United States Department of Labor
Employees' Compensation Appeals Board

N.S., Appellant	)	
and	)	**Docket No. 19-0232**
	)	**Issued: July 11, 2019**
DEPARTMENT OF VETERANS AFFAIRS, JAMES A. HALEY VETERANS MEDICAL CENTER, Tampa, FL, Employer	)	

Appearances:
Wayne Johnson, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 9, 2018 appellant, through counsel, filed a timely appeal from a May 14, 2018 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.

[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 her burden of proof to establish cervical, lumbar, and bilateral upper and lower extremity conditions causally related to the accepted May 31, 2015 employment incident.

FACTUAL HISTORY

On June 1, 2015 appellant, then a 53-year-old nurse aid, filed a traumatic injury claim (Form CA-1) alleging that on May 31, 2015 she sustained injuries to her neck, both shoulders, low back, and legs while caring for patients while in the performance of duty.[3] She described duties which included bathing and cleaning, as well as turning, pushing, and pulling patients up in bed. Appellant did not stop work.

In reports dated June 1 and 18, 2015, Brendalee Figueroa, an advanced registered nurse practitioner, reviewed 2014 and 2015 diagnostic tests and medical records, and provided examination findings. She noted that appellant had a history of L5-S1 herniated nucleus pulposus. Appellant's diagnoses included anxiety and depression due to chronic pain and work-related injuries, cervical disc with myelopathy, bilateral upper extremity radiculopathy, bilateral shoulder impingement, aggravation of left shoulder tenosynovitis, bilateral lower extremity radiculopathy, and lumbar disc syndrome with myelopathy. Ms. Figueroa opined that appellant's work duties on May 31, 2015 caused cervical spine and bilateral shoulder injuries and aggravated her prior lumbosacral condition. She continued to submit reports to the record which provided diagnoses and which opined that appellant sustained a traumatic injury on May 31, 2015.

In a report dated June 8, 2015, Dr. Sara Vizcay, a Board-certified family medicine physician, noted an injury date of May 31, 2015. She reviewed appellant's medical records and provided examination findings which included C4-6 tenderness, increased tenderness on neck flexion, some left shoulder subluxation, tenderness on midline dorsolumbar spine, and moderate paraspinal spasm intensity at L5-S1 trigger points. Dr. Vizcay diagnosed cervical and thoracic disc disease with myelopathy and herniation, bilateral upper extremity radiculopathy, bilateral shoulder impingement, aggravation of left shoulder tenosynovitis, depression and anxiety due to chronic pain and work-related injuries, and lumbar disc syndrome with myelopathy. She noted that appellant's degenerative joint disease, lumbar disc disease, and stenosis placed her at risk for aggravation or new injuries with lifting, pushing, or pulling more than 20 pounds. Dr. Vizcay explained that the work of caring for patients weighing at least 80 pounds and heavy workload on May 31, 2015 placed a strain on her already weakened musculoskeletal system, which resulted in a new injury and aggravation of a prior work injury.

The record contains magnetic resonance imaging (MRI) scans dated June 9, 2015 of appellant's cervical, lumbar, and thoracic spines revealed C3-4 disc bulge, C4-5 posterocentral

[3] The record reflects that appellant had prior claims which were accepted for lumbar and thoracic conditions. An April 12, 2009 traumatic injury claim was accepted for lumbar sprain under OWCP File No. xxxxxx661; an April 1, 2010 occupational disease claim was accepted for thoracic lumbar sprain under OWCP File No. xxxxxx064; and a February 11, 2015 traumatic injury claim was accepted for lumbar sprain under OWCP File No. xxxxxx864. These claims have not been administratively combined with the current claim.

protrusion-type herniation with annulus tear, C5-6 disc bulge with shallow posterocentral protrusion-type herniation, L1-2 protrusion type herniation with annulus tear, mild worsening of disc herniations and resultant spinal canal stenosis at C5-6 and C6-7, L4-5 disc bulge, L5-S1 right paracentral protrusion-type herniation with annulus tear, T2-3 protrusion-type herniation, T5-6 disc bulge, and possible acute injury.

In a June 10, 2015 work capacity evaluation (Form OWCP-5c), Dr. Kevin L. Scott, a physician Board-certified in orthopedic surgery and family medicine, placed appellant off work. He diagnosed cervical disc syndrome with myelopathy, bilateral shoulder radiculopathy, bilateral upper extremity neuritis, and lumbar disc syndrome with myelopathy.

A June 17, 2015 MRI scan of appellant's right shoulder diagnosed distal supraspinatus tendinitis, marrow edema with hypertrophic changes at the acromioclavicular joint causing subacromial space narrowing, SLAP type 1 superior labral tear, and mild subacromial bursitis. A June 17, 2015 MRI scan of the left shoulder revealed supraspinatus tendinosis/tendinitis, no labral tear, and marrow edema with hypertrophic changes at the acromioclavicular joint causing subacromial space narrowing.

In a development letter dated June 26, 2015, OWCP informed appellant that initially her claim appeared to be a minor injury that resulted in minimal or no lost time from work and was administratively handled to allow payment of a limited amount of medical expenses. However, appellant's claim was being reopened for adjudication because the medical bills had exceeded $1,500.00. OWCP advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. It afforded appellant 30 days to provide the necessary information.

OWCP thereafter received additional evidence. Dr. Scott, in a June 10, 2015 report, noted a May 31, 2015 date of injury. He provided examination findings and diagnosed cervical disc syndrome with myelopathy, bilateral upper and lower extremity radiculopathy, aggravation of left shoulder tenosynovitis, and lumbar and thoracic disc syndrome with myelopathy and herniated disc. Dr. Scott determined, based on appellant's statement and examination findings, that she sustained an aggravation of her lumbosacral spine and injuries to both shoulders and her cervical spine from work activities performed on May 31, 2015. He concurred with both Dr. Vizcay and Ms. Figueroa that appellant's preexisting degenerative joint disease, stenosis, and lumbar disc disease made her susceptible to new injuries or aggravation from lifting, pulling, or pushing more than 20 pounds. Dr. Scott noted that the work appellant performed on May 31, 2015 involved care for patients weighing at least 80 or 90 pounds and was the direct cause of her injury.

Dr. Vizcay, in a June 29, 2015 report, provided examination findings which included C4-6 tenderness, increased tenderness on neck flexion, some left shoulder subluxation, tenderness on midline dorsolumbar spine, and moderate paraspinal spasm intensity at L5-S1 trigger points. She noted May 31, 2015 as the date of injury and diagnosed cervical and thoracic disc disease with myelopathy and herniation, bilateral upper extremity radiculopathy, bilateral shoulder impingement, aggravation of left shoulder tenosynovitis, depression and anxiety due to chronic pain and work-related injuries, and lumbar disc syndrome with myelopathy.

In a June 30, 2015 duty status report (Form CA-17), Dr. Vizcay noted a May 31, 2015 injury date and placed appellant off work.

On July 3, 2015 Dr. Scott completed a Form OWCP-5c and indicated that appellant was disabled from work. In a narrative report of the same date, he provided physical examination findings and diagnosed cervical, lumbar, and thoracic disc syndrome with myelopathy and herniated disc, bilateral shoulder impingement syndrome, bilateral upper and lower extremity radiculopathy, and aggravation of left shoulder tenosynovitis.

By decision dated July 31, 2015, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish that the diagnosed medical conditions had been caused or aggravated by the accepted May 31, 2015 employment incident.

In OWCP-5c forms dated August 3, 6, and 18, 2015, Dr. Vizcay placed appellant off work. She diagnosed cervical and lumbar stenosis with multiple levels of disc herniation, an antalgic gait, and bilateral upper extremity neuritis. Dr. Vizcay, in an August 6, 2015 report, again related that appellant's diagnoses were due to work-related injuries. On August 11, 2015 she opined that appellant was temporarily totally disabled due to lumbar, cervical, and other work injuries sustained on February 11 and May 31, 2015.

In OWCP-5c forms dated June 10, and August 19 and 26, 2015, Dr. Scott found appellant totally disabled from work.

On August 26, 2015 appellant requested reconsideration and submitted an attending physician's report (Form CA-20) from Dr. Vizcay noting a May 31, 2015 injury date and diagnoses of cervical disc syndrome, bilateral shoulder impingement, and lumbar disc syndrome with impingement. Dr. Vizcay indicated that appellant had preexisting conditions or a prior injury, and noted a February 2015 injury. She also checked a box marked "yes" indicating that the diagnosed conditions had been caused or aggravated by an employment activity.

On September 2, 2015 Dr. Vizcay found that appellant was disabled from working due to her February 11, 2015 employment injury. She, in OWCP-5c forms dated September 24 and October 2, 2015, found appellant disabled from work.

By decision dated October 21, 2015, OWCP denied modification of its prior decision.

In an October 27, 2015 report, Dr. Jay Parekh, a Board-certified pain medicine physician and anesthesiologist, noted that appellant had been referred by Ms. Figueroa. He provided examination findings and noted that the pain began in 2009 due to herniated discs from moving patients. Dr. Parekh diagnosed chronic pain syndrome and lumbar spondylosis.

Dr. Vizcay, in a November 12, 2015 Form OWCP-5c, found appellant temporarily totally disabled from work.

In a report dated January 27, 2016, Dr. David P. Kalin, a Board-certified family practice physician, based upon a review of medical records and a physical examination, diagnosed chronic cervical musculoskeletal ligamentous strain, C3-4 and C4-5 disc bulges, C4-5 posterior central protrusion-type herniation with annulus tear, C6-7 posterior/left central paracentral protrusion-

type herniation with annulus tear, mild bilateral neural foraminal narrowing, C5-6 and C6-7 spinal canal stenosis, chronic thoracic ligamentous musculoskeletal strain, T3-4 posterior central-type herniation, T5-6 disc bulge, chronic lumbosacral musculoskeletal ligamentous strain, L1-2 right paracentral protrusion-type herniation with annulus tear, L4-5 disc bulge, L5-S1 right paracentral protrusion-type herniation with annulus tear, L5-S1 diffuse mild degenerative joint disease, significant L5-S1 disc space narrowing, bilateral shoulder impingement syndrome, and history intermittent right upper extremity and bilateral low extremity dysesthesia. He opined that appellant's February 11, 2015 work-related injury had aggravated these conditions, which he noted were originally caused by an April 12, 2009 employment injury. Dr. Kalin reported that on May 31, 2015 she was put in a nonwork status due to progressively worsening right leg and lower back pain while performing her usual work duties. He noted that appellant continued to be in a nonwork status. Dr. Kalin opined that on February 11, 2015 she aggravated her April 12, 2009 employment injury, which was reaggravated by the repetitive stress of her work duties after her return to work for the period March 31 until May 31, 2015.

In a March 8, 2016 Form OWCP-5c, Dr. Scott placed appellant off work.

By decision dated March 21, 2017, OWCP denied modification finding that the evidence of record did not establish a diagnosed condition due to the accepted May 31, 2015 employment incident.

A January 10, 2018 report by Ms. Figueroa and Dr. Sydel Legrand, a Board-certified family practice physician, detailed physical examination findings and noted review of medical reports and diagnostic tests. Appellant's diagnoses were related as cervical disc disease with herniation and neuritis, lumbar disc syndrome with herniation and neuritis, bilateral upper and lower extremity radiculopathy, bilateral shoulder impingement, bilateral shoulder tendinitis, right shoulder ligament and/or tendon tear, and anxiety and depression due to work-related injuries and chronic pain. Dr. Legrand and Ms. Figueroa opined that appellant was totally disabled due to her chronic conditions which they attributed to her work. They concurred with Dr. Patel's May 9, 2015 opinion that her May 31, 2015 employment injury had aggravated her lumbar herniated disc disease with neuritis and was the cause of the bilateral shoulder and cervical conditions.

On March 21, 2018 OWCP received appellant's request for reconsideration.

By decision dated May 14, 2018, OWCP denied modification of its March 21, 2017 decision.

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 if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[7] The second component is whether the employment incident caused a personal injury.[8]

Rationalized medical opinion evidence is 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 incident.[9]

ANALYSIS

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

Appellant submitted reports by Dr. Vizcay and Dr. Scott in support of her claim. In her June 8, 2015 report, Dr. Vizcay noted appellant's employment history and prior employment-related injuries, and presented examination findings. She diagnosed cervical and thoracic disc disease with myelopathy and herniation, bilateral upper extremity radiculopathy, bilateral shoulder impingement, aggravation of left shoulder tenosynovitis, depression and anxiety due to chronic pain and work-related injuries, and lumbar disc syndrome with myelopathy. Dr. Vizcay opined that the May 31, 2015 traumatic injury aggravated appellant's preexisting lumbosacral work injury and caused cervical and bilateral shoulder injuries. She explained that appellant had weakened musculoskeletal system and degenerative joint disease due to prior injuries. Moreover, appellant was at risk for aggravation or new injuries with lifting, pushing, or pulling more than 20 pounds due to her preexisting lumbar conditions and degenerative joint disease. Dr. Vizcay further explained that appellant's work duties on May 31, 2015 of caring for patients weighing at least 80 pounds and heavy workload on May 31, 2015 placed a strain on her already weakened musculoskeletal system, resulting in a new injury and aggravation of a prior work injury.

In his June 10, 2015 report, Dr. Scott reviewed appellant's employment history, prior employment-related injuries, and medical records, and presented examination findings. He diagnosed cervical disc syndrome with myelopathy, aggravation of left shoulder tenosynovitis, bilateral upper and lower extremity radiculopathy, and lumbar and thoracic disc syndrome with

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

[8] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[9] *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

myelopathy and herniated disc. Based on examination findings and appellant's statement regarding her work duties, Dr. Scott attributed her bilateral shoulder and cervical injuries and aggravation of her lumbosacral spine to the work duties performed on May 31, 2015. He explained that her preexisting lumbar conditions and degenerative joint disease made her susceptible to aggravation or new injuries when lifting, pulling, or pushing more than 20 pounds. As appellant's duties on May 31, 2015 involved caring for patients weighing at least 80 pounds, Dr. Scott opined that this directly caused an aggravation of her lumbosacral spine and cervical and bilateral shoulder injuries.

The Board finds that Dr. Vizcay and Dr. Scott provided affirmative opinions on causal relationship which described the mechanism of injury, findings upon examination, and explained how the accepted May 31, 2015 employment incident produced mechanical forces which caused appellant's diagnosed medical conditions. The Board finds that their opinions, while not sufficiently rationalized to meet her burden of proof, are sufficient to require further development of the case record.[10]

In addition, OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files.[11] For example, if a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body, doubling is required.[12]

On remand OWCP shall administratively combine appellant's accepted claims. It should then prepare an updated statement of accepted facts and refer her to a second opinion physician for an evaluation and opinion regarding causal relationship. After this and any other further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

[10] *C.M.*, Docket No. 18-1516 (issued May 8, 2019); *S.S.*, Docket No. 17-0332 (issued June 26, 2018). *See also John J. Carlone*, *supra* note 8; *Horace Langhorne*, 29 ECAB 820 (1978).

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance & Management*, Chapter 2.400.8(c) (February 2000).

[12] *Id.; K.T.*, Docket No. 17-0432 (issued August 17, 2018).

ORDER

IT IS HEREBY ORDERED THAT the May 14, 2018 decision of the Office of Workers' Compensation Programs is set aside and this case is remanded for further action consistent with the decision of the Board.

Issued: July 11, 2019
Washington, DC

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

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

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