

FACTUAL HISTORY

On January 8, 2014 appellant, a 50-year-old motor vehicle operator, filed a traumatic injury claim (Form CA-1) alleging that he sustained an injury on November 4, 2013 as a result of moving cars and using a van to shuttle drivers in the performance of duty.² He stated that he injured his lower back while entering and exiting the back of the van from a cramped third row seat and from riding in the van under breaking and accelerating conditions. On the claim form, the employing establishment noted that appellant did not report the injury within 30 days following the incident.

Appellant submitted work excuse notes dated October 8 and November 18, 2013, which noted that he was unable to return to work due to chronic and severe low back pain.

In a January 13, 2014 letter, OWCP notified appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted an undated narrative statement and witness statements dated December 18 and 23, 2013 from a coworker in support of his claim. He also submitted diagnostic studies and an October 16, 2009 report from a nurse practitioner diagnosing postlaminectomy syndrome, degenerative disc disease, radiculopathy, spondylolisthesis, axial spasm, diffuse atrophy, and polyneuropathy.

In reports dated January 16, 2012 and January 25 and September 24, 2013, Dr. Glenn D. Babus, a Board-certified anesthesiologist, diagnosed the following conditions: (1) postlaminectomy syndrome; (2) L3-4 internal disc disruption; (3) degenerative disc disease; (4) right-sided S1 radiculopathy; (5) L5-S1 grade one spondylolisthesis; (6) L4-S1 facet arthropathy; (7) paraspinal axial spasm and diffuse atrophy; and (8) mild lumbar arachnoiditis. He noted that appellant presented with chronic low back pain and right lower extremity pain. Dr. Babus found that the overall intensity of the pain had increased in severity, the timing was constant with no daytime temporal pain pattern, and quality described as burning, cramping, dull-aching, pressure-like, sharp, shooting, and throbbing.

On November 18, 2013 Dr. Babus reiterated his diagnoses and reported that appellant “states his neck, right arm, low back, and bilateral lower extremity pain had increased in severity after a work-related incident on November 4, 2013.” Appellant indicated that he was riding in a passenger van and he felt a shifting of his spine, which caused excruciating neck and low back pain, bilateral lower extremity pain, neuropathic pain, muscle cramping, difficulty walking, slight rectal incontinence, and also slight right arm pain. Dr. Babus opined that appellant was unable to return to work due to his severe pain, which had been awakening him during the night.

In a February 4, 2014 attending physician’s report (Form CA-20), Dr. Babus diagnosed “exacerbation of lumbar radiculopathy and possibly worsening of L5-S1 spondylolisthesis and worsening of arachnoiditis.” He checked the box marked “yes” that it was due to riding in a

² Appellant also submitted claims for wage-loss compensation (Form CA-7) for the following periods: December 11, 2013 through January 31, 2014 and November 6, 2013 through January 12, 2014.

passenger van at work on November 4, 2013. Appellant reiterated that he had felt a shifting of his spine.

By decision dated February 20, 2014, OWCP denied appellant's claim finding that the medical evidence was insufficient to establish a causal relationship between his lower back conditions and the November 4, 2013 employment incident.

On February 19, 2015 appellant, through counsel, requested reconsideration and submitted physical therapy notes dated February 19 and 20, 2014.

In reports dated July 4 through August 4, 2014 Dr. Richard Akoto, a family practitioner, diagnosed sciatica with radiculopathy, muscle spasm, chronic obstructive pulmonary disease, depression, anxiety, and hypertension. Dr. Akoto reported that appellant underwent lumbar spine laminectomy and disc fusion in 2009 due to degenerative disc disease and complained of persistent severe lumbar pain that radiated to his right lower extremity that had progressively worsened over the past nine months.

In reports dated February 6 and 19, 2015 Dr. Arthur W. Wardell, a Board-certified orthopedic surgeon, diagnosed lumbosacral spine injury aggravating preexisting L5-S1 fusion with new right and left sacroiliac joint disruption. Dr. Wardell asserted that appellant injured his low back on November 4, 2013 when he was riding in a van that was starting and stopping and bumping up and down. He found that appellant had a past medical history of back pain for which he underwent an L5-S1 fusion. Appellant noted that the difference between his back pain prior to the November 4, 2013 employment incident and after was more buttock pain. There was increased pain in the right leg and new pain down the left leg.

By decision dated May 28, 2015, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of establishing 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 injury⁴ 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.⁵

³ *Supra* note 1.

⁴ OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

⁵ *See T.H.*, 59 ECAB 388 (2008). *See also Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her condition relates to the employment incident.⁶

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 factors identified by the employee.⁷

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish lower back conditions causally related to the November 4, 2013 employment incident.

OWCP has accepted that the employment incident of November 4, 2013 occurred at the time, place, and in the manner alleged. The issue is whether appellant’s lower back conditions resulted from the November 4, 2013 employment incident. The Board finds that appellant did not meet his burden of proof to establish a causal relationship between the conditions for which compensation is claimed and the employment incident.

In his reports, Dr. Babus diagnosed the following conditions: (1) postlaminectomy syndrome; (2) L3-4 internal disc disruption; (3) degenerative disc disease; (4) right-sided S1 radiculopathy; (5) L5-S1 grade one spondylolisthesis; (6) L4-S1 facet arthropathy; (7) paraspinal axial spasm and diffuse atrophy; and (8) mild lumbar arachnoiditis. On November 18, 2013 he reiterated his diagnoses and reported that appellant “states his neck, right arm, low back, and bilateral lower extremity pain had increased in severity after a work-related incident on November 4, 2013.” Appellant indicated that he was riding in a passenger van and he felt a shifting of his spine, which caused excruciating neck and low back pain, bilateral lower extremity pain, neuropathic pain, muscle cramping, difficulty walking, slight rectal incontinence, and also slight right arm pain. Dr. Babus asserted that appellant was unable to return to work due to his severe pain. The Board finds that Dr. Babus failed to provide a rationalized opinion explaining how factors of appellant’s federal employment, such as driving, riding, or getting in and out of a van at work, caused or aggravated his lower back conditions. Dr. Babus noted that appellant’s condition occurred while he was at work, but such generalized statements do not establish causal relationship because they merely repeat his allegations and are unsupported by adequate medical rationale explaining how his physical activity at work actually caused or

⁶ *Id.* See Shirley A. Temple, 48 ECAB 404 (1997); John J. Carlone, 41 ECAB 354 (1989).

⁷ *Id.* See Gary J. Watling, 52 ECAB 278 (2001).

aggravated the diagnosed conditions.⁸ He failed to provide an opinion adequately addressing how the November 4, 2013 incident contributed to appellant's preexisting back conditions. Thus, the Board finds that the reports from Dr. Babus are insufficient to establish that appellant sustained an employment-related injury.

Similarly Dr. Babus indicated by a "yes" check mark that the aforementioned diagnosed conditions were causally related to the November 4, 2013 employment incident. However, the Board has held that a checkmark, without supporting rationale, is of limited probative value, and insufficient to establish the claim.⁹ Dr. Dabus did not explain how riding in a passenger van at work resulted in his claimed conditions. No mechanism of injury was provided.

In his reports, Dr. Wardell diagnosed lumbosacral spine injury aggravating preexisting L5-S1 fusion with new right and left sacroiliac joint disruption. He asserted that appellant injured his low back on November 4, 2013 when he was riding in a van that was starting and stopping and bumping up and down. Dr. Wardell found that appellant had a past medical history of back pain for which he underwent an L5-S1 fusion. He noted that appellant's conditions occurred while he was at work, but as noted above such generalized statements do not establish causal relationship.¹⁰ The Board finds that Dr. Wardell did not provide sufficient medical rationale explaining how appellant's new or preexisting lower back conditions were caused or aggravated by driving, riding, or entering and exiting a van at work on November 4, 2013. The need for such rationale is particularly important as the evidence indicates that appellant had a preexisting condition. Therefore, the Board finds that the reports from Dr. Wardell are insufficient to establish causal relationship.

Reports from Dr. Akoto noted diagnoses and findings, but did not specifically address whether the November 4, 2013 work incident caused or contributed to a diagnosed condition. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.¹¹ Thus, the Board finds that appellant did not meet his burden of proof with these submissions.

Appellant also submitted evidence from nurse practitioners and physical therapists. These documents do not constitute competent medical evidence because nurse practitioners nor physical therapist are considered "physicians" as defined under FECA.¹² As such, this evidence is also insufficient to meet appellant's burden of proof.

⁸ See *K.W.*, Docket No. 10-98 (issued September 10, 2010).

⁹ See *Lillian M. Jones*, 34 ECAB (1982); see also *J.R.*, Docket No. 15-1443 (issued October 21, 2015).

¹⁰ *Id.*

¹¹ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹² 5 U.S.C. § 8101(2); *Paul Foster*, 56 ECAB 208 (2004) (nurse practitioners); *Jennifer L. Sharp*, 48 ECAB 209 (1996) (physical therapists). See also *Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

On appeal, counsel contends that OWCP erred by denying appellant's claim for failure to establish causal relationship and argues that he submitted sufficient evidence to demonstrate that he was injured at the workplace due to riding in a jolting van and entering and exiting the van with preexisting lumbar injuries. Based on the findings and reasons set forth above, the Board finds counsel's arguments are not substantiated. As appellant has not submitted any rationalized medical evidence to support his allegation that he sustained an injury causally related to a November 4, 2013 employment incident, he has failed to meet his burden of proof to establish a claim for compensation.

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 lower back conditions causally related to a November 4, 2013 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the May 28, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 20, 2016
Washington, DC

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

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

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