck and shoulder pain. Dr. Kesserwani opined that there was a direct relationship between the injury sustained at work and the clinical and MRI scan findings.

By decision dated December 20, 2012, OWCP denied the claim as the medical evidence failed to establish a causal relationship between the December 13, 2010 work incident and a diagnosed medical condition.

On December 29, 2012 appellant requested a review of the written record before OWCP's Branch of Hearing and Review.

Appellant submitted a December 29, 2012 statement and resubmitted Dr. Kessarwani's November 25, 2012 report, which he argued established causation. A copy of the January 5, 2012 cervical spine MRI scan report was also received, which contained an impression of mild cervical spondylosis at C5-6 and disc herniation at C6-7 with central canal stenosis.

By decision dated March 15, 2013, an OWCP hearing representative affirmed OWCP's December 20, 2012 decision. The hearing representative found that the medical evidence of record did not establish that the December 13, 2010 work incident caused or contributed to a diagnosed medical condition.

On September 19, 2013 OWCP received appellant's September 16, 2013 request for reconsideration. In his September 16, 2013 letter, appellant referenced medical evidence he believed supported that the December 13, 2010 work incident aggravated his preexisting back, neck, arm, headaches, and fibromyalgia conditions. He indicated that his medical conditions were manageable prior to the December 13, 2010 work incident.

In a December 5, 2012 letter, the employing establishment verified that the December 13, 2010 work incident occurred.

Additional medical evidence included a January 24, 2012 diagnostic report confirming sleep apnea, a February 27, 2013 lumbar MRI scan noting unremarkable findings, a July 15, 2013 brain MRI scan, hospital reports dated July 17 and 25, 2013, and reports from Dr. Kesserwani from September 2008 through August 29, 2013, the majority of which were duplicative and previously of record.

In a new May 21, 2013 report, Dr. Kesserwani noted that appellant had been suffering from neck pain, low back pain, and occipital pain for many years. Appellant was first seen on July 23, 2008 and his current diagnoses included: cervical spondylosis, bilateral carpal tunnel syndrome, chronic left and right C5 radiculopathy, fibromyalgia/myofascial pain syndrome,

occipital neuralgia, and migraine. Dr. Kesserwani noted that appellant sustained cervical trauma during military service in 1996 and another trauma to his neck on December 13, 2010 during civil service, when he was shocked by a simulator and thrown backwards, landing on his buttocks at which time he felt a snap in his neck. He noted that the January 25, 2012 MRI scan revealed severe cervical spondylosis at C5-6 and C6-7 with neural foraminal stenosis, which accounted for his symptoms. Dr. Kesserwani stated that there was no other interceding injury and there appeared to be a causal link between the neck snap and the noted MRI scan findings. He indicated that appellant's clinical symptomatology, nerve conduction study electromyogram (EMG) findings, recent findings, MRI scan of the C-cord, and his neck injury all support a direct causal link between the recent trauma and his current clinical findings. Dr. Kesserwani concluded that most likely there was a causal link between the electrical shock, fall, and neck snap, and the manifestation/exacerbation of appellant's diagnosed conditions of cervical spondylosis, chronic bilateral C5 radiculopathy, fibromyalgia/myofascial pain syndrome, occipital neuralgia, and migraines.

In an August 29, 2013 report, Dr. Kesserwani diagnosed lumbago, lower back strain, cervical disc disorder (spondylosis) with myelopathy, bilateral carpal tunnel syndrome, and sleep apnea (obstructive). With regard to the back condition, he opined that without any other interceding trauma or injury, and after review of MRI scan that most likely a compression injury of the L-spine occurred after appellant was shocked by a simulator and landed on his buttocks on December 13, 2010. This injury resulted with exacerbation of appellant's lower muscular spasms with limited range of motion and L5-S1 radicular pain. With regard to the cervical disc disorder (spondylosis) with myelopathy, Dr. Kesserwani opined that, more likely than not, the previous C-spine injury was caused by the military injury in 1996 and, most likely, the simulator shock resulted with a cervical hyperextension whiplash as appellant landed on his buttocks. He also opined that appellant's migraines were chronic and disabling.

OWCP further developed the medical evidence and referred appellant, along with a statement of accepted facts, a list of questions, and the medical record to Dr. Farrukh S. Khan, a Board-certified neurologist, for a second opinion examination. In a January 1, 2014 report, Dr. Khan noted the history of appellant's past injuries to his low back in 1995 and his military injury in 1996 as well as appellant's current complaints. He presented examination findings and included a review of the medical records. Dr. Khan advised that there was no C-cord signal change seen on the cervical MRI scan of record. An assessment of cervical spondylosis without myelopathy and chronic neck pain were provided. Dr. Khan indicated that appellant probably aggravated his neck and arm pain on December 13, 2010. He indicated that appellant had no clinical evidence based on his examination or the clinical records of any motor or sensory deficits to support a significant myelopathy.

Dr. Khan saw no evidence of a sensory deficit and there was no evidence of a significant motor deficit or evidence of loss of superficial reflexes. He advised that while the cervical disc disease seen on the MRI scan could potentially cause pain, it was difficult for him to associate appellant's overall body pain and total body numbness to the C5-6 and C6-7 disc conditions. Dr. Khan explained that appellant has preexisting fibromyalgia syndrome, which was more likely to cause the overall body pain and dysesthesias that he described. He advised that while appellant had significant pain, any disability would be due to pain, or to prevent the disc disease from worsening the progression of degenerative disease or future radiculopathy. Dr. Khan

opined that appellant's disability did not preclude him from performing sedentary work and he should be able to perform the work requirements described. He emphasized that only subjective complaints of pain resulted from the injury, and this was probably partly responsible for his ongoing chronic pain.

By decision dated January 29, 2014, OWCP denied modification of its prior decision. It accorded determinative weight to Dr. Khan's January 1, 2014 second opinion report.

On January 6, 2015 OWCP received a January 4, 2014 request for reconsideration from appellant's counsel. Appellant's counsel submitted a 19-page letter arguing that the evidence of record supported causation.

Evidence received in support of the request for reconsideration included appellant's November 18, 2014 statement, a July 7, 2014 EMG, reports of nerve block/trigger point injections dated February 27, March 5, and June 30, 2014, a January 23, 2014 operative report, and various reports and publications from journals and periodicals.

By decision dated April 1, 2015, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing 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 time limitation period of FECA, that an injury[2] 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.[3]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her condition relates to the employment incident.[4]

[2] OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress, or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

[3] *See T.H.*, 59 ECAB 388 (2008). *See also Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Id. See Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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 the specific employment factors identified by the employee.[5]

An award of compensation may not be based on surmise, conjecture, or speculation or upon appellant's belief that there is a causal relationship between his condition and his employment.[6] To establish causal relationship, appellant must submit a physician's report, in which the physician reviews the factors of employment identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination and appellant's medical history, state whether these employment factors caused or aggravated appellant's diagnosed condition.[7]

ANALYSIS

Appellant has diagnosed conditions of cervical spondylosis, bilateral carpal tunnel syndrome, chronic left and right C5 radiculopathy, fibromalgia/myofascial pain syndrome, occipital neuralgia and migraine, which he claimed were caused or aggravated by the accepted December 13, 2010 electrical shock incident. OWCP relied upon the opinion of Dr. Khan, its referral physician, in finding that appellant did not establish that his medical conditions were caused or aggravated as a result of the December 13, 2010 employment incident.

In a January 1, 2014 report, Dr. Khan detailed his review of the diagnostic testing and indicated that there was no C-cord signal change. He assessed cervical spondylosis without myelopathy and chronic neck pain. Dr. Khan indicated that the December 13, 2010 work incident aggravated appellant's neck and arm pain, but advised that there was no evidence of any motor or sensory deficits to support a finding of significant myelopathy. He stated that appellant's preexisting fibromyalgia syndrome was more likely to be the cause of his pain as there was no C-cord signal change. Dr. Khan further opined that any disability from the work injury would be based on subjective symptoms of pain and stiffness. He also opined that appellant could perform his date-of-injury position as there were no objective motor or sensory deficits that could prevent him from performing his job duties. Dr. Khan based his opinion on a review of the factual and medical background, as set forth by the statement of accepted facts and appellant's medical record, and provided rationale for his opinion by explaining that appellant had only increased his chronic pain as a result of the December 13, 2010 traumatic event. The Board finds that Dr. Khan's opinion has reliability, probative value, and convincing quality regarding the relevant issue of causation, and thus constitutes the weight of the evidence and establishes that appellant did not sustain an employment-related condition or aggravate any

[5] *Id. See Gary J. Watling*, 52 ECAB 278 (2001).

[6] *William S. Wright*, 45 ECAB 498, 503 (1993).

[7] *Calvin E. King*, 51 ECAB 394, 401 (2000).

preexisting condition.[8] The Board has held, a diagnosis of pain does not constitute a basis of payment for compensation as pain is considered to be a symptom rather than a specific diagnosis.[9]

Counsel contends on appeal that OWCP should have accepted an aggravation or exacerbation of appellant's multiple conditions. However, the medical evidence on file does not provide a medical explanation based on objective findings or a proper factual background to support that the diagnoses of appellant's multiple medical conditions were caused or aggravated by the December 13, 2010 work incident.

The Board notes initially that the contemporaneous medical evidence in file dated December 14, 2010 from Dr. Rodriguez only provided findings of pain due to the work incident. Pain does not constitute a basis for payment of compensation.[10]

Appellant subsequently submitted numerous reports from Dr. Kesserwani. In these reports the physician provided multiple diagnoses including bilateral cervical radiculopathy, bilateral lumbar radiculopathy, myofascial pain syndrome/fibromyalgia, migraine, bilateral occipital neuralgia, sleep apnea with fatigue, and headaches. The Board finds that Dr. Kesserwani's reports are of limited probative value and are therefore insufficient to cause a conflict of medical opinion with that of Dr. Khan.

In his reports, Dr. Kesserwani indicated that he had treated appellant since July 23, 2008. He noted histories of prior injuries in 1995 as an air traffic controller, a 1996 head injury while appellant was in the military, and the December 13, 2010 work incident where he received a shock and fell, landing on his buttocks, and developing a stiff neck. Dr. Kesserwani opined in a March 29, 2009 report that appellant experienced neck and arm pain due to the 1996 injury. Subsequently, he opined in several 2012 reports that cervical MRI scan results explained appellant's neck and right arm symptoms. However, Dr. Kesserwani did not distinguish between the 1996 and 2010 incidents, or explain with medical rationale how the December 13, 2010 work incident caused or contributed to the diagnosed conditions. Additionally, he did not provide any explanation as to the nature of the 1995 injury, and whether it caused any of the currently diagnosed conditions.

Dr. Kesserwani also did not explain how a fall on the buttocks caused a cervical spine condition. In his February 17, 2012 report, he advised that appellant apparently developed a hyperextension injury of his neck, a stiff neck, and chronic pain. However, Dr. Kesserwani's mention of appellant experiencing a hyperextension injury of his neck appears speculative in nature as appellant did not report or seek initial care for a neck condition; rather, his initial complaints immediately after the injury were of arm pain. He also failed to explain how or distinguish between appellant's use of the computer and simulator, his preexisting conditions and preexisting history played a role in causation.

[8] *See M.R.*, Docket No. 15-0583 (issued December 9, 2015); *T.N.*, Docket No. 14-1331 (issued February 18, 2015).

[9] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *Robert Broom*, 55 ECAB 339 (2004).

[10] *See id.*

In his November 26, 2012 report, Dr. Kesserwani again indicated that the December 13, 2010 work incident resulted in a stiff neck and chronic pain. He also noted that an MRI scan of the C-cord showed evidence of a herniated disc indenting the cervical cord at C5-6 and C6-7 with bilateral stenosis at C5-6, which explained his symptoms of neck and shoulder pain. While Dr. Kesserwani opined that there was a direct relationship between the injury sustained at work and the clinical and MRI scan findings, he did not provide any medical explanation as to how the diagnosed conditions would have been caused by the employment incident, especially in light of the fact that his diagnoses were made some two years following the accepted incident.

In his May 21, 2013 report, Dr. Kesserwani related that appellant suffered a neck snap at the time of the work injury. While he opined that the manifestations/exacerbations of appellant's symptoms and the diagnosed conditions of cervical spondylosis, chronic bilateral C5 radiculopathy, fibromyalgia/myofascial pain syndrome, occipital neuralgia, and migraines were all aggravated/exacerbated by the work incident, he again failed to provide any detailed medical reasoning for his conclusion on causal relationship. Dr. Kesserwani also failed to discuss the effect of or natural progression of appellant's preexisting conditions. A medical report lacking thorough medical rationale is of limited probative value in establishing causal relationship.[11]

In his August 29, 2013 report, Dr. Kesserwani opined that appellant suffered both a back condition and cervical conditions from the December 13, 2010 work incident. However, he did not sufficiently differentiate between the preexisting state of appellant's conditions and any conditions found due to the work incident. Dr. Kesserwani mentions findings on MRI scan, but does not address how those findings are related; instead, he indicates that appellant's increased symptomology and the incident aggravated appellant's muscle spasm, without providing a medical rationale supported by objective findings to support his conclusion.

In all of his reports, Dr. Kesserwani failed to provide in any of his reports sufficient medical rationale explaining the basis of his conclusion regarding the causal relationship between appellant's multiple diagnosed conditions and the December 13, 2010 incident.[12] Rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background, of reasonable medical certainty, and supported by medical rationale explaining the opinion.[13] For all the above reasons, Dr. Kesserwani did not provide a rationalized medical opinion on the issue of causal relationship. Thus, his reports are of limited probative value and are insufficient to cause a conflict of medical opinion with Dr. Khan.

Appellant submitted copies of diagnostic testing and test results. These tests, however, are insufficient to establish his claim as they do not contain a physician's opinion on causal relation. As the diagnostic tests do not provide an opinion on causation, they are of diminished probative value.[14] The newspaper clippings, medical texts and publications appellant provided

[11] *See D.P.*, Docket No. 15-1325 (issued February 18, 2010).

[12] Medical evidence that states a conclusion, but does not offer any rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship. *See J.F.*, Docket No. 08-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

[13] *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

[14] *See Conard Hightower*, 54 ECAB 796 (2003).

are also insufficient to establish causal relationship. Causal relationship is medical in nature and can be established only by medical evidence.[15] Newspaper clippings, medical texts, and excerpts from publications are of no evidentiary value in establishing the necessary causal relationship as they are of general application and are not determinative of whether the specific condition claimed was causally related to the particular employment injury involved.[16]

On appeal, counsel also contends that appellant suffered multiple aggravations and new medical conditions resulting from the December 13, 2010 work incident. However, there is no medical evidence on file that provides a medical explanation based on objective findings to support that the diagnoses of bilateral C5 radiculopathy, L5-S1 radiculopathy, herniated disc at C6-7, fibromyalgia, occipital neuralgia, migraine headache, or any new conditions were caused or aggravated by the December 13, 2010 work incident. Appellant has the burden proof to establish causal relationship through the submission of rationalized medical opinion evidence, which has not been done in this case.[17]

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that the December 13, 2010 employment incident caused or aggravated his diagnosed medical conditions.

[15] *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

[16] *Gaetan F. Valenza*, 35 ECAB 763 (1984); *Kenneth S. Vansick*, 31 ECAB 1132 (1980).

[17] *John J. Montoya*, 54 ECAB 306 (2003).

ORDER

IT IS HEREBY ORDERED THAT the April 1, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 13, 2016
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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