

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

J.H., Appellant)	
)	
and)	Docket No. 24-0415
)	Issued: May 23, 2024
U.S. POSTAL SERVICE, POST OFFICE,)	
Santa Ana, CA, Employer)	
)	

Appearances: *Case Submitted on the Record*
Daniel M. Goodkin, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On March 11, 2024 appellant, through counsel, filed a timely appeal from an October 3, 2023 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 expand the acceptance of his claim to include a stroke on May 29, 2021, as a consequence of his accepted employment injury.

FACTUAL HISTORY

On February 5, 2013 appellant, then a 62-year-old computer forward systems clerk, filed an occupational disease claim (Form CA-2) alleging that he sustained a low back condition due to repetitive heavy lifting. He noted that he first became aware of his condition on June 10, 1992 and realized its relationship to factors of his federal employment on November 27, 2012. OWCP accepted the claim for a lumbar strain. It paid appellant on the supplemental rolls commencing March 1, 2014, and on the periodic rolls commencing April 26, 2020.

By decision dated September 18, 2019, OWCP expanded acceptance of his claim to include lumbar radiculopathy and lumbar intervertebral disc degeneration.

In a March 8, 2022 report, Dr. Michael M. Bronshvag, a Board-certified internist, reviewed appellant's medical record. He noted that appellant developed relatively-abrupt low back issues in 2013, with widespread abnormalities; however, low back surgery "might not be a safe possibility" for appellant. Dr. Bronshvag further noted that appellant experienced a fall and a stroke in May 2021. Appellant's blood pressure when seen immediately after the fall was 193/100. Dr. Bronshvag noted that the neurologist's description of appellant's condition was of an acute ischemic stroke, typically caused by occlusion of a small blood vessel in the middle of the brain. He related that this location was not especially typical of a head injury, traumatic brain injury (TBI) and the description did not demonstrate a hemorrhage-hematoma clot, which could be related to head trauma. Dr. Bronshvag concluded that he needed to speak to appellant and to obtain additional medical records to determine whether his stroke was consequential to his accepted employment injury.

In a report dated July 7, 2022, Dr. Bronshvag opined that appellant's stroke was secondary to his fall and striking of his head, which was caused by his low back pain. He related that appellant felt an electric pain in his lower back while getting out of bed, radiating into his legs and up his neck. This caused appellant to fall and strike his head hard against a television set. He was hospitalized within hours for a stroke. Dr. Bronshvag opined that appellant's stroke (or cerebral issue) had not been caused by an underlying medical issue, but was due to the hard fall which was caused by appellant's worsening low back pain. He related that his observations of appellant showed brain stem findings on the left side of the brain stem, which had nothing to do with the right thalamus. Dr. Bronshvag explained that appellant's low back difficulties and stroke were all tied together and caused by a spontaneous worsening of the accepted low back conditions, which caused the fall and head injury and resulting cerebral-brain stem issue.

On July 21, 2022 counsel requested that OWCP expand its acceptance of appellant's claim to include a stroke.

On September 23, 2022 OWCP referred appellant, the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Surasak Phuphanich, a Board-certified neurologist, for a second opinion evaluation. The referral letter to Dr. Phuphanich requested that he provide an opinion regarding whether appellant's stroke was consequential to the accepted employment injury.

In a report dated October 20, 2022, Dr. Phuphanich recounted appellant's history of injury and reviewed the medical record and SOAF. He noted appellant's current physical examination findings and diagnosed lumbar spondylosis and spondylolisthesis, lumbar spine stenosis with bilateral L5 radiculopathy, right cerebral infarction, depression and anxiety, hypertension, and diabetes mellitus. Dr. Phuphanich related that on May 29, 2021 appellant suffered a stroke, with right cerebral infarction and left hemiparesis. He concluded that appellant's stroke was directly attributed to high cholesterol, hypertension, diabetes, and his age. Dr. Phuphanich explained that a stroke was commonly seen in appellant's age group with underlying hypertension, diabetes, and high cholesterol.

By decision dated November 14, 2022, OWCP denied appellant's request to expand the acceptance of his claim to include a stroke condition causally related to his accepted lumbar strain, lumbar radiculopathy, and lumbar intervertebral disc degeneration.

Thereafter OWCP received a December 12, 2022 supplemental report, wherein Dr. Bronshvag noted that appellant had severe pain the night before the stroke, which worsened when he arose. Thus, he attributed the onset of the stroke to appellant's severe pain and hard fall caused by the severe worsening of his back. Dr. Bronshvag acknowledged there were preexisting medical issues, which had been stable. He explained it was inaccurate and inappropriate to attribute the stroke to appellant's preexisting conditions as appellant's history of increased back pain the night before the stroke. Dr. Bronshvag concluded that appellant's stroke was clearly multifactorial.

On February 14, 2023 appellant, through counsel, requested reconsideration.

On February 28, 2023 OWCP denied modification of the prior decision.

On April 4, 2023 OWCP received a May 30, 2021 report from Dr. Claudia A. Muñoz, a neurologist. She related appellant's history of back pain with left-sided weakness and a fall during which appellant hit his head on a television. On physical examination no head trauma or skull tenderness was noted. Appellant's brain magnetic resonance imaging (MRI) scan was reviewed which revealed acute ischemic infarct in the right thalamus. Dr. Muñoz noted that appellant had a family history, which included his father's death at age 68 due to a stroke. His stroke risk factors included age, family history, but most importantly uncontrolled diabetes. Dr. Muñoz assessed appellant's conditions as acute right middle cerebral artery stroke, uncontrolled diabetes mellitus, and uncontrolled hypertension.

On April 21, 2023 OWCP requested clarification from Dr. Phuphanich regarding the cause of appellant's stroke.

In a supplemental report dated May 12, 2023, Dr. Phuphanich noted that appellant's stroke occurred approximately 29 years after his 1992 injury and there was no correlation between

appellant's previous back or head injuries and his stroke. He reported that appellant's history was significant for diabetes, age, high cholesterol, and hypertension. According to Dr. Phuphanich, hypertension was the most potent risk factor for a stroke and individuals with diabetes commonly have high blood pressure. He explained the physiological impact of diabetes and high blood pressure on the blood vessels and arteries. Dr. Phuphanich concluded that these risk factors caused appellant's stroke on May 29, 2021 and strongly disagreed with Dr. Bronshvag's conclusion.

On July 25, 2023 OWCP received a May 29, 2021 computerized tomography (CT) scan report of appellant's brain. The findings noted that appellant's carotid arteries, anterior, middle and posterior cerebral arteries were unremarkable without significant stenosis, dissection, or aneurysm.

On August 22, 2023 OWCP requested that Dr. Phuphanich review additional medical evidence, including diagnostic testing.

In a supplemental report dated September 11, 2023, Dr. Phuphanich, based upon a review of the additional medical evidence, reported that his opinion was unchanged. He reiterated his opinion that appellant's May 29, 2021 stroke had been caused by his diabetes, age, high cholesterol, and hypertension, and was unrelated to his accepted 1992 employment injury. Dr. Phuphanich explained that appellant had a typical lacunar infarction of the right thalamus. He further related that lacunar infarcts are small noncortical infarcts caused by occlusion of a single penetrating branch of a large cerebral artery.

By decision dated October 3, 2023, OWCP denied modification.

LEGAL PRECEDENT

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.³

To establish causal relationship between a condition and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁴ The opinion of the physician must be one of reasonable certainty, and must explain the nature of the relationship between the diagnosed condition and the accepted employment injury.⁵

In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury. The basic rule is that

³ *L.M.*, Docket No.23-0605 (issued December 5, 2023); *N.U.*, Docket No. 22-1329 (issued April 18, 2023); *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁴ *L.M.*, *id.*; *B.W.*, Docket No. 21-0536 (issued March 6, 2023); *D.E.*, Docket No. 20-0936 (issued June 24, 2021); *S.L.*, Docket No. 19-0603 (issued January 28, 2020).

⁵ *Id.*

a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.⁶

ANALYSIS

The Board finds that appellant has not met his burden of proof to expand the acceptance of his claim to include a stroke on May 29, 2021, as a consequence of his accepted employment injury.

In a March 8, 2022 report, Dr. Bronshvag noted appellant's accepted back conditions and that he had experienced a fall and a stroke in May 2021. He explained that the neurologist's description of appellant's condition was of an acute ischemic stroke, typically caused by occlusion of a small blood vessel in the middle of the brain. Dr. Bronshvag found that this location was not especially typical of a head injury, TBI and the description did not demonstrate a hemorrhage-hematoma clot, which could be related to head trauma. In a report dated July 7, 2022, he opined that appellant's stroke was not caused by an underlying medical issue, but was rather due to the hard fall caused by appellant's worsening low back pain. Dr. Bronshvag related that appellant showed brain stem findings on the left side of the brain stem, which had nothing to do with the right thalamus. In a December 12, 2022 supplemental report, he opined that the cause of the stroke was multifactorial and acknowledged there were preexisting conditions which also contributed to appellant's stroke. The Board finds that Dr. Bronshvag's opinions were unrationalized and conclusory. Medical reports consisting solely of conclusory statements without supporting rationale are of little probative value.⁷ While he initially acknowledged that the initial neurologic records indicated that appellant had suffered an acute ischemic stroke, typically caused by occlusion of a small blood vessel in the middle of the brain, which was not typical of a TBI or hemorrhage clot related to head trauma, he subsequently opined that appellant's stroke was related to his back condition as his physical limitations were left sided. Dr. Bronshvag however did not offer a medical explanation in any of his reports as to the pathophysiologic process by which appellant's accepted back injury would have caused appellant's stroke.⁸ He also did not further explain why appellant did not suffer an acute ischemic stroke. The Board, therefore, finds that Dr. Bronshvag's reports are of diminished probative value and are insufficient to establish appellant's claim.

Dr. Phuphanich, OWCP's referral physician, concluded in his October 20, 2022 report and June 7 and September 11, 2023 supplemental reports that he could not attribute appellant's stroke to the accepted June 10, 1992 employment injury, because there were other preexisting contributing factors. In his October 20, 2022 report, he related that on May 29, 2021 appellant suffered a stroke with right cerebral infarction and left hemiparesis. Dr. Phuphanich concluded

⁶ See *L.M., id.*; *D.L.*, Docket No. 21-0047 (issued February 22, 2023); *D.H.*, Docket Nos. 20-0041 & 20-0261 (issued February 5, 2021).

⁷ *C.C.*, Docket No. 15-1056 (issued April 4, 2016); see *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *William C. Thomas*, 45 ECAB 591 (1994) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

⁸ See *L.G.*, Docket No. 19-0142 (issued August 8, 2019).

that appellant's stroke was directly attributed to high cholesterol, hypertension, diabetes, and his age. In his May 12, 2023 report, he opined that there was no correlation of a prior head or back injury with acute cerebral infarction. Rather, hypertension was the most potent risk factor for a stroke, and individuals with diabetes commonly have high blood pressure. Dr. Phuphanich explained the physiological impact of diabetes and high blood pressure on the blood vessels and arteries. He concluded that these risk factors caused appellant's stroke on May 29, 2021 and related that he strongly disagreed with Dr. Bronshavag's conclusion. In a supplemental report dated September 11, 2023, Dr. Phuphanich further explained that appellant had a typical lacunar infarction of the right thalamus, which was a small noncortical infarct caused by occlusion of a single penetrating branch of a large cerebral artery.

As Dr. Phuphanich's opinion was well rationalized and based on the evidence of record, the Board finds that his opinion constitutes the weight of the medical evidence.⁹

As the medical evidence of record is insufficient to establish that appellant's May 29, 2021 stroke was a consequence of his accepted back injury, 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 expand the acceptance of his claim to include a stroke on May 29, 2021 as a consequence of his accepted employment injury.

⁹ See *J.T.*, Docket No. 23-1176 (issued March 19, 2024); *L.L.*, Docket No. 22-0733 (issued May 9, 2023); *A.C.*, Docket No. 21-1093 (issued July 21, 2022).

ORDER

IT IS HEREBY ORDERED THAT the October 3, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 23, 2024
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board