United States Department of Labor
Employees' Compensation Appeals Board

M.J., Appellant	)	
and	)	**Docket No. 17-1241**
	)	**Issued: October 17, 2017**
GOVERNMENT PRINTING OFFICE, Washington, DC, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 16, 2017 appellant, through counsel, filed a timely appeal from a January 12, 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 to consider the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a head, neck, and back condition causally related to a November 15, 2016 employment incident.

[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 23, 2016 appellant, then a 55-year-old motor vehicle operator, filed a traumatic injury claim (Form CA-1) alleging that on November 15, 2016, while he was backing up a van, he collided with a storage unit and injured his head, neck, and back. He stopped work on November 15, 2016.

Appellant was treated by a physician assistant on November 15, 2016 in the emergency room at MedStar Washington Hospital Center who diagnosed acute bilateral low back pain from a motor vehicle collision. The physician assistant provided discharge instructions and returned appellant to work without restrictions on November 17, 2016. An x-ray of the lumbar spine dated November 15, 2016 revealed no fracture.

Appellant was treated by Dr. Temketem L. Tsige, a Board-certified internist, on November 16, 2016, who diagnosed neck, low back, and left thigh pain. He had reported being in a motor vehicle accident. Dr. Tsige recommended physical therapy. In verification of treatment forms dated November 16 and 21, 2016, she noted that appellant was unable to work from November 16 to 25, 2016. On November 21, 2016 Dr. Tsige diagnosed low back pain, headache, and ecchymosis from trauma and indicated that the cause of the injury was a motor vehicle accident. She recommended a computerized tomography scan of the head and x-ray of the back.

Appellant was treated by Dr. Christine Assia, Board-certified in emergency medicine, on November 18, 2016. In a verification of treatment form dated November 18, 2016, Dr. Assia diagnosed back pain and returned appellant to work on November 23, 2016.

In a report dated November 29, 2016, Dr. Gregory M. Ford, a Board-certified orthopedist, diagnosed low back contusion and lumbar muscle strain. He prescribed prednisone and referred appellant for physical therapy. In a December 1, 2016 work status report, Dr. Ford noted that appellant was placed off work from November 29 to December 9, 2016.

By letter dated December 6, 2016, OWCP advised appellant of the type of evidence needed to establish his claim, particularly requesting that he submit a physician's reasoned opinion addressing the relationship of his claimed condition and the specific employment incident. It noted that medical evidence must be submitted by a qualified physician and that a physician assistant is not considered a qualified physician under FECA. OWCP requested that appellant substantiate the factual elements of his claim and respond to an attached questionnaire.

In an employing establishment statement form dated November 15, 2016, appellant indicated that he was driving an agency vehicle and put the vehicle in reverse and collided with a storage unit in the alley. Also submitted was a District of Columbia notice of infraction dated November 18, 2016 which charged appellant for backing up without caution causing an accident.

Appellant also provided medical evidence. On November 16, 2016 Dr. Tsige treated him for neck and low back pain. Appellant reported driving a work van the day before and bumped into a vehicle while backing up. On November 21, 2016 Dr. Tsige treated appellant in follow-up for neck and low back pain, and left thigh numbness following a motor vehicle accident. Appellant reported continued low back pain. Dr. Tsige noted findings of lower back bruise and

tenderness. She diagnosed low back pain, headache, and traumatic ecchymosis. Dr. Tsige opined that the cause of the injury was a motor vehicle accident and a collision with another car. She noted that appellant could not work. In a November 28, 2016 report, Dr. Tsige treated him for neck and low back pain, left thigh numbness, and periodic headaches after a motor vehicle accident. She noted findings of a bruise of the lower back, mildly tender, but improving. Dr. Tsige diagnosed low back pain, ecchymosis, lumbosacral spondylosis, and headache. She opined that the cause of the injury was a car collision

Appellant was treated by Dr. Assia on November 18, 2016 for back pain after a motor vehicle accident. She reported that appellant was a truck driver with the employing establishment who was "rear ended" three days before his visit. Appellant noted treatment from his primary care provider, but still had pain. Dr. Assia noted findings of back pain, neck pain, and neck stiffness. She opined that appellant's back pain was consistent with a musculoskeletal etiology.

In a November 29, 2016 progress note, Dr. Ford reported that appellant was involved in a motor vehicle accident on November 15, 2016 when he was driving a van and struck a wall. Appellant reported low back and left thigh pain with tingling which did not improve. He noted examination findings of a small area of ecchymosis and bruising on the right side of the lower lumbar spine at L4-5, mild decreased range of motion, and negative straight leg testing. Dr. Ford diagnosed low back contusion, lumbar muscle strain, and sciatica. In an attending physician's report (Form CA-20) dated December 2, 2016, he noted that on November 15, 2016 appellant was backing up a van and struck a wall. Dr. Ford diagnosed low back contusion, lumbar muscle strain, and sciatica. He noted by checking a box marked "yes" that appellant's condition was caused or aggravated by an employment activity and prescribed prednisone and physical therapy.

A magnetic resonance imaging (MRI) scan of the lumbar spine dated December 1, 2016 revealed multifactorial mild spinal canal narrowing at L4-5 and L5-S1, marked bilateral neural foraminal narrowing, and a soft tissue edema presacral collection which may represent a hematoma.

Appellant also submitted a December 7, 2016 report from Dr. Ian D. Gordon, a Board-certified orthopedist, who treated him for lumbar pain after a motor vehicle accident. He reported driving a truck for a living and while backing up he struck a trailer unit that was being used for storage. Appellant indicated that the panel truck was totaled. He sustained forcible injury to his back, ecchymosis in his lumbar area, neck pain, and radiating leg pain with paresthesias. A lumbar spine MRI scan revealed broad-based circumferential disc bulging at L4-5 with small annular tears. Examination revealed full range of motion with pain. Dr. Gordon diagnosed cervical strain, lumbar strain, and aggravation of degenerative disc disease. He recommended physical therapy and placed appellant on light duty for four to six weeks. In a December 7, 2016 work status report, Dr. Gordon placed appellant on modified duty from December 7, 2016 to January 31, 2017.

In a statement dated December 12, 2016, appellant indicated that his supervisor, G.R., had direct knowledge of his injury. He noted the immediate effects of his injury were neck and lower back pain and were immediately reported to his supervisor. Appellant advised that he did

not have any similar back-related disability or symptoms before the injury. He also submitted reports from a physical therapist.

In a January 12, 2017 decision, OWCP denied the claim finding that appellant had failed to submit medical evidence establishing a medical condition in connection with the accepted work incident.

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 filed within the applicable time limitation of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. 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.[3]

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. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[4]

Rationalized medical opinion evidence is generally required to establish causal relationship. 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.[5]

ANALYSIS

It is undisputed that on November 15, 2016, while appellant was backing up in an agency van, he collided with a storage unit. However, the Board finds that he failed to submit sufficient medical evidence to establish that this work incident caused or aggravated his diagnosed head, neck, and back conditions. In a letter dated December 6, 2016, OWCP requested that appellant submit a comprehensive medical report from his treating physician which included a reasoned explanation as to how the accepted work incident had caused his claimed injury.

Appellant submitted reports dated November 16, 2016 from Dr. Tsige who diagnosed neck, low back, and left thigh pain after a motor vehicle accident. He reported driving a work van when he bumped into a vehicle while backing up. Other reports from Dr. Tsige dated November 21 and 28, 2016 noted appellant's treatment in follow up for neck and low back pain,

[3] *Gary J. Watling*, 52 ECAB 357 (2001).

[4] *T.H.*, 59 ECAB 388 (2008).

[5] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

left thigh numbness, and periodic headaches after a motor vehicle accident. Dr. Tsige diagnosed low back pain, headache, and traumatic ecchymosis. She opined that the cause of the injury was a motor vehicle accident and advised that appellant was disabled from work. The Board finds that, although Dr. Tsige supported causal relationship, she did not provide medical rationale explaining the basis of her conclusory opinion regarding the causal relationship.[6] Dr. Tsige did not explain the process by which colliding with a storage unit while backing up a van would have caused or aggravated the diagnosed conditions. As such, these reports are thus insufficient to establish appellant's claim. November 16 and 21, 2016 verification of treatment forms from Dr. Tsige are also insufficient as they do not provide a history of injury[7] or specifically address whether appellant's employment activities had caused or aggravated a diagnosed medical condition.[8]

Appellant submitted a report from Dr. Assia dated November 18, 2016 who treated him for back pain after a motor vehicle accident. He had reported that he was a truck driver for the employing establishment and had been "rear ended." Dr. Assia noted findings on examination and opined that appellant's back pain was consistent with a musculoskeletal etiology. Regarding causal relationship, she repeats the history of injury as reported by appellant without providing her own opinion regarding whether appellant's condition was work related. To the extent that Dr. Assia is providing her own opinion, she failed to provide a rationalized opinion regarding the causal relationship between appellant's diagnosed conditions and the accepted work incident of November 15, 2016.[9] Furthermore, the history of injury provided by Dr. Assia, of appellant being "rear ended," differs from appellant's statement that he backed into a storage unit.[10] Therefore, these reports are insufficient to meet appellant's burden of proof. Other reports from Dr. Assia are of limited probative value as she failed to specifically address whether appellant's employment activities had caused or aggravated a diagnosed medical condition.[11]

Appellant submitted a progress note from Dr. Ford dated November 29, 2016, who indicated that appellant was involved in a motor vehicle accident on November 15, 2016 when he was driving a van and struck a wall. Dr. Ford diagnosed low back contusion, lumbar muscle strain, and sciatica. In a work status report dated December 1, 2016, he placed appellant off work from November 29 to December 9, 2016. However, Dr. Ford failed to indicate that this

[6] *See T.M.*, Docket No. 08-975 (issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

[7] *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

[8] *A.D.*, 58 ECAB 149 (2006); Docket No. 06-1183 (issued November 14, 2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[9] *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

[10] *See Vernon R. Stewart*, 5 ECAB 276, 280 (1953) (where the Board held that medical opinions based on histories that do not adequately reflect the basic facts are of little probative value in establishing a claim).

[11] *Supra* note 8.

was a work injury[12] or specifically addressed whether appellant's employment activities had caused or aggravated a diagnosed medical condition.[13] An attending physician's report (Form CA-20) from Dr. Ford, dated December 2, 2016, noted that on November 15, 2016 appellant was backing up a van and struck a wall. He diagnosed low back contusion, lumbar muscle strain, and sciatica. Dr. Ford noted by checking a box marked "yes" that his condition was caused or aggravated by an employment activity. The Board has held that, when a physician's opinion on causal relationship consists only of checking "yes" to a form question without explanation or rationale, it is of diminished probative value and is insufficient to establish a claim.[14] Furthermore, the history provided by Dr. Ford, striking a wall, differs from appellant's statement that he backed into a storage unit.[15]

Appellant submitted a December 7, 2016 report from Dr. Gordon who treated him for lumbar pain after a motor vehicle accident. He reported backing up a truck and striking a trailer unit that was being used for storage. Dr. Gordon noted that appellant had sustained a forcible injury to his back, ecchymosis in his lumbar area, neck pain, and radiating leg pain with paresthesias. He diagnosed cervical strain, lumbar strain, and aggravation of degenerative disc disease. Dr. Gordon recommended physical therapy and placed appellant on light duty for four to six weeks. Similarly, in a work status report dated December 7, 2016, he noted that appellant was placed on modified duty from December 7, 2016 to January 31, 2017. However, Dr. Gordon failed to provide a rationalized opinion regarding the causal relationship between appellant's cervical strain, lumbar strain, and aggravation of degenerative disc disease and the accepted work incident of November 15, 2016.[16] Therefore, this report is insufficient to meet appellant's burden of proof.

Appellant was treated by a physician assistant and a physical therapist. The Board has held that notes signed by a physician assistant or a physical therapist are not considered medical evidence as they are not physicians under FECA.[17] Thus, these treatment records are of no probative medical value in establishing causal relationship.

The remainder of the medical evidence is of limited probative value as it fails to provide a physician's opinion on the causal relationship between appellant's work incident and his diagnosed cervical and lumbar condition.[18]

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[12] *Supra* note 7.

[13] *Supra* note 8.

[14] *D.D.*, 57 ECAB 734 (2006); *Sedi L. Graham*, 57 ECAB 494 (2006).

[15] *See supra* note 10.

[16] *Jimmie H. Duckett*, 52 ECAB 332 (2001).

[17] *See David P. Sawchuk*, 57 ECAB 316, 320n.11 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

[18] *See S.E.*, Docket No. 08-2214 (issued May 6, 2009) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated, or aggravated by his employment is sufficient to establish causal relationship. Causal relationships must be established by rationalized medical opinion evidence.[19] Appellant failed to submit such evidence and therefore he has not met his burden of proof.

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 a head, neck, and back condition causally related to a November 15, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the January 12, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 17, 2017
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

[19] *See Dennis M. Mascarenas,* 49 ECAB 215 (1997).