United States Department of Labor
Employees' Compensation Appeals Board

R.J., Appellant	)	
and	)	**Docket No. 17-1138**
	)	**Issued: October 19, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Charlotte, NC, Employer	)	

Appearances:
Alan J. Shapiro, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 2, 2017 appellant, through counsel, filed a timely appeal from a January 27, 2017 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.

ISSUE

The issue is whether appellant met his burden of proof to establish an occupational disease causally related to the accepted factors of appellant's federal employment.

[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.*

FACTUAL HISTORY

On November 4, 2015 appellant, then a 40-year-old automotive technician, filed a traumatic injury claim (Form CA-1) alleging that on October 14, 2015, over the course of two days of lifting and reaching over his shoulders, he aggravated a previous injury and sustained a strain in his neck.[3]

In a January 4, 2016 report, Dr. T. Maxwell Kelley, a Board-certified family practitioner, noted seeing appellant for a follow up on his cervical condition. He indicated that he had last seen appellant in his office on December 23, 2015. Appellant's symptoms started after an injury at work on September 19, 2013 when appellant hit his head on the frame of a truck and that these symptoms consisted primarily of involuntary titubation of the head and neck. Dr. Kelley noted that these symptoms occurred episodically and were typically triggered by overhead movements and reaching outward, and that this abnormal movement caused dizziness and sometimes pain. On February 2, 2016 Dr. Kelley diagnosed cervical dystonia.

By letter dated February 8, 2016, OWCP informed appellant that further information was necessary to support his claim and afforded him 30 days to submit this information.

Appellant thereafter submitted multiple medical documents that were dated before the alleged October 2015 employment injury. From May 23 through June 10, 2014, Dr. T.L. Bradley, a chiropractor, treated appellant for cervical segmental dysfunction and cervicalgia. Dr. Bradley released appellant to return to work effective December 30, 2014 with restrictions of no reaching above shoulders and no reaching beyond length of arms. Appellant submitted notes from Novant Health Matthews Medical Center dated September 19, 2013, wherein Dr. Erin Smith, an emergency room physician, diagnosed near syncope, benign position vertigo. Appellant also submitted multiple progress notes from the Carolinas Health System commencing September 24, 2013. These notes described treatment for multiple medical conditions including: vertigo, dizziness, cervical segment dysfunction, cervicalgia, hypertension, and chronic headaches.

In a March 7, 2016 note, Dr. Bradley noted that a lateral x-ray of appellant's cervical spine revealed loss of normal lordotic curvature with slight reversal apex at C-4. He diagnosed cervicalgia and segmental and somatic dysfunction of the cervical region and noted that supine adjustment had been performed. Dr. Bradley noted that appellant had made good progress, but continued to have muscle tightness with fixation in the cervical and upper thoracic spine. He indicated that appellant's neck pain started on September 13, 2014.

By decision dated March 8, 2016, OWCP denied appellant's claim. It determined that, although the evidence supported that the events occurred as alleged, the medical component of

[3] Appellant had previously filed a claim in OWCP File No. xxxxxx134. He had alleged in the prior claim that on September 19, 2013 he sustained a neck injury when he struck his head on the frame of a truck. In a decision dated January 6, 2015, OWCP denied appellant's claim as it determined that he failed to submit medical evidence providing a medical diagnosis. It also noted that appellant had not established causal relationship. There is no evidence that appellant pursued any form of appeal from the January 6, 2015 decision.

fact of injury had not been met. Specifically, appellant failed to submit medical evidence containing a medical diagnosis in connection with the accepted factors.

On March 24, 2016 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative.

At the hearing held on November 15, 2016, appellant testified that in his previous job he was a mobile mechanic and that most of his duties were performed below waist level. However, on October 13 and 14, 2016 the employment establishment placed him in a job that required him to lift above his shoulders, and he injured his neck from repeated lifting. Appellant noted that when he left and went to the parking lot, his head started shaking like a "bobble head." He noted that he had previously injured his neck in September 2013, when he jumped up from underneath a truck and caught his forehead and ripped something in the left side of the neck. Appellant described his medical treatment and noted that he was not currently under a physician's care. The hearing representative advised appellant of the importance of submitting medical evidence in support of his claim.

In a letter dated December 29, 2016, M.A., a manager for health and resource management for the employing establishment, contended that appellant did suffer a serious injury on September 19, 2013 and again on October 14, 2015. She argued that the medical evidence established that appellant had a traumatic injury to his neck which had now resulted in a diagnosis of cervical dystonia, which was also called spasmodic torticollis. M.A. noted that, in meeting with appellant, she has witnessed the spasmodic attacks, and that it was evident that appellant experienced incredible pain and uncontrollable shaking of his head. She also stated that appellant did not receive the support and guidance he was entitled to from the employing establishment. M.A. requested that OWCP accept appellant's claims.

By decision dated January 27, 2017, the hearing representative affirmed the March 8, 2016 decision as appellant had not submitted medical evidence of a diagnosis in connection with the accepted employment factors.

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, that the claim was timely filed within the applicable time limitation period, that an injury was sustained in the performance of duty as alleged, and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.[4] 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.[5]

[4] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *Victor J. Woodhams*, 41 ECAB 345 (1989).

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.[6] To establish fact of injury in an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[7]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background, 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.[8]

ANALYSIS

The only issue before the Board is whether appellant sustained an injury due to his work activities of October 13 and 14, 2015. There is no dispute that the employment events occurred as alleged. However, the Board finds that appellant has failed to submit medical evidence to establish a medically-diagnosed condition as a result of these employment factors.

The medical evidence indicates that, at the time of the alleged October 2015 employment injury, appellant had already been treated for cervical segment dysfunction and cervicalgia. Appellant has not submitted any medical evidence after the October 2015 employment factors that establish an employment injury.

Appellant submitted a January 4, 2016 narrative medical report by Dr. Kelley, as well as a February 2, 2016 progress report. Dr. Kelley treated appellant for cervical dystonia. He indicated that appellant's symptoms of involuntary titubation of the head and neck started after the work injury of September 19, 2013. Dr. Kelley never addressed the alleged October 2015 employment factors. As previously noted, to establish an occupational disease claim, the claimant must submit medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[9] Dr. Kelley's reports did not address how

[6] *See S.P.*, 59 ECAB 184, 188 (2007).

[7] *See Roy L. Humphrey*¸ 57 ECAB 238, 241 (2005); *see also P.W.*, Docket No. 10-2402 (issued August 5, 2011).

[8] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 4.

[9] *See George G. Wilk*, Docket No. 03-0453 (issued May15, 2003).

the accepted October 2015 employment factors caused the diagnosed condition. As such, his reports are of limited probative value.

Appellant also submitted a March 7, 2016 report wherein his chiropractor, Dr. Bradley, diagnosed cervicalgia and segmental and somatic dysfunction of the cervical region based on cervical x-rays. Dr. Bradley performed spinal manipulation.[10] However, he also noted that these conditions started on September 13, 2014, and did not address the October 2015 employment factors. As such, his report is of limited probative value.[11]

Finally, the Board notes the statement and argument from M.A., a manager of the employing establishment, in support of appellant's claim. However, because causal relationship is a medical issue, it can only be proven by probative medical opinion evidence.[12] Lay persons are not competent to render medical opinion.[13]

An award of compensation may not be based on surmise, conjecture, speculation, or appellant's belief of causal relationship.[14] Appellant has failed to submit rationalized medical evidence to meet his burden of proof on causal relationship.

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 did not meet his burden of proof to establish an occupational disease causally related to the accepted factors of his federal employment.

[10] 5 U.S.C.§ 8101(2) of FECA provides that the term "physician" includes chiropractors only to the extent that their reimbursable services were limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. Dr. Bradley is a physician pursuant to this definition.

[11] *Supra* note 7.

[12] *S.C.*, Docket No. 16-1322 (issued January 18, 2017).

[13] *James A. Long*, 40 ECAB 538, 542 (1989).

[14] *John D. Jackson*, 55 ECAB 465 (2004); *William Nimitz*¸30 ECAB 57 (1979).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 27, 2017 is affirmed.

Issued: October 19, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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