United States Department of Labor
Employees' Compensation Appeals Board

B.C., Appellant	)	
and	)	**Docket No. 18-1735**
	)	**Issued: April 23, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Bellmawr, NJ, Employer	)	

Appearances:
Thomas R. Uliase, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 17, 2018 appellant, through counsel, filed a timely appeal from a May 31, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the

[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.

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.[3]

ISSUE

The issue is whether appellant has met his burden of proof to establish an injury causally related to the accepted April 11, 2016 employment incident.

FACTUAL HISTORY

On April 11, 2016 appellant, then a 55-year-old rural letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he was rear-ended by a privately-owned vehicle when he stopped at a rural mailbox to deliver mail while in the performance of duty. He alleged that a seatbelt cinched his abdominal area and a visor hit his head causing neck, abdominal, and head injuries. Appellant stopped work on the date of injury.

OWCP subsequently received a letter dated April 12, 2016 by Dr. Teena Varghese, an attending physiatrist. Dr. Varghese noted that appellant was unable to work due to severe neck pain. She released him to return to work on April 25, 2016.

In a development letter dated April 25, 2016, OWCP informed appellant of the deficiencies of his claim. It requested that he submit a narrative medical report from his physician which contained a detailed description of findings and diagnoses, explaining how the reported incident caused or aggravated his medical condition. OWCP afforded appellant 30 days to provide the requested evidence.

OWCP received additional medical evidence from Dr. Varghese. In letters dated April 12 and 22, 2016, duty status reports (Form CA-17) dated April 22 and May 10, 2016, a narrative report dated April 22, 2016, and an attending physician's report (Form CA-20) dated May 10, 2016, Dr. Varghese noted a history that appellant was involved in a motor vehicle accident on April 11, 2016 while driving a work vehicle. She noted that appellant's vehicle was rear-ended while he was preparing to deliver mail. Dr. Varghese indicated that he sustained impact injuries to his neck and had neck pain radiating into both shoulders. She reported appellant's history, which included a prior cervical disc herniation at C3-4. Dr. Varghese discussed findings on physical examination and reviewed prior and current diagnostic test results. She provided an assessment of cervical radiculopathy, left shoulder pain, cervicalgia, and cervical facet syndrome due to the April 11, 2016 motor vehicle accident. Dr. Varghese placed appellant off work commencing April 22, 2016 and set forth his physical restrictions. She released him to return to work with restrictions on May 22, 2016.

[2] 5 U.S.C. § 8101 *et seq.*

[3] Following the issuance of OWCP's May 31, 2018 decision, appellant submitted new evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

By decision dated June 1, 2016, OWCP denied appellant's traumatic injury claim. It accepted that the April 11, 2016 employment incident occurred as alleged, but denied his claim because the medical evidence of record did not contain a rationalized medical opinion relating his diagnosed cervical conditions to the accepted employment incident.

A May 10, 2016 report by Dr. Varghese provided findings on examination of appellant and an assessment of cervical radiculopathy and cervical facet joint pain due to the accepted April 11, 2016 employment incident.

On June 16, 2016 appellant, through counsel, requested an oral hearing before an OWCP hearing representative regarding the June 1, 2016 decision.

OWCP received additional reports from Dr. Varghese. In a report dated May 24, 2016, Dr. Varghese reexamined appellant on that date and reiterated her assessment of cervical radiculopathy and cervical facet joint pain due to the accepted April 11, 2016 employment incident. She advised that he could return to light-duty work until his next visit on June 7, 2016. In a June 7, 2016 report, Dr. Varghese reviewed the findings of a June 3, 2016 cervical spine magnetic resonance imaging (MRI) scan, reexamined appellant, and again diagnosed cervical radiculopathy and cervical facet joint pain due to the accepted April 11, 2016 motor vehicle accident. She also diagnosed a prolapsed cervical intervertebral disc due to the accepted employment incident. Dr. Varghese released appellant to return to work on June 11, 2016 as the MRI scan did not find cord compression from a herniated disc as suspected.

In a July 8, 2016 report, Dr. Uche Eneanya, an attending Board-certified physiatrist, reviewed diagnostic test results and discussed findings on physical examination. He provided an assessment of cervical radiculopathy, cervical facet joint pain, and prolapsed cervical intervertebral disc due to the accepted April 11, 2016 employment incident. Dr. Eneanya recommended an electromyogram and a nerve conduction velocity (EMG/NCV) study of the right upper extremity to rule out and evaluate radiculopathy versus peripheral nerve entrapment versus plexopathy in view of appellant's persistent symptoms, objective findings, and the nonspecific nature of the radiculopathy. On July 20, 2016 he performed EMG/NCV testing of the right upper extremity which failed to document cervical radiculopathy. The testing showed right median motor neuropathy of an axonal nature.

Dr. Eneanya reexamined appellant on July 20, 2016 and again noted the diagnoses of cervical facet joint pain and prolapsed cervical intervertebral disc due to the accepted April 11, 2016 motor vehicle accident. He further diagnosed median nerve and thoracic back pain due to the accepted employment incident.

Reports dated August 19 and September 16, 2016 from Dr. Eneanya again provided examination findings and explained that appellant's diagnosed cervical, thoracic, and back conditions were due to the accepted employment incident.

A cervical spine MRI scan report dated June 3, 2016 by Dr. Nick Maravich, a Board-certified diagnostic radiologist, provided an impression of mild foraminal encroachment on the right at C3-4 and on the left at C4-5 and significant foraminal stenosis on the left at C3-4 secondary to a spondylotic disc and uncovertebral joint hypertrophy.

During the October 13, 2016 oral hearing, appellant testified, amongst other matters, that he had herniated discs in his cervical and thoracic spines prior to the April 11, 2016 employment incident.

Following the hearing, OWCP received additional reports dated October 18 and November 4, 2016 from Dr. Eneanya. The reports reviewed diagnostic test results, noted physical examination findings, and reiterated the assessment of cervical facet joint pain, prolapsed cervical intervertebral disc, injury of the median nerve, and thoracic back pain due to the accepted motor vehicle accident of April 11, 2016. Appellant received trigger point injections in the right trapezius muscle, right rhomboid, and right thoracic paraspinal muscles on the dates of his examination. Dr. Eneanya, in a November 23, 2016 report, reexamined appellant and diagnosed cervical disc protrusion at C3-4, myofascitis, and thoracic sprain/strain. He again noted his diagnosis of injury of median nerve. Dr. Eneanya indicated that his review of the medical records associated with the accepted employment incident did not change his medical opinion that the diagnosed conditions were directly causally related to the accepted employment incident. He noted that the difficulties reported by appellant were consistent with the type of injuries sustained as a result of this type of incident.

By decision dated December 5, 2016, an OWCP hearing representative affirmed the June 1, 2016 decision, finding that the medical reports of Dr. Varghese and Dr. Eneanya did not contain medical rationale explaining how the accepted motor vehicle accident of April 11, 2016 caused appellant's diagnosed cervical and thoracic conditions as required, especially since appellant had preexisting herniated discs in both the cervical and thoracic spines.

OWCP continued to receive reports by Dr. Eneanya. The reports dated November 18, 2016 and January 27 and February 24, 2017 diagnosed cervical facet joint pain, prolapsed cervical intervertebral disc, injury of the median nerve, and thoracic back pain due to the accepted April 11, 2016 employment incident. The reports also provided an assessment of myofascial pain related to the accepted incident. Appellant received additional trigger point injections in the right trapezius muscle, right thoracic paraspinal muscle, and right rhomboid on the dates of his examination.

Reports dated March 24 and April 21, 2017 by Dr. Eneanya, discussed examination findings and provided an assessment of cervical facet joint, thoracic back, and myofascial pain, prolapsed cervical intervertebral disc, and injury of median nerve due to the accepted work-related April 11, 2016 incident. The reports indicated that appellant received additional trigger point injections in the right trapezius muscle, right thoracic paraspinal muscle, and right rhomboid on the date of his examination.

On June 28, 2017 appellant, through counsel, requested reconsideration of the December 5, 2016 decision. Counsel submitted a separate narrative report dated November 23, 2016 from Dr. Eneanya who noted appellant's history and maintained that regarding his April 11, 2016 accident, namely the impact trauma to the cervical and thoracic spine, led to the initiation of an intricate biological response of body tissues to harmful stimuli such as trauma. Dr. Eneanya further maintained that, in appellant's initial response to trauma to his body, there was an increased flow of inflammatory mediators from the blood into the injured herniated disc and muscles. He explained that the promotion of the inflammatory response included participation from multiple systems (the vascular system, the immune system, and various cells) that migrated to the injured

tissue. Dr. Eneanya noted that, over time, there was a gradual shift in the type of cells present at the site of inflammation. He related that this change was characterized by simultaneous destruction and attempted healing of the initially damaged tissue. Dr. Eneanya also related that this process occurred in the C3-4 disc protrusion, median nerve, and muscles of the cervical and lumbar spine. He noted that appellant received trigger point injections to treat his myofascitis.

Reports dated July 5 and August 2, 2017 by Dr. Eneanya continued to reiterate the assessment of cervical facet joint, thoracic back, and myofascial pain, prolapsed cervical intervertebral disc, and injury of median nerve due to the accepted employment related April 11, 2016 incident. Appellant received an additional trigger point injection in the right rhomboid muscle on August 2, 2017.

OWCP, by decision dated September 26, 2017, denied modification of the December 5, 2016 decision. It again found that Dr. Eneanya's reports failed to provide rationale explaining how the accepted motor vehicle accident of April 11, 2016 caused or aggravated appellant's diagnosed cervical, thoracic, and lumbar conditions.

Reports dated September 27 and November 22, 2017 by Dr. Eneanya again noted the assessments of appellant's cervical, thoracic, and lumbar spine conditions and opinion on causal relationship. Appellant also continued to receive trigger point injections at the bilateral upper trapezius and right and left rhomboids on the dates of his examination.

In reports dated October 25, 2017 and February 16, 2018, Dr. Adam Schreiber, a Board-certified physiatrist, discussed physical examination findings and reviewed the June 3, 2018 MRI scan and July 20, 2016 EMG/NCV results. He provided an assessment of cervical facet joint pain, prolapsed cervical intervertebral disc, injury of median nerve, and thoracic back and myofascial pain due to the accepted April 11, 2016 employment incident. Dr. Schreiber performed trigger point injections at the bilateral upper trapezius on the dates of appellant's examination.

On March 6, 2018 appellant, through counsel, requested reconsideration regarding the September 26, 2017 decision.

By decision dated May 31, 2018, OWCP denied modification of the September 26, 2017 decision, finding that the reports of Dr. Eneanya and Dr. Schreiber did not provide a rationalized opinion on causal relationship or "differentiate the claimed injury from the symptoms [from the] preexisting [conditions]."

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 of FECA,[4] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related

[4] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.[5] 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.[6]

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 or she actually experienced the employment incident at the time, place, and in the manner alleged.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[7] 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 identified factors.[8] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[9]

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence sufficient to establish such causal relationship.[10] 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.[11]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an injury causally related to the accepted April 11, 2016 employment incident.

In support of his claim appellant submitted medical reports and findings from Dr. Varghese. In reports dated April 12 and 22, 2016, Dr. Varghese noted that he was involved in a motor vehicle accident and was temporarily unable to return to work. In a May 10, 2016 report,

[5] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *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).

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

[9] *See M.J.*, Docket No. 17-0725 (issued May 17, 2018); *see also Lee R. Haywood*, 48 ECAB 145 (1996); *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

[10] *K.V.*, Docket No. 18-0723 (issued November 9, 2018).

[11] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 45 ECAB 345(1989).

she noted the history of appellant's motor vehicle accident and indicated that he sustained impact injuries to his neck causing neck pain which radiated to both shoulders. Dr. Varghese referenced his prior history of cervical disc herniation at C3-4. She diagnosed cervical radiculopathy, left shoulder pain, cervicalgia, and cervical facet syndrome due to the April 11, 2016 motor vehicle accident at work. The Board finds that these reports of Dr. Varghese are insufficient to establish appellant's claim as they contain only a conclusory statement on causal relationship without providing supportive 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 was related to an employment incident.[12]

In a report dated May 24, 2016, Dr. Varghese again noted the history of appellant's motor vehicle accident and indicated that he could not return to light-duty work until June 7, 2016. In addition to her prior diagnoses, she provided an additional diagnosis of a prolapsed cervical intervertebral disc due to the motor vehicle accident. This report is also insufficient to establish appellant's claim as Dr. Varghese did not provide the necessary medical rationale to establish causal relationship.[13]

Appellant also submitted medical reports from his attending physician, Dr. Eneanya. In reports dated July 8 and 20, August 19, September 16, October 18, and November 24, 2016, Dr. Eneanya discussed appellant's history of injury, reviewed diagnostic test results, and discussed physical examination findings. He diagnosed cervical radiculopathy, cervical facet joint pain, prolapsed cervical intervertebral disc, median nerve injury, and thoracic back pain due to the April 11, 2016 motor vehicle accident. Dr. Eneanya provided trigger point injections to the right trapezius muscle, right rhomboid, and right thoracic paraspinal muscles. He opined that appellant's diagnosed conditions were directly causally related to the accepted incident of a motor vehicle accident. Dr. Eneanya explained that the difficulties reported by appellant were consistent with the type of injuries sustained as a result of this incident. The Board finds that this opinion of his is conclusory in nature. A mere conclusory opinion provided by a physician, without the necessary rationale explaining how and why the employment incident was sufficient to result in the diagnosed medical conditions, is insufficient to meet a claimant's burden of proof to establish a claim.[14]

In reports dated November 18, 2016 and January 27, February 24, March 24, April 21, July 5, August 2, September 27, and November 22, 2017, Dr. Eneanya diagnosed an additional condition, myofascial pain syndrome. He continued to provide trigger point injections to treat appellant's complaints of pain. These additional reports do not contain a specific opinion as to the cause of the diagnosed conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[15] These reports, therefore, are insufficient to establish appellant's claim.

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

[13] *Id*.

[14] *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

[15] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

In a narrative report dated November 23, 2016, Dr. Eneanya provided examination findings and diagnosed cervical disc protrusion at C3-4, myofascitis, thoracic sprain/strain, and injury of the median nerve due to the accepted April 11, 2017 employment-related motor vehicle accident. He explained that the impact trauma to the cervical and thoracic spine during the motor vehicle accident led to the initiation of an intricate biological response of body tissues to harmful stimuli such as trauma. Dr. Eneanya maintained that, in the initial response of appellant's body to trauma, there was an increased flow of inflammatory mediators from the blood into the injured herniated disc and muscles. He further maintained that the promotion of the inflammatory response included participation from multiple systems (the vascular system, the immune system, and various cells) that migrated to the injured tissue. Dr. Eneanya indicated that, over time, there was a gradual shift in the type of cells present at the site of inflammation. He related that this change was characterized by simultaneous destruction and attempted healing of the initially damaged tissue. Dr. Eneanya also related that this process occurred in the C3-4 disc protrusion, median nerve, and muscles of the cervical and lumbar spine. The Board finds that this report of him is deficient because it is unclear as to his opinion on causation. On one hand, Dr. Eneanya appears to explain that the impact during the motor vehicle accident can cause swelling, but did not explain how the swelling resulted in the disc protrusion or was otherwise sufficient to have resulted in an injury to the median nerve and the muscles of the cervical and lumbar spine. On the other hand, he appears to describe the after effects of trauma, that is the subsequent physiological reactions of the increased flow of blood to the area and swelling etc., but he did not explain the causal nature of how the injury initially resulted in the claimed conditions.

In addition, the Board notes that Dr. Eneanya previously noted that appellant had a history of a preexisting cervical spine herniation and appellant testified at the hearing to his preexisting condition, yet his report fails to address the preexisting cervical condition. In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[16] The Board finds that Dr. Eneanya's November 23, 2016 report fails to provide such a rationalized opinion differentiating between a new trauma and the progression of preexisting conditions and is therefore insufficient to establish appellant's claim.

In October 25, 2017 and February 16, 2018 reports, Dr. Schreiber discussed findings upon physical examination and the results of diagnostic testing. He diagnosed cervical facet joint pain, prolapsed cervical intervertebral disc, injury of the median nerve, and thoracic back and myofascial pain due to the April 11, 2016 motor vehicle accident at work. The Board finds that Dr. Schreiber's reports are insufficient to establish causal relationship as they do not contain the necessary medical rationale to establish causal relationship.[17]

[16] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

[17] *Supra* note 12.

Appellant also submitted diagnostic test reports. The Board has held that diagnostic studies lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.[18] Such reports are therefore insufficient to establish appellant's claim.

As there is no well-reasoned medical opinion establishing appellant's claim for compensation the Board finds that 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 has not met his burden of proof to establish an injury causally related to the accepted April 11, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the May 31, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 23, 2019
Washington, DC

Christopher J. Godfrey, 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

[18] *See J.S.*, Docket No. 17-1039 (issued October 6, 2017).