United States Department of Labor
Employees' Compensation Appeals Board

D.B., Appellant	)	
and	)	**Docket No. 18-1359**
	)	**Issued: May 14, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Merrifield, VA, Employer	)	

Appearances:
Appellant, pro se
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 July 6, 2018 appellant filed a timely appeal from a June 6, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 that his cervical and left shoulder conditions were causally related to the accepted August 21, 2017 employment incident.

FACTUAL HISTORY

On August 21, 2017 appellant, then a 47-year-old custodian, filed a traumatic injury claim (Form CA-1) alleging that, on that date, he felt neck and shoulder pain when pushing a hamper

[1] 5 U.S.C. § 8101 *et seq.*

while in the performance of duty. He noted that he was already under a physician's care. On the reverse side of the claim form, the employing establishment checked a box marked "no" in response to whether their knowledge of the facts of the injury agreed with the statements of appellant. W.C., a supervisor, indicated that the medical evidence included diagnoses of "osteoarthritis -- not a traumatic injury." He also controverted continuation of pay and noted that appellant had engaged in "willful misconduct -- elected to violate VA [Veterans Affairs] medical restrictions." Appellant stopped work on August 21, 2017.

In an August 10, 2017 treatment note regarding a prior injury, Dr. David M. Luse, an internist, indicated that appellant had restrictions which included, no lifting in excess of 20 pounds and no pushing or pulling in excess of 20 pounds.

In an August 22, 2017 emergency room report, Dr. Vinod Kumar, an emergency medicine specialist, noted left trapezius, left shoulder, and humerus pain, which was consistent with an acute flare of chronic arthritis. He diagnosed arthritis and related that appellant's disability began on August 22, 2017. Dr. Kumar indicated that the injury was a "repetitive motion" injury of the extremities. He checked a box marked "yes" indicating that the diagnosed condition was due to the employment injury described above, but he did not complete the section describing how an injury occurred. In a separate hospital report dated August 22, 2017, Dr. Kumar diagnosed arthritis and trapezius strain on the left and left shoulder strain. He also completed an August 22, 2017 duty status report (Form CA-17) and indicated that appellant "reinjured [his] left neck and shoulder pushing and pulling hamper." Dr. Kumar diagnosed acute arthritis flare-up due to the injury and placed appellant off work.

In a September 1, 2017 development letter, OWCP informed appellant that the evidence submitted was deficient. It advised him of the type of factual and medical evidence needed to establish his claim and provided a factual questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary information.

In a September 15, 2017 report, Dr. John McConnell, a Board-certified orthopedic surgeon, noted that appellant was seen for pain of the left shoulder and neck. He related that appellant was "pushing and pulling hampers at work" two to three months ago when he had a "spasming and tingling sensation in the left arm." Dr. McConnell indicated that appellant had an occasional shooting pain and a previous episode eight months prior. He advised that a magnetic resonance imaging (MRI) scan revealed osteoarthritis and that he reviewed the x-ray of the left shoulder.[2] Dr. McConnell related that appellant was not working. He diagnosed left rotator cuff tendinitis and chronic left shoulder pain. Dr. McConnell provided a "no work until further notice" excuse on September 15, 2017.

OWCP received records from the VA that included a September 7, 2017 treatment note from a physical therapist, counter-signed by Dr. Luse. Dr. Luse noted that appellant was seen for worsening cervical radiculopathy. He related that appellant was doing heavy lifting and pulling at work on August 21, 2017, and "thinks [appellant] reinjured his neck/shoulder." Dr. Luse indicated that appellant had cervical radiculopathy with left arm and shoulder pain that was "worsened from

[2] A September 15, 2017 x-ray of the left shoulder was ordered by Dr. Edward S. Chang, a Board certified orthopedic surgeon, based on chronic left shoulder pain.

baseline in the setting of recent injury at work." OWCP also received March 8, August 28, and September 7, 2017 physical therapy notes.

OWCP received a September 29, 2017 MRI scan of the cervical spine, read by Dr. Melissa Kang, Board-certified in diagnostic radiology, that revealed multilevel degenerative disease, facet arthrosis, severe right foraminal narrowing at C5-6 with moderate left neural foraminal stenosis, C6-7 moderate-to-severe left neural foramen and moderate right neural foramen, and mild central stenosis.

In an undated statement, appellant described his August 21, 2017 employment incident. He related that he was seriously injured at 11:00 p.m., while pushing and pulling hampers "weighing approximately 150 pounds and more." Appellant explained that he felt a "pop" in his shoulder and "immediately felt an acute and searing pain" throughout his shoulder and arm "with a needle like sensation in my fingertips." He confirmed that he notified his supervisor. Appellant indicated that he was diagnosed with arthritis, left trapezius strain, and left shoulder strain.

By decision dated October 12, 2017, OWCP accepted that the incident occurred, however, denied appellant's claim. It found that the medical evidence of record was insufficient to establish causal relationship, as it did not include an opinion from a physician explaining how his diagnosed conditions were causally related to the accepted employment incident.

OWCP received physical therapy reports from September 28 and October 3, 5, 10, and 12, 2017.

On October 22, 2017 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

In an October 16, 2017 attending physician's report (Form CA-20), Dr. McConnell noted appellant's history of pulling hampers. He checked a box marked "no" in response to whether appellant had a preexisting injury or disease. Dr. McConnell diagnosed pain with motion of the left shoulder. He checked a box marked "yes" in response to whether he believed that the condition was caused or aggravated by an employment activity and notated "pulling hampers at work." Dr. McConnell advised that appellant was disabled from work from September 15 through October 17, 2017, and that he could return to regular-duty work on October 18, 2017.

On January 18, 2018 OWCP received another August 22, 2017 report from Dr. Kumar, which provided an additional history that included that appellant had a history of arthritis when he presented to the emergency room with acute chronic left neck and left shoulder pain/numbness and tingling. Dr. Kumar noted that there were no acute symptoms in any other part of the body. He related that appellant explained that, when he had arthritis flare-ups in the left neck and shoulder, he also had intermittent tingling, numbness, and weakness of the left arm. Dr. Kumar noted that appellant first had these symptoms two years prior, and that previous flare-ups occurred in the setting of "overuse and too much heavy lifting." He also related that appellant had a note from his physician indicating that he was not supposed to lift over 20 pounds, but that appellant was made to lift more than 20 pounds and subsequently started feeling left neck, left shoulder pain, tingling, and burning, consistent with previous flare-ups of symptoms. Dr. Kumar indicated that he suspected an acute flare up of chronic arthritis in the setting of overuse and lifting weights

beyond restrictions advised by appellant's physician. He diagnosed arthritis, left trapezius strain, and left shoulder strain.

By decision dated March 16, 2018, OWCP's hearing representative affirmed the October 12, 2017 decision. He found that the evidence of record did not contain a rationalized medical opinion that appellant sustained a specific injury as a result of the accepted employment incident. OWCP also explained that a diagnosis of pain alone is considered a symptom and is not a valid diagnosis.

On May 22, 2018 appellant requested reconsideration. He provided an undated statement indicating that the facts as related by Dr. McConnell were incomplete, misleading, and contained improper and irrelevant information.

In an April 30, 2018 report, Dr. Luse noted that appellant had suffered from chronic neck pain since March 2013. He explained that an MRI scan from 2013 demonstrated multilevel degenerative changes causing radiculopathy. Dr. Luse noted that appellant experienced intermittent flares of neck pain. He indicated that prescription medications helped during these flare ups and that physical therapy was first completed in 2015 with improvement. Dr. Luse further related that in August 2017 appellant "reaggravated [appellant's] neck condition doing heavy lifting and pushing while at work." He indicated that a repeat MRI scan in September 2017 showed a progression of the degenerative changes which necessitated another course of physical therapy that improved appellant's symptoms. Dr. Luse advised that, since the last exacerbation, appellant was advised to avoid carrying anything across his neck, shoulders, and upper back, and no lifting in excess of 20 pounds or pushing/pulling in excess of 20 pounds. He opined that appellant's condition and restrictions were permanent.

By decision dated June 6, 2018, OWCP denied modification of its prior 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,[3] 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 to the employment injury.[4] 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.[5]

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

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

[5] *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).

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. Generally, 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.[6] The second component is whether the employment incident caused a personal injury.[7]

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.[8]

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.[9]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that his cervical and left shoulder conditions were causally related to the accepted August 21, 2017 employment incident.

Dr. Luse's August 10, 2017 treatment note regarding a prior injury related that appellant had work restrictions which preceded the August 21, 2017 incident at work. The Board has held that medical evidence which predates the date of a traumatic injury has no probative value on the issue of causal relationship of a current medical condition.[10]

The September 7, 2017 report by Dr. Luse related that appellant "thinks he reinjured his neck/shoulder." He did not provide his own opinion on causal relationship.[11] In an April 30, 2018 report, Dr. Luse noted that appellant suffered from chronic neck pain since March 2013,[12] but he offered no opinion regarding causal relationship. 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

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

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

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

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *See R.D.*, Docket No. 18-1551 (issued March 1, 2019).

[10] *V.N.*, Docket No. 16-1427 (issued December 13, 2016).

[11] *See A.M.*, Docket No. 10-0205 (issued October 5, 2010) (a physician's opinion must be independent from a claimant's belief regarding causal relationship).

[12] *E.M.*, Docket No. 18-1599 (issued March 7, 2019). Pain is a symptom, note a diagnosis.

on the issue of causal relationship.[13] This report is, therefore, insufficient to establish appellant's claim.

Similarly, the August 22, 2017 report from a nurse, counter-signed by Dr. Kumar,[14] merely provided a lifting restriction. As it did not offer an opinion regarding the cause of the employee's condition it is also of limited probative value on the issue of causal relationship.[15]

In an August 22, 2017 report Dr. Kumar stated that the injury was a "repetitive motion" injury of the extremities and checked a box marked "yes" in response to whether the diagnosed condition was due to an injury at work. However, he did not provide any explanation describing how the work injury caused the diagnosed condition. The checking of a box marked "yes" in a form report, without additional medical explanation or rationale, is of limited probative value and, thus, is insufficient to establish causal relationship.[16]

In a separate report also dated August 22, 2017, Dr. Kumar indicated that appellant "reinjured his left neck and shoulder pushing and pulling hamper." Again, he did not provide any medical rationale to support his conclusion regarding causal relationship.[17] To be of probative medical value, a medical opinion must explain how physiologically the movements involved in the employment incident caused or contributed to the diagnosed conditions.[18] An explanation on causal relationship is especially important in light of the preexisting injury dating back to 2013.[19]

In another report also dated August 22, 2017, Dr. Kumar reiterated appellant's preexisting condition and work restrictions. He indicated that these symptoms appeared two years prior and that appellant's treating physician advised that appellant was not to lift over 20 pounds. Dr. Kumar indicated that he suspected an "acute flare up of chronic arthritis in the setting of overuse and lifting weights beyond restrictions advised by [appellant's physician]." The Board notes that his opinion is speculative. The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value.[20]

[13] *K.K.*, Docket No. 18-1209 (issued March 7, 2019).

[14] *Id.*

[15] *K.W.*, 59 ECAB 271 (2007).

[16] *Linda Thompson*, 51 ECAB 694 (2000); *Calvin E. King*, 51 ECAB 394 (2000).

[17] *Id.*

[18] *T.C.*, Docket No. 18-1498 (issued February 13, 2019).

[19] *See supra* note 9.

[20] *Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

In a September 15, 2017 report, Dr. McConnell did not offer any opinion on causal relationship, and his report is of no probative value.[21] In his October 16, 2017 report, he checked a box marked "no" in response to whether appellant had a preexisting injury or disease. Appellant correctly noted in his May 22, 2018 reconsideration request that Dr. McConnell provided an incorrect medical history. The record indicates that he had a preexisting condition for which he was provided with work restrictions. Medical reports must be based on a complete and accurate factual and medical background, and medical opinions based on an incomplete or inaccurate history of injury are of little probative value.[22]

OWCP also received a physical therapy report dated September 7, 2017, and countersigned by Dr. Luse, related that appellant "thinks he reinjured his neck/shoulder."[23] Medical reports that merely restate an employee's own assessment of his condition carry limited probative weight.[24] The physical therapy reports dating from March 8 to October 12, 2017, are insufficient to satisfy appellant's burden of proof because the reports are not signed or countersigned by a physician.[25] Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[26] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[27]

The diagnostic reports dated September 15 and 29, 2017, lack probative value as they do not provide an opinion on causal relationship between appellant's employment duties and a diagnosed condition.[28] The Board has held that reports of diagnostic tests lack probative value as they do not provide an opinion on causal relationship between his employment incident and a diagnosed condition.[29]

[21] *See supra* note 13.

[22] *See T.F.*, Docket No. 17-1427 (issued May 16, 2018).

[23] A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. *Supra* note 9 at Chapter 2.805.3a(1) (January 2013). *See S.C.*, Docket No. 18-1242 (issued March 13, 2019).

[24] *See D.C.*, Docket No. 06-1807 (issued February 2, 2007).

[25] *Id*.

[26] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[27] *Supra* note 15 at 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. *Supra* note 9 at Chapter 2.805.3a(1) (January 2013).

[28] *See S.G.*, Docket No. 17-1054 (issued September 14, 2017).

[29] *T.H.*, Docket No. 18-1736 (issued March 13, 2019).

As appellant has not submitted reasoned medical evidence explaining how a diagnosed condition is causally related to his accepted August 21, 2017 employment incident, he has not met his burden of proof.[30]

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 that his cervical and left shoulder conditions were causally related to the accepted August 21, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the June 6, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 14, 2019
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

[30] *See A.J.*, Docket No. 18-1116 (issued January 23, 2019); *E.C.*, Docket No. 17-0902 (issued March 9, 2018).