United States Department of Labor
Employees' Compensation Appeals Board

E.G., Appellant	)	
and	)	**Docket No. 17-0866**
	)	**Issued: July 17, 2017**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Houston, TX, 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:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 10, 2017 appellant, through counsel, filed a timely appeal from a January 12, 2017 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish right shoulder and cervical spine injuries causally related to the accepted March 1, 2014 employment injury.

[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.*

FACTUAL HISTORY

This case has previously been before the Board. The facts and circumstances of the case as set forth in the Board's prior decision[3] are incorporated herein by reference. The relevant facts are set forth below.

OWCP accepted that on March 1, 2014 appellant, then a 58-year-old electrician, was struck by metal parts which fell 19 feet from an overhead door mechanism,[4] causing an open scalp wound without complications, and an unspecified "nontraumatic hematoma soft tissue."[5] The employing establishment issued an authorization for examination and/or treatment (Form CA-16) on March 5, 2014 describing appellant's injury as "top of head, right shoulder pain." Following intermittent absences, appellant stopped work on May 13, 2014 and did not return.

Appellant contended that the March 1, 2014 incident also injured his right shoulder and cervical spine. He submitted medical evidence in support of the expansion of his claim.

Dr. Molham Aldeiri, an employing establishment physician, who treated appellant on an emergent basis, immediately following the March 1, 2014 incident, diagnosed a small hematoma of the scalp and released appellant to work.

Dr. Lubor Jarolimek, an attending orthopedic surgeon, noted in March 5 and 6, 2014 reports that appellant sustained a scalp laceration and "injured his right shoulder" on March 1, 2014 when the door mechanism fell on him. On examination, he found "muscle spasm right trapezius and posterior shoulder," muscle spasm in the right-sided cervical paraspinals, and a healing scalp laceration. Dr. Jarolimek diagnosed a parietal laceration/hematoma, cervical spine sprain, and right shoulder sprain. He prescribed physical therapy.[6] Appellant's right shoulder motion was still significantly restricted on an April 15, 2014 examination. Dr. Jarolimek noted on April 30, 2014 that appellant injured his right shoulder at work on March 1, 2014. He added in an August 7, 2014 report that on March 1, 2014 metal parts from the malfunctioning overhead door struck appellant's head, right shoulder, and cervical spine. Dr. Jarolimek opined that because the metal parts struck appellant's head, it was "reasonable to include [appellant's] neck[-]related symptoms as part of his work-related injury." He provided a July 15, 2015 report affirming that when he examined appellant on March 5, 2014 four days after the March 1, 2014 injury, appellant had "injuries to his right shoulder" caused by the falling door parts.

[3] Docket No. 16-0242 (issued October 14, 2016).

[4] In a May 27, 2014 investigative memorandum, the employing establishment acknowledged that on March 1, 2014 appellant tried to close a misaligned overhead door. A metal roller, which weighed nine ounces, fell from a height of 19 feet onto his head. In an April 9, 2015 letter, a supervisor acknowledged ordering two replacement rods and a bracket to repair the door following appellant's injury, corresponding to the broken door parts in a photograph appellant provided of the parts he claimed to have struck him.

[5] OWCP initially accepted the claim on May 15, 2014. By notice dated June 17, 2014 and finalized July 23, 2014, OWCP rescinded its acceptance of the claim, finding significant factual inconsistencies in the circumstances of the March 1, 2015 incident.

[6] Appellant participated in physical therapy from March to July 2014.

Dr. Steven B. Inbody, an attending Board-certified neurologist, examined appellant on May 12, 2014, noting appellant's account of the March 1, 2014 incident. He diagnosed postconcussion syndrome, with a "probable cervical spine injury causing cervicocranial headaches, dizziness, and blurred vision."[7] In June 26, 2015 reports, Dr. Inbody opined that "the mechanism of injury involved one or more rollers falling from a door which lacerated [appellant's] right occipital parietal region with a second roller if not the same impacting the right supraspinatus region on the right shoulder. This caused a lump or hematoma both of which were addressed by Dr. Jarolimek." Dr. Inbody explained that the downward axial force of the falling door components resulted in cervical disc herniations. He noted that appellant had recently undergone right rotator cuff surgery.[8]

Dr. Clark D. McKeever, an attending Board-certified orthopedic surgeon, submitted June 24, 2014 reports noting the March 1, 2014 incident. On examination, he found restricted motion of the cervical spine and right shoulder. Dr. McKeever diagnosed cervical radiculopathy, cervical disc protrusion or herniation at C5-6 and C7-T1, and a right rotator cuff tear. He opined that, based on the cervical magnetic resonance imaging (MRI) scan report, the March 1, 2014 incident also resulted in the diagnosed cervical disc herniations.

By decision dated October 2, 2015, OWCP denied expansion of the claim, finding that the medical evidence of record failed to establish causal relationship between the accepted March 1, 2014 employment injury and the claimed right shoulder and cervical spine conditions. Appellant then appealed to the Board.

By decision and order issued October 14, 2016,[9] the Board affirmed OWCP's October 2, 2015 decision, finding that the medical evidence of record failed to establish causal relationship. The Board explained that Dr. Inbody, Dr. Jarolimek, and Dr. McKeever had not provided sufficient medical rationale to support right shoulder or cervical spine injuries due to the accepted March 1, 2014 employment injury.

In an October 21, 2016 letter, counsel requested reconsideration. He submitted additional evidence. Dr. Inbody provided reports from June 3, 2014 through August 30, 2016, noting persistent headaches, right shoulder pain, and right upper extremity paresthesias. He diagnosed C5-6 and C7-T1 disc herniation, postconcussion syndrome, a right rotator cuff tear, internal derangement of the right shoulder, thoracic outlet syndrome, possibly brachial plexopathy, and post-traumatic stress. Dr. Inbody attributed all of these diagnoses to the March 1, 2014 employment injury. He commented on May 25, 2016 that, while a right rotator cuff repair addressed some of the causes of appellant's pain symptoms, the March 1, 2014 impact, if it were moderate-to-severe, "lacerating through the scalp down and descending striking him then in the neck and shoulder," could have caused appellant's "symptoms, which have been present since the injury." Alternatively, Dr. Inbody reasoned that a "downward concussive force upon the

[7] A May 30, 2014 cervical spine MRI scan showed a central to right-sided disc protrusion at C7-T1 and a C5-6 central disc protrusion with mild bilateral foraminal stenosis. A May 31, 2014 right shoulder MRI scan showed partial surface tears of the supraspinatus and infraspinatus tendons, and a spinoglenoid notch cyst.

[8] During the pendency of the prior appeal, on May 20, 2016, OWCP authorized the right shoulder arthroscopic rotator cuff repair.

[9] *Supra* note 3.

cervical spine" or "abrupt lateral movement" could have caused the right-sided C7-T1 herniation.

Dr. Jarolimek submitted August 12, 2015 and February 18, 2016 reports reiterating previous diagnoses. He opined that, based "on reasonable medical probability, [appellant's] injury to his scalp, neck, and right shoulder [was] related directly to his work-related injury of March 1, 2014 when metal parts shot out from a door."

Dr. John D. Beerbower, an attending Board-certified neuroradiologist, provided a November 24, 2015 report reiterating appellant's account of the March 1, 2014 incident and later treatment. He obtained an MRI scan of the cervical spine demonstrating degenerative changes, mild C5-6 disc bulge, C7-T1 disc protrusion, and multilevel facet arthrosis. On examination, Dr. Beerbower found restricted right shoulder and cervical spine motion. He diagnosed a closed head injury, concussion, craniocervical syndrome, cervicogenic headaches, cervical spondylosis, and greater occipital neuralgia. Dr. Beerbower opined that appellant's headaches could be caused by cervical facet abnormalities, C5-6 discogenic pain, or greater occipital neuralgia. He administered cervical facet injections.

In a January 12, 2017 decision, OWCP denied the claim for right shoulder and cervical spine injuries, finding that the medical evidence submitted on reconsideration was insufficiently rationalized and too speculative to establish causal relationship. It noted that Dr. Inbody posited two distinct mechanisms of injury, without explaining how or why either was connected to the accepted March 1, 2014 employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA[10] 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, that an injury was sustained in the performance of duty as alleged, and that any specific condition and/or disability for which compensation is claimed are causally related to the employment injury.[11]

Where 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.[12] The medical evidence required to establish causal relationship between a claimed condition and employment factors is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the claimed condition and the specific employment factors identified by the claimant.[13]

[10] *Supra* note 2.

[11] *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

[12] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[13] *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

ANALYSIS

Following the prior appeal, appellant again requested to expand OWCP's acceptance of his claim to include right shoulder and cervical spine injuries. OWCP had denied these conditions by decision dated October 2, 2015 and the denial was affirmed by the Board in its October 14, 2016 decision. On October 21, 2016 counsel requested reconsideration and submitted additional medical evidence to support his claim to expand the accepted conditions. OWCP denied modification by decision dated January 12, 2017, finding the additional evidence insufficient to meet appellant's burden of proof to establish causal relationship.

Dr. Inbody provided reports from June 3, 2014 through August 30, 2016, diagnosing headaches, postconcussion syndrome, right shoulder pain, paresthesias in the right arm, and cervical disc herniations. However, he did not identify a specific mechanism of causation attributable to the accepted incident. Rather, Dr. Inbody offered several theories of causation. He opined that the diagnosed conditions could have been caused by the accepted March 1, 2014 employment injury if the metal door parts which struck appellant impacted the neck or right shoulder, and did so with sufficient force. Alternatively, Dr. Inbody suggested that a downward concussive force or abrupt lateral movement could have caused the right-sided C7-T1 herniation. He did not specify a discrete, established means by which the impact of the door roller caused an injury to appellant's right shoulder or cervical spine. Dr. Inbody's opinion is therefore speculative, and insufficient to meet appellant's burden of proof.[14]

Dr. Jarolimek submitted August 12, 2015 and February 18, 2016 reports generally supporting a causal relationship between the March 1, 2014 incident and cervical spine and right shoulder injuries. However, he did not explain how and why the impact of the metal roller could have caused those injuries. The lack of medical reasoning supporting Dr. Jarolimek's conclusions reduces the persuasiveness of his opinion.[15]

Dr. Beerbower, an attending Board-certified neuroradiologist, provided a November 24, 2015 report diagnosing headaches, occipital neuralgia, cervical spondylosis, and a concussion. Although he reiterated appellant's account of the March 1, 2014 incident, Dr. Beerbower did not address causal relationship in his report. Therefore, his opinion is insufficient to meet appellant's burden of proof.[16]

The Board finds that the opinions of Dr. Inbody, Dr. Jarolimek, and Dr. Beerbower are not sufficiently rationalized to meet appellant's burden of proof to establish his claim. Therefore, OWCP's January 12, 2017 decision is proper under the law and facts of this case.

Appellant may submit additional evidence or argument with a written request for reconsideration to OWCP within one year of the date of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

[14] *D.D.*, 57 ECAB 734 (2006).

[15] *See Frank D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

[16] *Frank D. Haislah*, *id*.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish right shoulder and cervical spine injuries causally related to the accepted March 1, 2014 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 12, 2017 is affirmed.

Issued: July 17, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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