

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

G.R., Appellant)	
)	
and)	Docket No. 18-0430
)	Issued: September 13, 2018
U.S. POSTAL SERVICE, POST OFFICE,)	
Kansas City, MO, Employer)	
)	

Appearances:
Stephanie N. Leet, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 26, 2017 appellant, through counsel, filed a timely appeal from an August 8, 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 this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish the expansion of the acceptance of his claim to include the additional conditions of aggravation of degenerative disc

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.*

disease at L3-5 and L4-5, aggravation of mild facet arthropathy at L5-S1, radiculopathy, and sciatica as causally related to his accepted June 18, 2014 employment injury.

FACTUAL HISTORY

On July 1, 2014 appellant, then a 48-year-old bulk mail dock clerk, filed a traumatic injury claim (Form CA-1) alleging that on June 18, 2014, while at work, he strained his lower back after lifting a trailer door. He stopped work and sought immediate medical treatment on the date of injury.

By development letter dated July 8, 2014, OWCP informed appellant that the evidence of record was insufficient to establish his traumatic injury claim. It advised him of the medical and factual evidence needed. OWCP afforded appellant 30 days to submit the necessary evidence.

A June 18, 2014 emergency department discharge report reflected that appellant sought treatment with Dr. David Scheffler, a doctor of osteopathic medicine, who diagnosed sacroiliac inflammation.

In medical reports dated July 15 and September 16, 2014, Dr. Tiffany Williams, Board-certified in physical medicine and rehabilitation, reported that appellant presented with complaints of left-sided low back pain which started on June 18, 2014 while at work. Appellant reported that on that date, he was opening a tractor trailer door when his back froze up. Dr. Williams noted that appellant was evaluated in July for acute onset of left-sided low back pain with radiation of pain into the left hip, buttock, and anterior thigh that started on June 18, 2014 while at work. A September 15, 2014 magnetic resonance imaging (MRI) scan revealed degenerative disc disease at L3-4 and L4-5, and mild facet arthropathy at L5-S1. Dr. Williams provided duty status reports (Form CA-17) dated July 15 and September 16, 2014 documenting work restrictions for a diagnoses of low back pain and leg weakness.

By decision dated October 16, 2014, OWCP denied appellant's claim finding that the evidence of record failed to establish that his diagnosed conditions were causally related to the accepted June 18, 2014 employment incident.

On November 12, 2014 appellant requested review of the written record before an OWCP hearing representative.

In a September 16, 2014 diagnostic report, Dr. Ernest Madarang, a Board-certified diagnostic radiologist, reported that a lumbar spine MRI scan revealed no high-grade central spinal stenosis or foraminal narrowing, mild degenerative facet hypotrophy at L4-5 and L5-S1, and mild degenerative disc disease at L2-3.

In an October 20, 2014 report, Dr. Williams noted an acute onset of low back pain and radiation of pain in the left leg which started on June 18, 2014 while working. She related that appellant had some resolution of symptoms, but continued to experience pain. Dr. Williams also explained that appellant's history, physical examination findings, and diagnostic studies revealed likely etiologies of axial low back pain, degenerative disc disease at L3-4 and L4-5, mild facet arthropathy at L5-S1, muscle strain in the lumbar region, and radicular like symptoms in the right lower extremity. She provided work restrictions.

In a November 4, 2014 narrative report, Dr. Troy A. Burns, Board-certified in emergency medicine, reported that appellant had been under his care since 2004 and was last evaluated on June 23, 2014 following a June 18, 2014 work injury. Appellant experienced a sudden onset of severe left low back and hip pain when bending over to open a semi-trailer door. He was treated in the emergency department on that date and was subsequently referred to physical therapy.

By decision dated April 21, 2015, an OWCP hearing representative affirmed the October 16, 2014 decision finding that the evidence of record failed to establish that his lumbar injury was causally related to the accepted June 18, 2014 employment incident.

In medical reports dated November 17 and December 22, 2014, Dr. Williams diagnosed low back pain, left SI joint arthropathy, facet arthropathy at L4-5 and L5-S1, lumbar muscle strain, and spondylosis.

In an April 13, 2016 narrative report, Dr. Williams opined within a reasonable degree of medical certainty that appellant lifting the trailer door on June 18, 2014 aggravated the diagnoses of degenerative disc disease at L3-4 and L4-5 and mild facet arthropathy at L5-S1, causing radiculopathy and sciatica after the injury. She further reported that this incident also caused a lumbar strain. Dr. Williams noted that although the September 15, 2014 lumbar MRI scan showed a degenerative condition, appellant was asymptomatic prior to the June 18, 2014 injury, leading her to the conclusion that the injury aggravated the above diagnoses.

By decision dated July 6, 2016, OWCP accepted the claim for lumbar strain.

By decision dated July 6, 2016, OWCP vacated in part and affirmed in part the April 21, 2015 decision. It found that appellant had established a causal relationship between the June 18, 2014 employment incident and the diagnosis of lumbar strain. However, appellant failed to establish causal relationship for the diagnoses of aggravation of degenerative disc disease at L3-4 and L4-5, aggravation of mild facet arthropathy at L5-S1, radiculopathy, and sciatica.³

On June 30, 2017 appellant, through counsel, requested reconsideration of the July 6, 2016 OWCP decision denying his claim for additional lumbar conditions. Counsel reported that the claim should be expanded to include the additional conditions of degenerative disc disease at L3-4 and L4-5, mild facet atrophy at L5-S1, lumbar strain, radiculopathy, and sciatica as evidenced by the medical reports of Dr. Williams and Dr. John W. Ellis, Board-certified in family medicine.

In a June 29, 2017 medical report, Dr. Ellis described the June 18, 2014 employment incident when appellant was lifting a trailer door at work and felt sudden pain in his low back. He noted that appellant experienced right low back pain approximately six years prior. Appellant was treated with epidural injections and physical therapy and was subsequently asymptomatic two months later. Dr. Ellis reported that he continued working heavy manual labor of opening and shutting the mail door and a lot of bending and lifting without difficulty until the acute June 18, 2014 injury. He provided physical examination findings, a review of diagnostic testing, and

³ In another July 6, 2016 decision, OWCP determined that appellant was not entitled to continuation of pay during his absence from work for the period June 19 through August 2, 2014. This issue is not before the Board on the present appeal.

diagnosed sprain of ligament lumbar spine, muscle tendon unit strain of left back, and strain of left iliolumbar ligament.

Dr. Ellis opined that appellant's conditions and disability set forth in his findings arose out of and in the course of appellant's employment, and that employment factors and work duties contributed to, aggravated, and/or caused his injuries. He explained that the lifting of the trailer door caused a sudden increase of straining forces on the left iliolumbar and sacroiliac ligaments, resulting in the need for emergency medical treatment. Dr. Ellis reported that the increased pressure from the tight muscles in appellant's back from the injury to the sacroiliac ligaments and lumbar ligaments caused impingement of the left L5 and S1 spinal nerves. He noted that this was very minor and there was no evidence of a herniated disc on physical examination or the MRI scan study. Dr. Ellis noted that appellant injured his right low back about six years prior which was indicative of a ligamentous injury. He opined that this was caused from his work of lifting doors at the employing establishment and that appellant had been asymptomatic until the sudden injury on the other side of his low back on June 18, 2014. Dr. Ellis noted that because appellant was able to recover from the injury six years prior, it was indicative of a grade 1 strain whereas the June 18, 2014 injury was a grade 2 or 3 strain on the muscles, ligaments, and fibers in his left low back. He reported that a grade 2 or 3 strain would result in the fibers being torn apart while a grade 1 strain results in the fibers stretching.

In a July 3, 2017 note, Dr. Ellis reported that, if OWCP declined to accept appellant's claim for an obvious acute injury, he should consider filing an occupational disease claim (Form CA-2).

By decision dated August 8, 2017, OWCP affirmed the July 6, 2016 decision finding that the medical evidence of record failed to establish causal relationship between the accepted June 18, 2014 employment injury and the additional conditions of aggravated degenerative disc disease at L3-4 and L4-5, aggravated mild facet atrophy at L5-S1, radiculopathy, and sciatica.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 are causally related to the employment injury.⁵ 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.⁶

To establish causal relationship between the condition alleged, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized

⁴ *Supra* note 2.

⁵ *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁶ *Michael E. Smith*, 50 ECAB 313 (1999).

medical opinion evidence supporting such causal relationship.⁷ 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁸

ANALYSIS

The Board finds that appellant did not submit sufficient medical evidence to support the expansion of his claim to include the additional conditions of aggravated degenerative disc disease at L3-4 and L4-5, aggravated mild facet atrophy at L5-S1, radiculopathy, and sciatica were causally related to the accepted June 18, 2014 employment injury.⁹

On the date of injury, appellant sought emergency medical treatment for complaints of low back pain. While the emergency department discharge notes reflect immediate treatment for his lumbar injury, the diagnosis provided was sacroiliac inflammation. This diagnosis is not at issue in this appeal.

In medical reports dated July 15, 2014 through April 13, 2016, Dr. Williams described the June 18, 2014 employment incident when appellant was lifting a trailer door and experienced low back pain. In an April 13, 2016 narrative report, she opined within a reasonable degree of medical certainty that lifting the trailer door on June 18, 2014 aggravated the diagnoses of degenerative disc disease at L3-4 and L4-5 and mild facet arthropathy at L5-S1, causing radiculopathy and sciatica following the injury. Dr. Williams further reported that this incident also caused a lumbar strain. The Board finds that the opinion of Dr. Williams is not well rationalized. While she opined that the diagnosed conditions were caused by the June 18, 2014 employment incident, Dr. Williams failed to provide a sufficient explanation as to the mechanism of injury, namely, how lifting a trailer door would cause or aggravate appellant's degenerative lumbar conditions.¹⁰ She explained that, although the September 15, 2014 lumbar MRI scan showed a degenerative condition, appellant was asymptomatic prior to the June 18, 2014 employment injury, leading her to conclude that the injury aggravated the above diagnoses. The Board has held that an opinion that a condition is causally related because the employee was asymptomatic before the injury is insufficient, without adequate rationale, to establish causal relationship.¹¹ As noted by Dr. Williams, the September 15, 2015 lumbar spine MRI scan revealed preexisting degenerative

⁷ See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁸ *James Mack*, 43 ECAB 321 (1991).

⁹ See *Robert Broome*, 55 ECAB 339 (2004).

¹⁰ *S.W.*, Docket 08-2538 (issued May 21, 2009).

¹¹ *M.R.*, Docket No. 14-0011 (issued August 27, 2014).

conditions. However, she failed to discuss appellant's medical history, did not address why his complaints were not caused by his preexisting degenerative condition, or discuss whether his preexisting injury had progressed beyond what might be expected from the natural progression of that condition.¹² As it is unclear if appellant's injury was caused by the June 18, 2014 employment incident, a result of a preexisting condition, or due to degenerative changes, a well-rationalized opinion is particularly warranted when there is a history of a preexisting condition.¹³ Without explaining how physiologically the movements involved in the June 18, 2014 employment incident caused or contributed to the diagnosed conditions, Dr. Williams' opinion is equivocal in nature and of limited probative value.¹⁴

The Board further finds that Dr. Ellis' June 29, 2017 report fails to establish that appellant's alleged additional lumbar conditions are causally related to the accepted employment injury. Dr. Ellis diagnosed sprain of ligament lumbar spine, muscle tendon unit strain of left back, and strain of left iliolumbar ligament. He opined that appellant's conditions set forth in his diagnosis findings arose out of and in the course of appellant's employment, and that employment factors and work duties contributed to, aggravated, and/or caused his conditions. The Board notes that Dr. Ellis' opinion pertaining to causation and the mechanism of injury relates to the diagnosed conditions of lumbar and ligament sprain. As noted above, OWCP already accepted the claim for lumbar sprain. However, Dr. Ellis failed to provide a rationalized opinion pertaining to causal relationship for the additional conditions of aggravated degenerative disc disease at L3-4 and L4-5, aggravated mild facet atrophy at L5-S1, radiculopathy, and sciatica.

Dr. Ellis reported that the increased pressure from the tight muscles in his back due to injury to the sacroiliac ligaments and lumbar ligaments caused impingement of the left L5 and S1 spinal nerves. However, as he reported this to be very minor with no evidence of herniated disc on physical examination or MRI scan, it is unclear what objective evidence exists to indicate that the preexisting degenerative conditions were caused or aggravated by the June 18, 2014 employment incident. It appears that the physician can only relate causal relationship of the preexisting degenerative conditions through subjective means based on the longevity of appellant's symptoms. Dr. Ellis failed to identify objective evidence *via* clinical studies and examination findings to provide support for the additional lumbar conditions. He further failed to discuss whether appellant's preexisting injuries had progressed beyond what might be expected from the natural progression of that condition.¹⁵ As Dr. Ellis failed to provide a fully-rationalized opinion causally relating appellant's degenerative lumbar injuries to the accepted June 18, 2014 employment injury, his medical report fails to establish additional work-related injuries.¹⁶

¹² *R.E.*, Docket No. 14-0868 (issued September 24, 2014).

¹³ *T.M.*, Docket No. 08-0975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

¹⁴ See *L.M.*, Docket No. 14-0973 (issued August 25, 2014); *R.G.*, Docket No. 14-0113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-0548 (issued November 16, 2012).

¹⁵ *Supra* note 12.

¹⁶ *S.R.*, Docket No. 12-1098 (issued September 19, 2012).

The remaining medical evidence of record is also insufficient to establish appellant's claim. Dr. Burns' November 4, 2014 report noted the onset of severe left low back and hip pain following the June 18, 2014 employment incident when bending over to open a semi-trailer door. The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis.¹⁷ As Dr. Burns is attributing appellant's symptoms to his employment duties rather than the diagnosed medical conditions, his opinion on causal relationship is of limited probative value.¹⁸

Dr. Madarang's September 16, 2014 report is also insufficient to establish appellant's claim as he merely interpreted diagnostic studies and provided no opinion on the cause of appellant's claimed conditions. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.¹⁹ Any medical opinion evidence appellant may submit to support his claim should reflect a correct history and offer a medically sound explanation by the physician of how the specific employment incident, in particular physiologically, caused or aggravated the claimed conditions.²⁰

On appeal counsel for appellant argues that the medical reports establish that appellant's claim should be accepted for additional diagnosed conditions. An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.²¹ Appellant's honest belief that his accepted employment incident aggravated his degenerative lumbar conditions, however sincerely held, does not constitute the medical evidence necessary to establish causal relationship.²² The Board finds that the record lacks rationalized medical evidence establishing causal relationship between the accepted June 18, 2014 employment injury and the additional conditions of aggravated degenerative disc disease at L3-4 and L4-5, aggravated mild facet atrophy at L5-S1, radiculopathy, and sciatica.

Appellant may submit additional 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 did not meet his burden of proof to establish the expansion of the acceptance of his claim to include the additional conditions of aggravated degenerative disc disease at L3-4 and L4-5, aggravated mild facet atrophy at L5-S1, radiculopathy, and sciatica as causally related to the accepted June 18, 2014 employment injury.

¹⁷ *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

¹⁸ *Supra* note 12.

¹⁹ *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

²⁰ *Supra* note 8.

²¹ *D.D.*, 57 ECAB 734 (2006).

²² *See J.S.*, Docket No. 17-0967 (issued August 23, 2017).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated August 8, 2017 is affirmed.

Issued: September 13, 2018
Washington, DC

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

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

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