

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

S.S., Appellant)	
)	
and)	Docket No. 17-1106
)	Issued: June 5, 2018
U.S. POSTAL SERVICE, POST OFFICE, Somerset, NJ, Employer)	
)	

Appearances:
Robert D. Campbell, Esq., for the appellant¹
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 26, 2017 appellant, through counsel, filed a timely appeal from a February 16, 2017 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 the claim.³

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.*

³ The record provided to the Board includes evidence received after OWCP issued its February 16, 2017 decision. The Board's jurisdiction is limited to the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

ISSUE

The issue is whether appellant has met his burden of proof to establish back conditions causally related to the accepted December 10, 2013 employment incident.

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts of the case as presented in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On December 10, 2013 appellant, then a 56-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on that date, he injured his low back when he fell out of a chair while pulling on snow boots at work. He stopped work on December 10, 2013 and did not return.⁵

By decision dated January 31, 2014, OWCP denied the claim as appellant had not established that the claimed incident occurred at the time, place, and in the manner alleged. On February 27, 2014 appellant requested a hearing before an OWCP hearing representative. By decision dated September 29, 2014, OWCP's hearing representative found that appellant had established that the incident occurred as alleged, but denied the claim as the evidence of record did not establish causal relationship between the accepted employment incident and the claimed back condition. Appellant requested reconsideration on January 19, 2015, and by decision dated August 21, 2015, OWCP denied modification of its prior decision.

On October 13, 2015 appellant appealed to the Board. By decision dated March 9, 2016, the Board affirmed OWCP's August 21, 2015 decision. The Board found that appellant had not submitted medical evidence sufficient to establish that the alleged conditions were causally related to the accepted employment incident.⁶

On May 3, 2016 appellant again requested reconsideration and submitted additional evidence in support of his request.

In an October 28, 2016 report, Dr. David Weiss, an osteopath, related the history of appellant's December 10, 2013 employment incident and his review of his previous reports of July 16 and December 29, 2014. He also set forth the results of an April 11, 2003 magnetic resonance imaging (MRI) scan, which indicated that there was moderate left and moderate-to-severe right foraminal stenosis at L5-S1 and a bulging disc at L5-S1. It was noted that the neural foramen where the S1 nerve exited was compromised and vulnerable. Dr. Weiss opined that the fall of December 10, 2013 led to proinflammatory cell release which caused chemical and

⁴ Docket No. 16-0056 (issued March 9, 2016).

⁵ Under OWCP File No. xxxxxx931, appellant has an accepted claim for lumbar degenerative disc disease, lumbar disc displacement, lumbar sprain, and lumbar stenosis from a December 1, 2001 work injury. He underwent an authorized lumbar laminectomy and fusion surgery on February 5, 2005. Appellant returned to work in 2006.

⁶ *Supra* note 4.

mechanical irritation to the S1 nerve root. Duplicate copies of Dr. Weiss' July 16 and December 29, 2014 reports were also received.

Evidence from OWCP File No. xxxxxx931 was also received. This included a duplicate copy of a partial report dated June 19, 2014 from Dr. Ian B. Fries, a Board-certified orthopedic surgeon and impartial medical specialist under File No. xxxxxx931, which noted bilateral lower extremity impairment ratings from the accepted December 1, 2001 employment injury, and a copy of the Board's August 4, 2016 decision in File No. xxxxxx931, which set aside a May 22, 2015 lower extremity schedule award decision.⁷

By decision dated February 16, 2017, OWCP denied modification of its prior decision. It found that the new evidence submitted on reconsideration was insufficient to establish causal relationship between appellant's diagnosed back conditions and the December 10, 2013 accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁸ 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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁹ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.¹⁰

In order to determine whether an employee sustained a traumatic 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 that must be considered conjunctively. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident that is alleged to have occurred.¹¹ An employee has not met his or her burden of proof in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.¹² 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.¹³

⁷ Docket No. 15-1736 (issued August 4, 2016).

⁸ *Supra* note 2.

⁹ *Joe D. Cameron*, 41 ECAB 153 (1989).

¹⁰ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

¹¹ *Gary J. Watling*, 52 ECAB 278 (2001).

¹² *S.N.*, Docket No. 12-1222 (issued August 23, 2013); *Tia L. Love*, 40 ECAB 586, 590 (1989).

¹³ *Deborah L. Beatty*, 54 ECAB 340 (2003).

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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 diagnosed condition and the specific employment factors identified by the claimant.¹⁴

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish his claim as he has not submitted rationalized medical evidence sufficient to support that his diagnosed back conditions were due to the accepted December 10, 2013 work incident.

Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹⁵ The Board will, therefore, not review the evidence addressed in the prior appeal.

OWCP continued to receive evidence on reconsideration. In his October 28, 2016 report, Dr. Weiss noted the history of the claimed December 10, 2013 work injury and indicated that he reviewed his prior reports of July 16 and December 29, 2014. Copies of the July 16 and December 29, 2014 report, which were previously of record and resubmitted, revealed that he was also aware of appellant's prior accepted work injury of 2001. Dr. Weiss noted the results of the April 11, 2003 MRI scan. He opined that the fall on December 10, 2013 led to proinflammatory cell release which caused chemical and mechanical irritation to the S1 nerve root. However, Dr. Weiss did not explain how the December 10, 2013 work incident caused, aggravated, or contributed to the findings to S1 nerve root found on the April 11, 2003 MRI scan. A medical opinion that states a conclusion, but does not offer any rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁶ Furthermore, Dr. Weiss did not provide any discussion about the effect if any, that the prior accepted work injury of 2001 may have had on the findings to the S1 nerve root found on the April 11, 2003 MRI scan.¹⁷ Thus, besides providing a general conclusion without the necessary rationale, Dr. Weiss did not base his opinion on a complete and accurate history of appellant's medical conditions establishing a diagnosed back condition causally related to the December 10, 2013 work incident.¹⁸ As Dr. Weiss failed to adequately explain how appellant's

¹⁴ *Solomon Polen*, 51 ECAB 341 (2000).

¹⁵ *See H.G.*, Docket No. 16-1191 (issued November 25, 2016).

¹⁶ *H.V.*, Docket No. 17-0492 (issued June 19, 2017); *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

¹⁷ *See supra* note 5. As noted, under OWCP File No. xxxxxx931, appellant has an accepted claim for lumbar degenerative disc disease, lumbar disc displacement, lumbar sprain and lumbar stenosis from a December 1, 2001 work injury, for which he underwent an authorized lumbar laminectomy and fusion surgery on February 5, 2005.

¹⁸ *M.G.*, Docket No. 16-0451 (issued March 17, 2017); *see also Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history have little probative value).

current back conditions were causally related to the December 10, 2013 employment incident and not an aggravation of a preexisting back condition, the Board finds that Dr. Weiss' report is insufficient to establish appellant's claim.¹⁹

As the reports of Dr. Weiss dated July 16 and December 29, 2014 and the June 19, 2014 partial report of Dr. Fries are duplicative of evidence already of record and previously considered, they have no new evidentiary value.²⁰

The Board's August 4, 2016 decision under OWCP File No. xxxxxx670 pertains to a schedule award resulting from appellant's December 20, 2001 work injuries. That decision has no relevance on establishing causal relationship between appellant's December 10, 2013 accepted employment incident and the diagnosed back conditions.²¹ There is no reasoned medical evidence explaining how appellant's December 10, 2013 accepted employment incident either caused or aggravated his diagnosed back conditions. Therefore, appellant has not met his burden of proof to establish back conditions causally related to the accepted December 10, 2013 employment incident.

On appeal counsel requests that OWCP combine OWCP File No. xxxxxx931 with the current claim as the claimed injuries relate to the same part of the body. The Board finds that a combination of the files at this point is premature as correct adjudication of the present claim does not require cross-referencing with the previous claim file.²²

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 back conditions causally related to the accepted December 10, 2013 employment incident.

¹⁹ In cases where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration or precipitation, the physician must provide rationalized medical opinion which differentiates between the effects of the work-related injury or disease and the preexisting condition. See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(e) (January 2013).

²⁰ See *Daniel Deparini*, 44 ECAB 657, 659 (1993).

²¹ See *M.D.*, Docket No. 16-0745 (issued February 8, 2017); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979). The submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.

²² Federal (FECA) Procedure Manual, *supra* note 19 at Chapter 2.400.8(c) (February 2000).

ORDER

IT IS HEREBY ORDERED THAT the February 16, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 5, 2018
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