United States Department of Labor
Employees' Compensation Appeals Board

S.H., Appellant	)	
and	)	**Docket No. 19-0697**
	)	**Issued: September 4, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Jamaica, NY, Employer	)	

Appearances:
Alan J. Shapiro, 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
JANICE B. ASKIN, Judge

JURISDICTION

On February 13, 2019 appellant, through counsel, filed a timely appeal from a December 28, 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 his burden of proof to establish an injury causally related to the accepted February 25, 2018 employment incident.

FACTUAL HISTORY

On February 25, 2018 appellant, then a 48-year-old mail handler, filed a notice of recurrence (Form CA-2a) alleging that on February 25, 2018 he sustained a recurrence of disability due to an April 18, 2016 employment injury to his lower back, neck, and left shoulder.[3] He asserted that he lifted a bag at work on February 25, 2018 and felt pain in the "same body part" as he injured on April 18, 2016. On February 25, 2018 appellant also filed an occupational disease claim (Form CA-2) alleging that he sustained a strain due to lifting bags to and from a higher level while in the performance of duty. He reported that he first related his claimed condition and his federal employment on February 25, 2018 and that he stopped work on February 25, 2018.

Appellant submitted a February 25, 2018 duty status report (Form CA-17) in which Osman Hossain, a physician assistant, indicated that appellant reported injuring himself on that same date due to lifting a 25-pound mailbag over his head and dumping out mail which caused a sharp pain after lifting the mailbag. The physician assistant diagnosed severe left shoulder sprain/strain and cervical, thoracic, and lumbar spine sprains/strains, and found that appellant was totally disabled from work.

In a February 26, 2018 note, Dr. Muntaz Majeed, a Board-certified internist, indicated that appellant was evaluated on that same date for a work-related injury. He advised that appellant was excused from work for the period February 26 to March 5, 2018.

In a March 28, 2018 development letter, OWCP indicated that it was developing appellant's recurrence claim as a claim for a new traumatic injury due to lifting a mailbag on February 25, 2018 because he had implicated a new employment incident. It requested that he submit additional evidence in support of his traumatic injury claim, including a physician's opinion supported by a medical explanation as to how the reported February 25, 2018 employment incident caused or aggravated a medical condition. OWCP provided a questionnaire for appellant's completion which posed various questions regarding the claimed February 25, 2018 employment incident and his prior medical condition. It afforded him 30 days to respond.

In March 9 and 26, and April 7, 2018 duty status reports (Form CA-17), Dr. Majeed noted that appellant reported that he lifted a heavy mailbag at work on February 25, 2018 and felt sharp pain in his neck, left shoulder, and back. He listed diagnoses "due to injury" as acute cervical/lumbar myofasciitis and left shoulder arthralgia, and opined that appellant was unable to perform work.

[3] Appellant's recurrence claim was originally filed under OWCP File No. xxxxxx525, in which OWCP had accepted that on April 18, 2016 he sustained sprains/strains of his lower back, neck, and left shoulder. He returned to limited-duty work for the employing establishment in December 2016 and to full-duty work in February 2017. Appellant's claims have not been administratively combined.

The findings of a March 20, 2018 magnetic resonance imaging (MRI) scan of appellant's cervical spine contained an impression of disc bulge at C4-5 impinging the anterior thecal sac and disc herniation at C5-6 impinging the anterior thecal sac/right lateral recess. A March 20, 2018 MRI scan of the lumbar spine showed a disc bulge at L4-5 impinging the anterior thecal sac and a disc bulge at L5-S1 impinging the anterior thecal sac/left neural foramen. A March 23, 2018 MRI scan of the left shoulder revealed a posterior/superior labrum tear, anterior/superior perilabral cyst, mild rotator cuff tendinitis, adhesive capsulitis of the rotator cuff interval/axillary recess, minimal subacromial/subdeltoid bursitis, and mild acromioclavicular joint arthrosis.

In an April 16, 2018 attending physician's report (Form CA-20), Dr. Majeed listed the date of injury as February 25, 2018 and diagnosed acute cervical/lumbar myofasciitis and left shoulder arthralgia. He checked a box marked "Yes" indicating that appellant's condition was caused or aggravated by an employment incident. Dr. Majeed indicated that appellant could not work and recommended that appellant avoid: lifting, pushing, and pulling heavy objects; kneeling, squatting, climbing/descending stairs; and prolonged sitting/standing.

By decision dated May 14, 2018, OWCP accepted that on February 25, 2018 appellant lifted a bag over his head and dumped out mail in the performance of duty, as alleged, but it denied the claim as he had not submitted medical evidence establishing a diagnosed medical condition causally related to the accepted February 25, 2018 employment incident. It concluded that the requirements had not been met to establish an injury or medical condition causally related to the accepted employment incident.

On June 7, 2018 appellant requested a telephonic hearing with a representative of OWCP's Branch of Hearings and Review.[4]

During the hearing held on October 18, 2018 counsel advised that he agreed with OWCP that appellant's claim was appropriately developed as a claim for traumatic injury due to lifting a mailbag over his head while at work on February 25, 2018. He argued that the reports of Dr. Majeed established appellant's claim.

Appellant submitted a February 25, 2018 narrative report in which Mr. Hossain indicated that appellant reported injuring himself on the same date by lifting a mailbag (weighing approximately 25 pounds) over his head and dumping out mail. Mr. Hossain indicated that appellant reported only occasionally experiencing back, left shoulder, or back pain after returning to full-duty work in February 2017. He diagnosed several neck, left shoulder, and thoracic/lumbar spine conditions.

Appellant also submitted May 9, June 11, and September 28, 2018 duty status reports (Form CA-17) in which Dr. Majeed described the February 25, 2018 employment incident. Dr. Majeed listed diagnoses due to the reported injury as acute cervical/lumbar myofasciitis and left shoulder arthralgia, and opined that appellant was unable to perform any work.

In a May 11, 2018 report, Dr. Vikas Varma, a Board-certified neurologist, noted that appellant reported lifting a heavy mailbag at work on February 25, 2018 and feeling a sharp pain

[4] Counsel became authorized with respect to the claim before OWCP in early July 2018.

in his neck which radiated into his left shoulder and back. He reported his physical examination findings noting intact muscle strength and intact pinprick sensation in the upper and lower extremities with hypothesias to light touch in the calves. Dr. Varma diagnosed left cervical radiculopathy, multiple cervical/lumbar disc herniations, stenosis at L5-S1, adhesive capsulitis, and left rotator cuff syndrome/acromioclavicular joint arthritis with subacromial/subdeltoid bursitis. In a May 11, 2018 duty status report (Form CA-17), he listed the date of injury as February 25, 2018 and the diagnosis "due to injury" as brachial neuritis or radiculopathy, not otherwise specified. Dr. Varma indicated that appellant could not return to work.

In an October 26, 2018 report, Dr. Majeed indicated that a review of the medical record revealed that appellant lifted a heavy mailbag on February 25, 2018 and exacerbated the prior April 18, 2016 injury to his neck, left shoulder, and back. He reported physical examination findings, including reduced neck, left shoulder, and back range of motion, and diagnosed cervical and lumbar myofasciitis and left shoulder arthralgia. Dr. Majeed opined that appellant's present condition was directly related to the February 25, 2018 employment incident, noting that the mechanism of injury was entirely consistent with the clinical presentation. He noted, "Therefore, the accident of [February 25, 2018] is the direct producing cause of [appellant's] injury, symptoms, and physical findings."

By decision dated December 28, 2018, OWCP's hearing representative affirmed the May 14, 2018 decision noting that appellant had not submitted medical evidence establishing a diagnosed medical condition causally related to the accepted February 25, 2018 employment incident.

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,[5] 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.[6] 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.[7]

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

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

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

[7] *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).

component is whether the employee actually experienced the employment incident that allegedly occurred.[8] The second component is whether the employment incident caused a personal injury.[9]

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.[10] 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.[11]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an injury causally related to the accepted February 25, 2018 employment incident.

In multiple form reports dated between March 9 and September 28, 2018, Dr. Majeed noted that appellant reported that he lifted a heavy mailbag at work on February 25, 2018 and felt sharp pain in his neck, left shoulder, and back. He listed diagnoses "due to injury" as acute cervical/lumbar myofasciitis and left shoulder arthralgia, and opined that appellant was unable to perform work. However, these reports contain mere conclusory opinions without the necessary rationale explaining how and why the February 25, 2018 employment incident was sufficient to result in the diagnosed medical conditions. The Board has held that such opinions are of limited probative value and are insufficient to meet a claimant's burden of proof to establish a claim and, therefore, these reports are insufficient to establish appellant's claim for a February 25, 2018 employment injury.[12] In a February 26, 2018 note, Dr. Majeed indicated that appellant was evaluated on the same date for a work-related injury. He advised that appellant was excused from work for the period February 26 to March 5, 2018. This report is of limited probative value because Dr. Majeed did not support his ostensible opinion on causal relationship with medical rationale.[13]

In an April 16, 2018 form report, Dr. Majeed listed the date of injury as February 25, 2018 and diagnosed acute cervical/lumbar myofasciitis and left shoulder arthralgia. He checked a box marked "Yes" indicating that appellant's condition was caused or aggravated by an employment activity. Dr. Majeed indicated that appellant could not work. Appellant's burden of proof includes the necessity of furnishing an affirmative opinion from a physician who supports his or her

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

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

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

[11] *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

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

[13] *Id*.

conclusion with sound medical reasoning.[14] Dr. Majeed provided no rationale for his opinion on causal relationship. The Board has held that when a physician's opinion on causal relationship consists only of checking "Yes" to a form question, without more by the way of medical rationale, that opinion is of limited probative value and is insufficient to establish causal relationship.[15] Therefore, Dr. Majeed's April 16, 2018 report is insufficient to discharge appellant's burden of proof.

In a May 11, 2018 narrative report, Dr. Varma noted the February 25, 2018 employment incident as described by appellant and diagnosed left cervical radiculopathy, multiple cervical/lumbar disc herniations, stenosis at L5-S1, adhesive capsulitis, and left rotator cuff syndrome/acromioclavicular joint arthritis with subacromial/subdeltoid bursitis. In a May 11, 2018 form report, he listed the date of injury as February 25, 2018 and the diagnosis "due to injury" as brachial neuritis or radiculopathy, not otherwise specified.

Dr. Varma's May 11, 2018 narrative report does not contain an opinion on the cause of the diagnosed medical conditions. The Board has held that 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.[16] As such, Dr. Varma's May 11, 2018 narrative report is of no probative value on the underlying issue of this claim.[17] His May 11, 2018 form report contains a mere conclusory opinion without the necessary rationale explaining how and why the February 25, 2018 employment incident was sufficient to result in the diagnosed medical condition. As noted, the Board has held that, such an opinion is insufficient to meet a claimant's burden of proof to establish a claim and, therefore, the May 11, 2018 form report is insufficient to establish appellant's claim for a February 25, 2018 employment injury.[18]

In an October 26, 2018 report, Dr. Majeed indicated that a review of the medical record revealed that appellant lifted a heavy mailbag on February 25, 2018 and exacerbated the prior April 18, 2016 injury to his neck, left shoulder, and back. He opined that appellant's present condition was directly related to the February 25, 2018 accident, noting that it was the direct producing cause of his injury, symptoms, and physical findings. The Board notes, however, that Dr. Majeed's October 26, 2018 report is of limited probative value on the underlying issue of the present case because he did not provide adequate medical rationale in support of his opinion on causal relationship.

Although Dr. Majeed asserted that the "mechanism of injury" was entirely consistent with appellant's clinical presentation, he did not adequately explain how the mechanism of injury on February 25, 2018 was consistent with specific findings on physical examination and diagnostic testing. Appellant had significant degenerative conditions of his neck, left shoulder, and back, and

[14] *J.A.*, Docket No. 18-1586 (issued April 9, 2019); *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

[15] *Id.*

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

[17] *Id.*

[18] *See supra* note 12.

Dr. Majeed did not explain why appellant's multiple complaints were not due to the natural progression of nonwork-related disease processes. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.[19] Therefore, this report is insufficient to establish appellant's claim.

Appellant also submitted February 25, 2018 reports of Mr. Hossain, a physician assistant. The Board has held, however, that health care providers such as physician assistants are not considered physicians as defined under FECA and their reports do not constitute competent medical evidence.[20] Therefore, these reports are of no probative value and are insufficient to meet appellant's burden of proof.

As the record does not contain a rationalized opinion on causal relationship between a diagnosed medical condition and the accepted February 25, 2018 employment incident, the Board finds that appellant 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 due to his accepted February 25, 2018 employment incident.

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

[20] *See M.M.*, Docket No. 17-1641 (issued February 15, 2018); *K.J.*, Docket No. 16-1805 (issued February 23, 2018); *P.S*, Docket No. 17-0598 (issued June 23, 2017); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law).

ORDER

IT IS HEREBY ORDERED THAT the December 28, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 4, 2019
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board