United States Department of Labor
Employees' Compensation Appeals Board

R.I., Appellant	)	
and	)	**Docket No. 16-0392**
	)	**Issued: October 18, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Brooklyn, NY, Employer	)	

Appearances:
Thomas S. Harkins, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On December 29, 2015 appellant, through counsel, filed a timely appeal from an October 30, 2015 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 an emotional condition and additional physical conditions causally related to the November 13, 2013 employment incident.

On appeal, counsel contends that a June 12, 2015 medical report from Dr. Osafradu Opam, an attending neurologist, a November 30, 2014 report from Dr. Peter Calapai, Ph.D., and a December 2, 2014 report from Dr. Jeffrey I. Rubin, Ph.D., both licensed psychologists, are sufficient to establish an injury in the performance of duty.

FACTUAL HISTORY

On November 14, 2013 appellant, then a 56-year-old parcel post collections driver, filed a traumatic injury claim (Form CA-1) alleging that on November 13, 2013 he sustained traumatic mental anguish as a result of being physically assaulted in the face and racially attacked at work. He stopped work on the filing date of his claim and has not returned to work. The employing establishment indicated that the incident occurred in the performance of duty.[3]

On November 15, 2013 the employing establishment issued a Form CA-16 authorizing treatment by Dr. Akwasi A. Achampong, a Board-certified internist. In a November 15, 2013 attending physician's report, Dr. Achampong provided a history that appellant was attacked and assaulted at work. He diagnosed post-traumatic headache and indicated by checking a box marked "yes" that the diagnosed condition was caused or aggravated by an employment activity. Dr. Achampong advised that appellant was totally disabled from November 13 through December 16, 2013.

By letter dated November 22, 2013, OWCP notified appellant of the deficiencies of his claim and afforded him 30 days to submit additional factual and medical evidence.

In a disability certificate dated November 29, 2013, Dr. Opam advised that appellant was totally incapacitated through December 29, 2013. He provided a history of injury that on November 13, 2013 appellant was physically and verbally assaulted "by a white man." Dr. Opam diagnosed work-related status post left facial contusion, cervical myofascitis, and post-traumatic acute stress disorder.

A November 30, 2013 medical report from a chiropractor's office with an illegible signature advised that on November 13, 2013 appellant was assaulted on the head and face at work. The provider noted appellant's symptoms and diagnosed cervical brachial neuropathy/radiculopathy, cervicalgia, cervical subluxations, and cervical sprain/strain. The provider opined that the diagnosed conditions were causally related to the November 13, 2013

[3] The record contains documents from the Kings County New York District Attorney's office and the Criminal Court for the City of New York indicating that the assailant was charged with several offenses including criminal mischief as a hate crime, attempted assault, menacing, and harassment with respect to appellant on November 13, 2013. Appellant stated that the assailant threatened him, used racial epithets, smacked him on the face, grabbed his jacket, and broke his sunglasses. On November 14, 2013 the New York City Criminal Court, Kings County Branch, issued a temporary order of protection directing the assailant to stay away from appellant.

incident. The provider recommended an x-ray of the cervical, thoracic, and lumbar spine to evaluate for fracture, dislocation, misalignment, and a magnetic resonance imaging (MRI) scan or computerized tomography scans to rule out herniated nucleus pulposus.

In a December 31, 2013 decision, OWCP denied appellant's claim as the medical evidence did not provide a rationalized medical opinion establishing that the accepted employment incident caused or aggravated his post-traumatic headaches, left facial contusion, cervical myofascitis, and post-traumatic/acute stress disorder.

In a December 30, 2013 disability certificate, received by OWCP on January 21, 2014, Dr. Opam advised that appellant was totally incapacitated through February 9, 2014. He reiterated his prior diagnoses of work-related status post left facial contusion, cervical myofascitis, and post-traumatic acute stress disorder. Dr. Opam reported that appellant continued to have active symptoms and active exacerbation.

By letter dated May 9, 2014, appellant, through a representative, requested reconsideration of the December 31, 2013 decision.

In a February 27, 2014 follow-up report, Dr. Opam related that appellant was status post his November 13, 2013 work-related accident. He noted his treatment and complaints of recurrent headaches, neck pain and stiffness, anxiousness, poor sleep, and feeling stressed. Dr. Opam provided findings on examination and addressed appellant's treatment plan. In a March 24, 2014 disability certificate, he advised that appellant was totally incapacitated through May 4, 2014. Dr. Opam reiterated his prior work-related diagnoses and statement regarding appellant's current symptoms and exacerbation. In a March 31, 2014 updated report, he noted appellant's history of injury and referenced his prior diagnoses. Dr. Opam reiterated that appellant's medical conditions were directly related to the November 13, 2013 work incident. He related that appellant's facial contusions were consistent with the reported location of being struck. Dr. Opam advised that it was a common consequence of face and neck trauma to suffer post-traumatic headaches and cervicalgia of the type that appellant described and symptoms that were evident on examination.

In a January 30, 2014 letter, James J. Baylis, a licensed clinical social worker, described appellant's history of injury and diagnosed post-traumatic stress disorder (PTSD).

In an August 8, 2014 decision, OWCP modified the December 31, 2013 decision in part, finding that the medical evidence was sufficient to establish that appellant sustained a left facial contusion as a result of the accepted November 13, 2013 employment incident. It found, however, that the medical evidence did not provide a rationalized opinion establishing that his brachial neuritis, unspecified subluxations, neck sprain/strain, cervical myofascitis, and post-traumatic acute stress disorder were causally related to the accepted work incident.

In a September 10, 2014 report, Dr. Opam noted that appellant had recurrent exacerbation of symptoms from job-related injuries sustained on November 13, 2013. He reiterated his diagnoses of cervical myofascitis and post-traumatic/acute stress disorder. Dr. Opam requested that OWCP also accept cervical disc syndrome due to appellant's present active symptoms and acute exacerbation.

In an October 13, 2014 report, Dr. Opam opined that appellant's post-traumatic headaches, brachial neuritis, cervical myofascitis, and acute stress disorder were causally related to his November 13, 2013 work incident. He related that appellant had trauma to the left side of his head and neck that was forceful and unexpected. Appellant did not have ample opportunity to steel himself against the intensity of the blow. Dr. Opam noted that when the head is subjected to trauma of this type, the neck and upper back are exposed to incredible stress and neurological consequences. Any wrenching or twisting of the cervical spine, such as when the neck is forced beyond normal range of motion, results in irritation of the nerves in the spinal column. This neurologic irritation results in symptoms such as headache, pain, or loss of strength in the upper arm or back. Dr. Opam maintained that the force of the blow was reflected in the facial contusion found on examination, caused snapping of the neck similar to whiplash experienced by passengers in a motor vehicle accident. Not only did appellant have bruising in the portion of the face that was the point of contact, he suffered the residual effects of the neurologic collision caused by the sudden shifting of the cervical spine incidental to trauma. These residual effects were diagnosed as brachial neuritis and cervical myofascitis, resulting in symptomatic pain in the head, neck, upper back, and left arm. Based upon the narrative history of traumatic injury, his findings on examination, and experience in the field of neurology, Dr. Opam concluded that his diagnosed facial, head, and cervical conditions were physical ramifications of the blow to the head and neck on November 13, 2013. Due to present active symptoms and acute exacerbation, he requested that OWCP accept cervical disc syndrome.[4]

In an October 23, 2014 progress report, Dr. Calapai noted appellant's therapy for stress symptoms following the November 13, 2013 employment incident. He diagnosed PTSD on Axis 1, hypertension on Axis 3, unemployed, legal involvement, and history of trauma on Axis 4, and 55/60 on Axis 5. Appellant had no diagnosis on Axis 2.

On December 1, 2014 Dr. Opam reported findings on examination and offered diagnoses. In a December 1, 2014 work capacity evaluation (Form OWCP-5c), he found that appellant was unable to perform his usual job due to continued active symptoms and acute exacerbation. Dr. Opam also found that appellant could not work eight hours a day with restrictions due to increased stress/distress with recurrence of facial pain. In a December 1, 2014 disability certificate, he advised that appellant was totally incapacitated through January 19, 2015. Dr. Opam diagnosed left facial neuralgia. Also, on December 1, 2014 he referred appellant for psychological treatment.[5]

In an October 30, 2014 cervical MRI scan, Dr. Myrna K. Nussbaum, a Board-certified radiologist, noted a reversal of the normal cervical lordosis, and bilateral uncovertebral joint hypertrophy C3-4 resulting in moderately severe right-sided and mild left-sided neuroforaminal stenosis. She diagnosed moderate degenerative disc disease at C4-5, moderate degenerative disc disease at C5-6, moderately severe degenerative disc disease at C6-7.

[4] An October 15, 2014 x-ray report indicated that no facial bone fractures were identified.

[5] Unsigned session notes addressed appellant's psychological treatment from November 29, 2013 to October 17, 2014. In prescriptions dated October 13, 2014 and February 2, March 19, and July 10, 2015, Dr. Opam ordered physical therapy to treat cervical myofascitis. On March 19, 2015 he reported appellant's responses to a questionnaire regarding the extent and nature of his injuries.

On December 2, 2014 Dr. Rubin reported appellant's history and findings. He diagnosed PTSD, which developed consequentially on Axis 1, anxiety, depression, tension, and stress on Axis 3, psychological stressors that included pain, fatigue, decreased physical capacity, decreased productivity at home, strained interpersonal relations, inability to work (with related financial difficulties), moderate severity (enduring circumstances) on Axis 4, and a global assessment functioning (GAF) score of 90 prior to the November 13, 2013 employment injury and a current GAF score of 50, which was incident related on Axis 5. Appellant had no diagnosis on Axis 2. Dr. Rubin opined that the November 13, 2013 employment incident was the clear, competent, and provocative cause of the consequential emotional and behavioral symptoms and diagnoses described above. He noted that, while appellant was anxious, psychological testing was necessary to determine quantitatively how his present anxiety was specifically related to the accepted work incident. Dr. Rubin also recommended further evaluation of the type and degree of his depression to determine whether he was suicidal and whether his reported depression was causally related to the incident in question.

By letter dated July 9, 2015, appellant, through counsel, requested reconsideration of the August 8, 2014 decision.

In a November 30, 2014 report, Dr. Calapai reiterated the diagnoses set forth in his October 23, 2014 progress report.

In a June 12, 2015 report, Dr. Opam noted appellant's history and findings. He reiterated his diagnoses of cervicalgia, post-traumatic stress reaction, and post-traumatic facial injury. Dr. Opam also diagnosed cervical disc syndrome with radiculopathy and post-traumatic aggravated headaches. He noted that, in the November 13, 2013 accident, appellant was verbally, with racial overtones, and physically assaulted by a white man exerting a tremendous amount of pressure upon his left face and neck. Range of motion testing consistently showed painful and significant limitations in the neck area. Dr. Opam related that these injuries had healed very little by way of scar tissue formation, which was less elastic and less functional than the original tissues they replaced. This reduced joint motion and resulted in the formation of fibrosis and lack of normal movement of the nerve root within the intervertebral foramen, causing irritation of the involved neural structures, and pain. These pathologies clinically correlated with appellant's symptoms, findings, physical limitations, and physical and mental discomforts. Dr. Opam maintained that these findings explained his ongoing pain, suffering, and physical impairments of the spine and left facial pain. He noted that the absence of prior trauma to that area suggested that the disc pathologies, nerve, and left facial injuries did not preexist the work injury. Dr. Opam advised that appellant subsequently developed pervasive general anxiety, and sad depressed feelings related to the incident and the way it had affected his everyday life and caused sleep difficulties. He noted that these symptoms often persist for many years and sometimes through life, placing limitations on daily activities, and, at times, could be quite disabling. Despite intensive physical therapy with different modalities and activity restrictions, there was no full recovery. Appellant continued to show signs and symptoms of injury to the cervical spine, left facial pain, and psychological symptoms such as angry feelings, life changes due to the accident, general nervousness, forgetfulness, and a sense of general hopelessness about life. Dr. Opam opined that these changes and symptoms were permanent and stress would trigger recurrent pain episodes to these regions. He noted that appellant was prone to future and frequent exacerbations of his symptom complex and further post-traumatic arthritic changes

could be expected to the injured areas as he aged, thus contributing to ongoing pain. Dr. Opam opined that he was a candidate for more aggressive treatment modalities, which would result in ongoing psychological consultation, pain management intervention, including long-term physical therapy, and medication. He concluded that appellant's prognosis was guarded and that his conditions were chronic, permanent, and disabling in nature.

An April 14, 2014 progress note from Ultimate Pain Management contained an unknown signature. The note provided appellant's history of injury and complaints, examination findings, and reviewed diagnostic test results. Appellant was diagnosed with neck pain, cervical disc with myelopathy, and a cervical facet condition.

In an October 30, 2015 decision, OWCP denied modification of the August 8, 2014 decision. It found that the medical evidence submitted was insufficiently rationalized to establish that appellant's cervical and emotional conditions were causally related to the accepted November 13, 2013 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence[6] including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[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.[8] There are two components involved in establishing the fact of injury. 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.[9]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[10] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the

[6] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[7] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[8] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[9] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[10] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

identified factors.[11] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[12]

ANALYSIS

The Board finds that this case is not in posture for a decision regarding whether appellant a sustained emotional condition and additional physical conditions causally related to the November 13, 2013 employment incident.

Appellant filed a claim for a traumatic injury occurring on November 13, 2013. OWCP accepted that the employment incident occurred and accepted a facial contusion, but it denied the claim for additional conditions because the medical evidence was insufficiently rationalized to establish a causal relationship between his diagnosed brachial neuritis, unspecified subluxations, neck sprain/strain, cervical myofascitis, and post-traumatic acute stress disorder and his accepted employment incident of being physically and verbally assaulted in the performance of his duties as a parcel post collections driver. On appeal, counsel contends that Dr. Opam's June 12, 2015 report establishes that appellant sustained an injury in the performance of duty.

Following the initial denial of his claim, appellant submitted two reports from Dr. Opam. In an October 13, 2014 report, Dr. Opam described the accepted November 13, 2013 employment incident and opined that appellant's post-traumatic headaches, brachial neuritis, cervical myofascitis, and acute stress disorder were due to this work incident. In his October 13, 2014 report, he explained in detail how the intense and unexpected blow to the left side of appellant's head and neck caused the diagnosed physical and emotional conditions. With regard to the physical component Dr. Opam specifically explained that when the head is exposed to trauma of this type, especially when unexpected, appellant's neck and upper back were exposed to incredible stress. He opined that any wrenching or twisting of the cervical spine, such as when the neck is forced beyond normal range of motion, result in irritation of the nerves which are encased in the spinal column. This type of trauma manifests in symptoms such as headache, pain, or loss of strength in the upper arm and back. In a June 12, 2015 report, Dr. Opam opined that appellant's permanent, chronic, and disabling cervicalgia, cervical disc syndrome with radiculopathy, post-traumatic stress reaction, and post-traumatic facial injury resulted from the November 13, 2013 work incident. He related that his opinion was based on his examination findings and appellant's symptomatology, physical limitations, and physical and mental discomforts.

The Board finds that Dr. Opam's reports contain a history of injury, diagnoses, and an opinion that appellant's physical and emotional conditions were caused by the accepted employment incident with some rationale. These reports raise an uncontroverted inference of causal relationship sufficient to require further development by OWCP.[13]

[11] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[12] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

[13] *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

It is well established that proceedings under FECA are not adversarial in nature and while the claimant has the burden of establishing entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.[14]

The Board will, therefore, set aside OWCP's October 30, 2015 decision denying modification of the denial of appellant's traumatic injury claim and remand the case to OWCP for further development of the medical opinion evidence on the issue of casual relationship. OWCP shall refer him, together with the case record and a statement of accepted facts, to an appropriate specialist for an examination to determine whether he has any physical or emotional conditions causally related to the accepted November 13, 2013 employment incident. After this and such other development as it deems necessary, OWCP should issue a *de novo* decision on appellant's traumatic injury claim.

CONCLUSION

The Board finds that this case is not in posture for a decision as to whether appellant sustained an emotional condition and additional physical conditions causally related to the November 13, 2013 employment incident.

[14] *Id.; supra* note 10.

ORDER

IT IS HEREBY ORDERED THAT the October 30, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: October 18, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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