

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

E.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Lagrangeville, NY, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 15-175
Issued: March 25, 2015**

Appearances:

Katherine Smith, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Deputy Chief Judge

ALEC J. KOROMILAS, Alternate Judge

JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 3, 2014 appellant, through his attorney, filed a timely appeal from a July 17, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 established an injury in the performance of duty on February 27, 2012.

FACTUAL HISTORY

On March 1, 2012 appellant, then a 48-year-old postal clerk, filed a traumatic injury claim (Form CA-1) alleging that on February 27, 2012 he sustained a low back injury in the

¹ 5 U.S.C. § 8101 *et seq.*

performance of duty. He alleged that he was “pulling on a hamper” and it “became jammed.” Appellant described the injury as to his left lower back.

An employing establishment supervisor completed a Form CA-16 (authorization for examination and/or treatment) dated February 28, 2012, indicating authorization to furnish necessary medical treatment. The form report on the reverse of the form was dated March 2, 2012 from Dr. Mark Anderson, a Board-certified internist, who noted left lower back tenderness but did not provide a diagnosis. Dr. Anderson checked a box “yes” that the condition was employment related. In a note dated February 28, 2012, he stated that appellant had an acute low back injury sustained while lifting at work on February 27, 2012. Dr. Anderson stated that appellant would not be able to work until March 5, 2012.

A magnetic resonance imaging (MRI) scan report dated March 9, 2012 from Dr. Robert Gumbardo, a radiologist, diagnosed small left paracentral disc herniation at L5-S1 with mild posterior displacement of the S1 nerve root, and minimal left lateral disc herniation at L4-5 with slight impingement on the left L4 nerve root. In a report dated March 19, 2012, Dr. Peter Lu, a physiatrist, provided a history of the February 27, 2012 incident and results on examination. He noted the results on the March 9, 2012 MRI scan. Dr. Lu stated that appellant continued to have intermittent lumbar pain and should continue with physical therapy. By report dated April 9, 2012, he provided results on examination and indicated that appellant should continue his rehabilitation program. In an x-ray report dated April 19, 2012, Dr. Stuart Roberts, a radiologist, diagnosed mild degenerative changes of lumbar spine, facet joints, and sacroiliac joints.

In a report dated April 19, 2012, Dr. David Bomback, a Board-certified orthopedic surgeon, provided a history of injury that at the end of February appellant was pulling a heavy mailbox/hamper when he felt a sharp pain in the left lower back. He stated that appellant had been out of work since the injury. Dr. Bomback provided results on examination, and diagnosed left L4-5 and L5-S1 facet syndrome, left sacroiliac joint dysfunction, and likely incidental disc protrusions, left L4-5 and L5-S1. He opined that appellant would benefit from facet injections. By form report (Form CA-20) dated May 18, 2012, Dr. Bomback checked a box “yes” that the diagnosed conditions were employment related.

By decision dated June 18, 2012, OWCP denied the claim for compensation. It found the medical evidence was insufficient to establish the claim.

On August 1, 2012 appellant requested reconsideration. He submitted a narrative report dated February 28, 2012 from Dr. Anderson, who provided a history that appellant was attempting to lift a carton of letters and had pain in his lower back. Dr. Anderson provided results on examination, noting decreased range of motion in the back and left lumbar tenderness. He stated, “Patient with acute lumbar strain sustained at work.” In a June 27, 2012 report, Dr. Bomback stated that, when appellant strained to pull the hamper free, he put a strain on his lower back causing facet syndrome, sacroiliac joint dysfunction and likely a disc protrusion.

By decision dated December 28, 2012, OWCP reviewed the case on its merits and denied modification. It found the medical evidence was insufficient to establish the claim.

Appellant again requested reconsideration and submitted a February 20, 2013 report from Dr. Bomback, who stated that he felt the February 27, 2012 work injury directly caused appellant's ensuing and current back complaints. Dr. Bomback provided results on examination and diagnosed lower back pain, herniated lumbar disc, and lumbar radiculopathy. He indicated that appellant would benefit from an epidural trail.

By decision dated June 19, 2013, OWCP reviewed the case on its merits and denied modification. It found the medical evidence was not sufficient to establish the claim.

On April 22, 2014 appellant, through his representative, requested reconsideration. Counsel argued that the medical evidence as a whole supported causal relationship.

By decision dated July 17, 2014, OWCP reviewed the case on its merits and denied modification. It found the medical evidence was insufficient to establish the claim.

LEGAL PRECEDENT

FECA provides for the payment of compensation for "the disability or death of an employee resulting from personal injury sustained while in the performance of duty."² The phrase "sustained while in the performance of duty" in FECA is regarded as the equivalent of the commonly found requisite in workers' compensation law of "arising out of and in the course of employment."³ An employee seeking benefits under FECA has the burden of establishing that he or she sustained an injury while in the performance of duty.⁴ In order to determine whether an employee actually sustained an 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 which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.⁵

OWCP's procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection.⁶ In clear-cut traumatic injury claims, such as a fall resulting in a broken arm, a physician's affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.⁷

² *Id.* at § 8102(a).

³ *Valerie C. Boward*, 50 ECAB 126 (1998).

⁴ *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

⁵ *See John J. Carlone*, 41 ECAB 354, 357 (1989).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(c) (January 2013).

⁷ *Id.* at Chapter 2.805.3(d) (January 2013).

Rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background, of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.⁸

ANALYSIS

Appellant has alleged that he sustained an injury on February 27, 2012 when he was "pulling a hamper" of mail and it "became jammed." OWCP has accepted an employment incident occurred as alleged. The issue is whether appellant has submitted medical evidence which establishes causal relationship between a diagnosed condition and the February 27, 2012 employment incident.

Appellant received treatment on February 28, 2012 from Dr. Anderson; however, he does not provide a rationalized medical opinion on the issue presented. Dr. Anderson's narrative report provides a brief and incorrect history that appellant was lifting a carton of mail. As noted, appellant indicated he was pulling on a hamper than had become jammed. In addition, Dr. Anderson provides a brief statement that appellant had an acute lumbar strain "sustained at work." A brief and general statement that appellant suffered an injury at work is not sufficient to establish an injury in the performance of duty.⁹ With respect to the March 2, 2012 form report from Dr. Anderson, this also provides little probative evidence on causal relationship. Dr. Anderson did not provide a diagnosis in this report, and the checking of a box "yes" on causal relationship with employment is of little probative value with further explanation.¹⁰ The Board finds that the medical evidence from him is not sufficient to establish a diagnosed condition causally related to the employment incident.

The record indicates that appellant received treatment from Dr. Lu as of March 19, 2012. Dr. Lu provided a history of injury, without providing an opinion on causal relationship between a diagnosed condition and the February 27, 2012 employment incident.

On April 19, 2012 appellant was treated by Dr. Bomback, who diagnosed left L4-5 and L5-S1 facet syndrome, left sacroiliac joint dysfunction, and likely incidental disc protrusions, left L4-5 and L5-S1. Dr. Bomback checked a box "yes" as to causal relationship with employment in a May 18, 2012 Form CA-20, but as noted above this is of little probative value. He stated in a June 27, 2012 report that the employment incident put a strain on his lower back causing facet syndrome, sacroiliac joint dysfunction and likely a disc protrusion, but this opinion is not supported by a complete history and sound medical reasoning or explanation. Dr. Bomback did not discuss whether appellant had a prior medical history involving the lumbar region, discuss the April 19, 2012 x-rays, or provide any explanation as to why he believes that all of the

⁸ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

⁹ *See A.G.*, Docket No. 13-1574 (issued November 7, 2013).

¹⁰ *See Barbara J. Williams*, 40 ECAB 649, 656 (1989).

diagnosed conditions were caused by the February 27, 2012 employment incident. The February 20, 2013 report similarly lacks any explanation for the opinion that all of appellant's back complaints were related to the employment incident.

Accordingly the Board finds that appellant did not meet his burden of proof in this case. The medical record does not contain a rationalized medical opinion with respect to a specific diagnosed condition or conditions and causal relationship to the February 27, 2012 employment incident.

The Board notes that the employing establishment issued a Form CA-16 authorization for medical treatment in this case. Where an employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim.¹¹ The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP.¹² The record is not clear as to whether OWCP paid for the cost of appellant's examination or treatment for the period noted on the form. On return of the case record, it should further address the issue.¹³

On appeal, counsel argues that the evidence as a whole supports causal relationship between the employment incident and a diagnosed injury. She cites a case where the Board found that the medical evidence was sufficient to establish that disability and back surgery were causally related to federal employment,¹⁴ but each claim must be evaluated based on the specific employment incident and the medical evidence submitted in that case. The Board has reviewed all of the medical evidence of record as of July 17, 2014. For the reasons noted above, the Board finds that appellant did not meet his burden of proof to establish an injury casually related to the February 27, 2012 employment incident.

Appellant may submit new evidence or argument with a written application 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 established an injury in the performance of duty on February 27, 2012. On return of the case record, OWCP should address the Form CA-16 issue.

¹¹ *Tracey P. Spillane*, 54 ECAB 608 (2003).

¹² *See* 20 C.F.R. § 10.300(c).

¹³ *See W.R.*, Docket No. 14-1869 (issued January 28, 2015).

¹⁴ *Joseph G. Herrnkind*, 40 ECAB 895 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 17, 2014 is affirmed.

Issued: March 25, 2015
Washington, DC

Patricia Howard Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board