

**United States Department of Labor
Employees' Compensation Appeals Board**

D.C., Appellant)	
)	
and)	Docket No. 18-1664
)	Issued: April 1, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Bronx, NY, Employer)	
)	

Appearances:
James D. Muirhead, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 4, 2018 appellant, through counsel, filed a timely appeal from a June 22, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 cervical spine, lumbar spine, left knee, and left shoulder injuries causally related to the accepted November 1, 2016 employment incident.

FACTUAL HISTORY

On November 1, 2016 appellant, then a 22-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that, at 11:00 a.m. that day, a taxi cab struck his delivery vehicle while in the performance of duty. The accident caused his vehicle to jerk, resulting in pain in his neck and lower back. He stopped work on November 5, 2016, returned to work on November 15, 2016, and then experienced intermittent periods of work absences.

By development letter dated November 7, 2016, OWCP notified appellant of the additional medical and factual evidence needed to establish his claim, including a detailed description of the November 1, 2016 employment incident and a report from his attending physician explaining how and why the collision would cause the claimed injuries. It afforded 30 days to submit the necessary evidence.

In response, appellant submitted a November 1, 2016 emergency department slip signed by Dr. Chiraag Gupta, a treating physician specializing in emergency medicine, who held appellant off work until November 4, 2016.

In a report dated November 17, 2016, Dr. Jeffrey Cohen, an attending Board-certified orthopedic surgeon, returned appellant to light-duty work effective November 18, 2016.

By decision dated December 12, 2016, OWCP accepted that the November 1, 2016 employment incident occurred as alleged, but denied appellant's claim finding that fact of injury had not been established as the medical evidence of record did not contain a diagnosis related to the accepted incident.

On January 31, 2017 appellant requested reconsideration and submitted additional evidence.

The evidence submitted on reconsideration also included a series of imaging studies. A December 1, 2016 magnetic resonance imaging (MRI) scan of the left shoulder showed tendinitis of the distal supraspinatus and subscapularis tendons, an anterior glenoid labrum tear, hypertrophic changes of the acromioclavicular (AC) joint, and a small effusion extending into the subscapular space. A December 1, 2016 MRI scan of the left knee showed mild lateral subluxation of the patella, edema in the anterior cruciate ligament consistent with a sprain, and a joint effusion. A December 2, 2016 MRI scan of the lumbar spine demonstrated a broad-based posterior disc herniation at L5-S1, and posterior disc bulges at L3-4 and L4-5. A December 2, 2016 MRI scan of the cervical spine demonstrated a posterior subligamentous disc bulge at C6-7.

In a report dated November 3, 2016, Dr. Mark Kramer, a Board-certified orthopedic surgeon, noted the November 1, 2016 incident and diagnosed traumatic impingement syndrome of

the left shoulder. He and his associate, Dr. Cohen, continued appellant on light duty through December 1, 2016.

Dr. Jodi Jacobs, a chiropractor, provided manual manipulation treatments commencing November 3, 2017 and performed range of motion tests. In an April 7, 2017 report, she diagnosed cervical, thoracic, and lumbar subluxations.

Dr. Wendell Joseph Gorum, an attending orthopedic surgeon, performed a left shoulder arthroscopy on December 22, 2016 with complete synovectomy and debridement, subacromial decompression, and lysis of adhesions. In a report dated January 24, 2017, he noted a history of the November 1, 2016 motor vehicle accident with subsequent neck, back, left shoulder, and left knee pain. On February 7, 2017 Dr. Gorum diagnosed a cervical disc herniation, lumbar disc herniation, left knee pain, and status post left shoulder arthroscopy.

An Authorization for Medical Treatment (Form CA-16), which is largely illegible, was completed by Dr. Mark Kramer on November 17, 2016 noting treatment. Part A of the form, which is to be completed by the employing establishment, is incomplete and does not bear a signature or date.

Dr. Elizabeth Kulesza, a treating internist specializing in nephrology, obtained electromyogram/nerve conduction velocity (EMG/NCV) studies on January 5, 2017 which demonstrated right C5-6 radiculopathy and left L5-S1 radiculopathy. In a February 10, 2017 form report, she checked a box marked "yes" indicating that the diagnosed conditions were causally related to the November 1, 2016 employment incident.

In a report dated February 10, 2017, Dr. Andrew Cordaro, an attending general surgeon, diagnosed cervicalgia, lumbalgia, a left shoulder sprain/strain, and left knee sprain/strain with an onset date of November 1, 2016.

By decision dated May 2, 2017, OWCP modified its prior decision, finding that appellant had established fact of injury. However, it denied the claim finding that causal relationship had not been established.

On March 26, 2018 appellant, through counsel, requested reconsideration and submitted additional evidence.

In a report dated March 21, 2017, Dr. Gorum diagnosed cervical spine pain, cervical disc disease, acute low back pain, lumbar paraspinal spasm, left shoulder weakness, and chondromalacia of the left knee.

In a report dated March 23, 2018, Dr. Gorum noted that the impact of the accepted November 1, 2016 motor vehicle collision jolted appellant "back and forth causing pain and injury to his neck, back, left shoulder, and left knee." He explained that "based on the force of the impact causing injury and tearing of the labral tissue that functions inside the shoulder as a chock block to prevent dislocation or subluxation" and appellant's young age, he was at a higher risk for recurrent injury and; therefore, surgery was necessary. Dr. Gorum opined that appellant's anterior glenoid labrum tear with AC joint impingement resulted from the traumatic impact on November 1, 2016. He explained that the rotator cuff tendons "pass through a narrow space

between the acromion process of the scapula” and the humeral head. Trauma further narrowed this space, resulting in impingement syndrome. Post-traumatic inflammation also thickened the subacromial bursa, causing additional impingement.

Also submitted were physical therapy treatment notes dated from February to June 2018, and chiropractic treatment and test reports dated from April to May 2018 by Dr. Walter E. Mendoza, a treating chiropractor.

By decision dated June 22, 2018, OWCP denied the claim finding that causal relationship had not been established.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 an 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

In order to determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁶ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁷

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.⁸ 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 supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁹

³ *Supra* note 2.

⁴ *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

⁵ *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁶ *R.E.*, Docket No. 17-0547 (issued November 13, 2018); *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

⁷ *R.E.*, *id.*

⁸ *G.N.*, Docket No. 18-0403 (issued September 13, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁹ *K.V.*, Docket No. 18-0723 (issued November 9, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁰

ANALYSIS

The Board finds that the case is not in posture for decision.

In support of his claim, appellant submitted medical evidence from Dr. Gupta, Dr. Kramer, and Dr. Cohen. These physicians, however, did not provide an opinion as to causal relationship in their reports. Medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship, and are therefore, insufficient to establish appellant's traumatic injury claim.¹¹

Appellant has submitted reports from Dr. Kulesza and Dr. Cordaro. In his report, Dr. Cordaro diagnosed cervical, lumbar, left knee, and left shoulder injuries resulting from the November 1, 2016 incident, but did not provide supporting medical rationale. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to employment factors.¹² Dr. Kulesza checked a box on a form report indicating her general support for causal relationship. The Board has held that, without further explanation or rationale, a checked box is insufficient to establish causation.¹³

Dr. Gorum, an attending orthopedic surgeon, performed a left shoulder arthroscopy on December 22, 2016. He provided an affirmative opinion on causal relationship and accurately identified the history of the accepted November 1, 2016 employment incident. In his March 23, 2018 report, Dr. Gorum opined that the accepted motor vehicle collision was competent to cause the claimed cervical, lumbar, left shoulder, and left knee injuries. He explained how the jolting forces of the accepted November 1, 2016 employment-related motor vehicle collision would cause glenoid labrum tears and AC joint impingement as observed during the December 22, 2016 surgery and that the force of the impact caused the tearing of the labral tissue. Dr. Gorum also specified the pathophysiologic mechanisms whereby post-traumatic inflammation would cause additional impingement as in appellant's presentation.

¹⁰ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹¹ *L.D.*, 18-1468 (issued February 11, 2019). *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹³ *D.S.*, Docket No. 17-1566 (issued December 31, 2018); *see Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

The Board finds that Dr. Gorum's March 23, 2018 opinion is sufficient, given the absence of any opposing medical evidence, to require further development of the record.¹⁴ The Board notes that his reports are not contradicted by any substantial medical or factual evidence of record. While they are insufficiently rationalized to meet appellant's burden of proof to establish his claim, they raise an uncontroverted inference between his left shoulder injury and the accepted employment incident and therefore, are sufficient to require OWCP to further develop the medical evidence and the case record.¹⁵

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹⁶ OWCP has an obligation to see that justice is done.¹⁷ The case shall, therefore, be remanded to OWCP.

On remand OWCP shall refer appellant, a statement of accepted facts, and the medical evidence of record to an appropriate Board-certified specialist for an examination, diagnosis, and a rationalized opinion as to whether the cervical spine, lumbar spine, left knee, and left shoulder conditions are causally related to the accepted November 1, 2016 employment incident. After this and other such further development deemed necessary, OWCP shall issue a *de novo* decision.¹⁸

CONCLUSION

The Board finds that the case is not in posture for decision.

¹⁴ *D.W.*, Docket No. 17-1884 (issued November 8, 2018). See *S.S.*, Docket No. 17-0322 (issued June 26, 2018); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *A.F.*, Docket No. 15-1687 (issued June 9, 2016). See also *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

¹⁵ *D.W.*, *id.*; *John J. Carlone*, *id.*

¹⁶ *D.W.*, *supra* note 14. See, e.g., *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Dorothy Sidwell*, 36 ECAB 699, 707 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978).

¹⁷ *D.W.*, *supra* note 14; *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

¹⁸ The record contains Part B of a Form CA-16 Authorization for Medical Treatment completed by Dr. Mark Kramer on November 17, 2016. Part A, the employing establishment's section of the form, is incomplete, and does not bear a signature or date. The Board notes, however, that a properly completed CA-16 form authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. See 20 C.F.R. § 10.300(c); *P.R.*, Docket No. 18-0737 (issued November 2, 2018); *N.M.*, Docket No. 17-1655 (issued January 24, 2018), *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the June 22, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Issued: April 1, 2019
Washington, DC

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

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

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