United States Department of Labor
Employees' Compensation Appeals Board

L.C., Appellant	)	
and	)	**Docket No. 17-1878**
	)	**Issued: March 7, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Milwaukee, Wl, Employer	)	

Appearances:
David A. Teegarden, for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 5, 2017 appellant, through her representative, filed a timely appeal from an April 7, 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 has established an injury causally related to the accepted factors of her 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 October 10, 2015 appellant, then a 55-year-old city mail carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained left forearm pain from her elbow to hand, with tingling of fingers and palm, right arm weakness, and tightness in both thighs as a result of her federal employment duties. In an attached narrative statement, she alleged that on August 11 or 12, 2015 she noticed a "jelly like" feeling in both thighs and felt that her thighs were so heavy that she could not pick up her feet. Appellant noted that on or around September 14, 2015 she began having left arm pain, from her elbow to hand, extending to her fingers. She described the duties of her federal employment, which included retrieving mail and standing while placing mail in case. Appellant noted that, as she was 4'10", she was given a stool to reach upper shelves, but she still had to reach over her shoulder and head. She explained that she would load trays and tubs of mail into a vehicle, and she would then deliver the mail, which involved carrying up to 35 pounds. Appellant noted that twisting, turning, and bending were required in the performance of her duties. She stopped work on September 14, 2015.

The employing establishment controverted appellant's claim, noting that she had not established fact of injury or causal relationship.

By development letter dated December 14, 2015, OWCP informed appellant that further medical evidence was necessary to establish her claim. Appellant was afforded 30 days to submit the necessary evidence.

Appellant was treated by Dr. Shekhar A. Dagam, a Board-certified neurosurgeon. On December 15, 2015 Dr. Dagam performed a T8-11 laminectomy for resection of thoracic intraspinal extradural calcification and decompression of spinal cord.

In a December 16, 2015 report of a computerized tomography of the thoracic spine, Dr. Matthew R. Brewer, a Board-certified radiologist, found: (1) interval posterior decompression from T8-10 with no residual central canal stenosis at these levels; (2) persistent multilevel foraminal stenosis secondary to hypertrophic facet arthropathy; (3) stable calcified disc protrusions at T8-9 and T9-10; and (4) nonobstructing left renal stone and stable left adrenal adenoma.

A magnetic resonance imaging scan of appellant's thoracic spine taken on December 17, 2015 was interpreted as showing: (1) postsurgical change from TI-10 laminectomy; (2) interval development of ill-defined 12 millimeter (mm) longitudinal intramedullary hyperintense T2 cord signal without enhancement concerning for edema; (3) stable focal 4 mm intramedullary hyperintense T2 nonenhancing intramedullary cord signal C5-6 level; (4) and multilevel mild disc degenerative changes and scattered facet arthropathy, stable foraminal stenosis T7-8, T9-10, and T10-11 levels.

In a January 12, 2016 report, Dr. Dagman noted that he had treated appellant on multiple occasions since September 30, 2015. He noted her complaints and discussed results of diagnostic testing. Dr. Dagman diagnosed lumbar spinal stenosis, lumbar degenerative disc disease, thoracic degenerative disc disease, thoracic myelopathy, thoracic spinal stenosis, thoracic spondylosis, thoracic myelomalacia, and weakness of the lower extremities. He

described appellant's 25-year work experience at the employing establishment. Dr. Dagman opined that the combination of the repetitive movements of lifting, bending, and twisting provided stress on the spine which overtime led to degenerative disc disease, and that the progression of degenerative disc disease ultimately may lead to canal stenosis and foraminal narrowing, which he believed that were contributors to her symptoms. He noted that appellant had radiographic evidence of calcified disc protrusions which were likely a result of repetitive movements and overuse related to a high work demand. Dr. Dagam opined that her fall on ice may have been exacerbated her symptoms, but the underlying spinal changes were the result of repetitive, strenuous activities related to her position as a mail carrier for over 25 years.

By memorandum dated February 11, 2016, OWCP referred appellant's case to an OWCP medical adviser. In a March 9, 2016 response, OWCP's medical adviser noted that there was no diagnostic evidence of lumbar disease and no description of employment factors causative of lumbar injury or disease. Accordingly, he recommended that appellant's lumbar conditions not be accepted.

By letter to Dr. Dagam dated April 19, 2016, OWCP requested that he provide diagnostic evidence and reasoned medical opinion describing how employment factors aggravated the diagnosed conditions in his January 12, 2016 report. In a response dated May 2, 2016, Dr. Dagam described appellant's employment duties and opined that her work environment caused progressive degenerative disease in her thoracic spine with disc herniation at T9-10 as well as T10-11 which caused compression of the spinal cord and myelopathic symptoms. He believed that the repetitive heavy lifting, bending, twisting, carrying, and multiple falls were the cause of her degenerative disc disease and ultimate disc herniation with compression of the spinal cord. Dr. Dagam related that, while appellant would have some improvement of her right lower extremity paresthesia and weakness, she would have a permanent deficit.

By memorandum dated May 20, 2016, OWCP asked its medical adviser to discuss the relationship of appellant's diagnosed conditions to her employment duties. In a May 23, 2016 response, the medical adviser opined that, based on a review of the file, the weight of the medical evidence did not support a causal relationship between her diagnosed condition and her work activities. He noted that appellant's thoracic canal stenosis and associated calcification in all likelihood represented degenerative changes due to her age without any causal relationship to her work activities. In a supplemental report dated June 8, 2016, the medical adviser reviewed additional records and determined that, from review of the entire case file, it appeared that her problems with the thoracic spine resulted from degenerative joint/degenerative disc disease of the thoracic spine with extradural calcification resulting in spinal cord compression. He related that the weight of the medical evidence did not support causal relationship between this condition and appellant's work activities or her falls which occurred at work. The medical adviser noted that, although the claimant did have documented falls at work, it appeared that these were secondary to weakness in the lower extremities and there was no documentation that any of these falls resulted in injury to her thoracic spine. In addition, he noted that, although Dr. Dagam was of the opinion that appellant developed disc herniation as a result of work activities, the operative report did not demonstrate any obvious thoracic disc herniation. The medical adviser further found that the evidence did not support that her work activities resulted in the development of thoracic spinal stenosis and extradural calcification which was the cause of her problem.

By letter dated July 8, 2016, OWCP referred appellant to Dr. Mysore S. Shivaram, a Board-certified orthopedic surgeon, for a second opinion. In a July 27, 2016 report, Dr. Shivaram diagnosed her with: (1) degenerative disc disease of the thoracic spine; (2) spinal stenosis at T9, T10, and T11 secondary to degenerative disc disease of the thoracic spine; and (3) cord compression at T9, T10, and T11 level. He opined that the conditions of degenerative changes of the thoracic spine and disc herniations at T9-10 and T10-11 were not related to claimant's employment. Dr. Shivaram opined that appellant's diagnosis had no relationship to her work activities and her falls at work were secondary to weakness in both lower extremities from cord compression. He also opined that the condition of degenerative disc disease and consequent spinal stenosis were degenerative conditions and not medically related to the factors of her federal employment. Dr. Shivaram noted that appellant had progressively worsening degenerative conditions of the thoracic spine, which ultimately resulted in her current condition, and was the result of degenerative arthritis of the thoracic spine, spinal stenosis, and calcified discs at this level.

On June 8, 2016 OWCP's medical adviser again reviewed the case file. He noted that appellant did have problems with the thoracic spine that resulted from degenerative joint/degenerative disc disease of the thoracic spine with extradural calcification resulting in spinal cord compression. The medical adviser determined that the weight of the medical evidence did not support any causal relationship between her condition and her work activities. He noted that, although appellant did have documented falls at work, it appeared that these were secondary.

By decision dated August 25, 2016, OWCP denied appellant's claim as it determined that the medical evidence of record was insufficient to demonstrate that her claimed condition was related to the established work-related factors.

On December 19, 2016 appellant requested reconsideration. In support thereof, she submitted a November 3, 2016 report wherein Dr. Dagam opined that her thoracic spine findings were associated with a prolonged period of work-related exposure to strenuous and repetitive activities. Dr. Dagam noted that repetitive twisting and turning could induce motion upon the spine which over time, could contribute to breakdown of cartilage between joints, disc bulging and degeneration, as well as bone spur formation, and that this in turn could lead to spondylosis and spinal stenosis. Within a reasonable degree of medical certainty, he opined that appellant's employment, which she performed for well over two decades, contributed to a permanent acceleration of a degenerative thoracic condition beyond the means of normal progression, which ultimately led to the presentation of spinal myelopathy and symptoms of weakness in the lower extremities that required surgical intervention.

OWCP determined that a conflict in medical opinion existed between appellant's treating physician, Dr. Dagam, and the second opinion medical examiner, Dr. Shivaram, as to whether her progressive degenerative disc disease of her thoracic spine with disc herniation at T9-10 as well as T10-11, with myelopathic symptoms, was causally related to her employment as a letter carrier. Accordingly, by letter dated February 22, 2017, it referred her to Dr. Jonathan Citow, a Board-certified neurosurgeon, for an impartial medical evaluation.

In an April 6, 2017 report, Dr. Citow noted that appellant appeared to have an inflammatory condition unrelated to actual pressure on her cervical or thoracic spine, as well as chronic spondylosis and some element of stenosis in the cervical, thoracic, and lumbar spine. He believed that her symptoms were not at all related to her work environment. Dr. Citow opined that appellant had normal, age-appropriate spondylitic changes, and these were likely causing the symptoms she was having. He noted that her acute deterioration and imaging studies with the signal changes at levels that were not significantly stenotic, suggested an inflammatory myelopathy such as transverse myelitis, and this was not related to her work duties which required lifting and retrieving mail.

By decision dated April 7, 2017, OWCP denied modification of its prior decision, finding that the evidence submitted was not of sufficient probative value to alter the August 25, 2016 decision. It determined that the special weight of the medical evidence rested with the opinion of the impartial medical examiner, Dr. Citow, who provided a well-reasoned and unequivocal medical opinion that was based on a complete, accurate, and consistent history covering both the factual and medical aspects of this claim.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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, that the 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.[4] 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.[5]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) 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. The medical evidence must include a physician's rationalized 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 of the claimant, must be one of reasonable medical certainty, and must be

[3] *Supra* note 2.

[4] *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *See Irene St. John*, 50 ECAB 521 (1999).

supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[6]

Section 8123(a) provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[7] The implementing regulations state that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[8] In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well-rationalized and based upon a proper factual background, must be given special weight.[9]

ANALYSIS

The Board finds that appellant has not established that her diagnosed medical conditions were causally related to her accepted factors of her federal employment.

Dr. Dagam, appellant's treating physician, determined that appellant's duties of employment, which she performed for well over two decades, contributed to a permanent acceleration of her degenerative thoracic condition, and that this ultimately led to the presentation of spinal myelopathy and symptoms of weakness in the lower extremities that required surgical intervention. He supported his opinion with multiple medical reports that, discussed her diagnostic studies, her physical findings, and her employment duties. OWCP referred appellant for a second opinion with Dr. Shivaram who opined that the degenerative changes of the thoracic spine and disc herniations at T9-10 and T10-11 were not related to her employment. Dr. Shivaram opined that her diagnosis had no bearing on her work activities and the incidents of falls at work were secondary to weakness in both lower extremities from cord compression. He also found that the degenerative disc disease and consequent spinal stenosis was a degenerative condition and not medically connected to the factors of appellant's federal employment. The Board finds that the reports of Drs. Dagam and Shivaram are in equipoise as to whether her diagnosed conditions were causally related to the duties of her federal employment.[10] Accordingly, OWCP properly referred the case to Dr. Citow for an impartial medical examination.[11]

[6] *Id.*

[7] *R.C.*, Docket No. 12-0437 (issued October 23, 2012).

[8] 20 C.F.R. § 10.321.

[9] *F.C.*, Docket No. 14-0560 (issued November 12, 2015).

[10] *See L.B.*, Docket No. 17-0597 (issued September 1, 2017).

[11] *Id.*

In an April 6, 2017 report, Dr. Citow reviewed appellant's medical history and conducted a physical examination. He explained that she appeared to have an inflammatory condition unrelated to the actual pressure on her spine, as well a chronic spondylosis and some element of stenosis in the cervical, thoracic, and lumbar spine. Dr. Citow opined that these symptoms were not related to appellant's work environment, noting that she had normal, age-appropriate spondylitic changes. He also noted that the acute deterioration and imaging studies were not significantly stenotic and suggested an inflammatory myelopathy such as transverse myelitis which was not related to lifting and retrieving mail at the employing establishment.

The Board finds that the special weight of the medical evidence rests with the well-reasoned report of Dr. Citow. As noted above, the opinion of an impartial specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.[12] The Board finds that Dr. Citow provided a comprehensive report that resolved the conflict, and his opinion represents the special weight of the medical evidence.[13] Appellant therefore has not met her burden of proof to establish that her medical diagnoses were related to her accepted factors of federal employment.

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 causally related to the accepted factors of her federal employment.

[12] *C.L.*, Docket No. 17-0949 (issued September 19, 2017).

[13] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 7, 2017 is affirmed.

Issued: March 7, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

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