

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

F.C., Appellant)	
)	
and)	Docket No. 19-1267
)	Issued: December 20, 2019
DEPARTMENT OF THE AIR FORCE,)	
TINKER AIR FORCE BASE, OK, Employer)	
)	

Appearances:
Christopher L. Kannady, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 20, 2019 appellant, through counsel, filed a timely appeal from a March 20, 2019 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.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 Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a lumbar condition causally related to the accepted June 24, 2014 employment incident.

FACTUAL HISTORY

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

On July 24, 2014 appellant, then a 50-year-old aircraft engine mechanical work inspector, filed an occupational disease claim (Form CA-2) alleging that on that day, he was performing a two-man lift with a ladder when his back began to hurt and he had back spasms. He explained that he was lifting above his head over the side of a ladder as a coworker was lifting from the ground. Appellant indicated that the employing establishment provided ladders that required him to lean over a platform to reach an engine. He noted that he finished his shift, was off work for two weeks, and missed work intermittently thereafter.

By decision dated November 21, 2014, OWCP denied appellant's claim. It found that the evidence submitted was insufficient to establish that the injury or events occurred as described.

On December 3 and 16, 2014 counsel requested a hearing, which was held before an OWCP hearing representative on August 6, 2015. During the hearing, appellant confirmed that he was claiming a traumatic injury.

By decision dated October 8, 2015, an OWCP hearing representative affirmed, as modified, the November 21, 2014 decision, finding that appellant had established that the June 24, 2014 incident occurred as alleged. He further found, however, that the medical evidence of record was insufficient to support causal relationship between a diagnosed medical condition and the accepted June 24, 2014 employment incident.

On March 3, 2016 appellant, through counsel, timely appealed to the Board. By decision dated November 21, 2016, the Board affirmed the October 8, 2015 decision finding that appellant had not met his burden of proof to establish a traumatic injury causally related to the June 24, 2014 employment incident.

On February 13, 2017 appellant, through counsel, requested reconsideration and submitted new evidence.

In an October 21, 2015 report, Dr. Qualls Stevens, an osteopath Board-certified in neurosurgery, noted that he initially saw appellant in March 2015, when he presented for a work-related accident which had occurred in June 2014. He advised that appellant was "working on an airplane engine when he felt a pop in his back." Dr. Stevens noted that since then, appellant was plagued with back pain and radiating pain into both lower extremities. He noted that appellant underwent an anterior and posterior lumbar fusion operation on April 27, 2015, and had ongoing

⁴ Docket No. 16-0743 (issued November 21, 2016).

chronic pain. Dr. Stevens opined that the need for treatment and surgery were the result of the work-related injury.

By decision dated February 23, 2018, OWCP denied modification of its prior decision.

On December 26, 2018 appellant requested reconsideration.

A report dated June 28, 2018 from Dr. M. Stephen Wilson, an orthopedic surgeon, noted appellant's history of injury working on an airplane engine when he felt a pop in his back, his medical treatment, and his prior injury at work in December 2008. Dr. Wilson advised that the incident on June 24, 2014 caused a significant increase in appellant's back pain along with bilateral lower extremity radicular symptoms, which were not present until the injury on June 24, 2014. He examined appellant and noted physical examination findings of the lumbar spine which included muscle spasms palpable in the bilateral paraspinal musculature from L1 through S1; restricted range of motion, weakness, decreased sensation, decreased two point discrimination with testing in the L5 nerve distribution of the right lower extremity, and positive straight leg raising. Dr. Wilson diagnosed: other intervertebral disc displacement, lumbosacral region; other intervertebral disc displacement, lumbosacral region, with radiculopathy; lumbar radiculopathy; and status post anterior and posterior lumbar fusion at L4-5.

Dr. Wilson referred to appellant's prior injury to his lumbar spine in December 2008 which resulted in a bulging disc at L4-5. He explained that appellant was provided with medications, was off work for a short period of time, and returned to full-time work without restrictions. Dr. Wilson opined that the injury on June 24, 2014, caused a significant increase in appellant's back pain along with bilateral lower extremity radicular symptoms, previously not present. He opined, "[t]herefore, in my medical opinion, based upon a reasonable degree of medical certainty, the sole and major cause of the significant and identifiable injury and need for treatment to the lumbar spine is directly related to the event that he was involved in on June 24, 2014, while at work."

By decision dated March 20, 2019, OWCP denied modification of the February 23, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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 of FECA,⁶ that an injury 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

⁵ *Supra* note 2.

⁶ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

the employment injury.⁷ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁸

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.⁹ Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.¹⁰ The second component is whether the employment incident caused a personal injury. An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.¹¹

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹² A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment incident must be based on a complete factual and medical background.¹³ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).¹⁴

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a lumbar condition causally related to the accepted June 24, 2014 employment incident.

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of OWCP's October 8, 2015 merit decision because the Board considered that evidence in its November 1, 2016 decision. Findings made in prior Board decisions are *res judicata*, absent any further review by OWCP, under section 8128 of FECA.¹⁵

⁷ *S.C., id.; J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁸ *S.C., id.; K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁹ *K.K.*, Docket No. 19-1193 (issued October 21, 2019); *R.C.*, Docket No. 19-0376 (issued July 15, 2019).

¹⁰ *Id.*

¹¹ *Id.*

¹² *K.K., supra* note 9; *M.B.*, Docket No. 17-1999 (issued November 13, 2018).

¹³ *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *K.V.*, Docket No. 18-0723 (issued November 9, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹⁴ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁵ *J.T.*, Docket No. 18-1757 (issued April 19, 2019).

In support of his claim, appellant submitted an October 21, 2015 report from Dr. Stevens who noted that appellant was working on an airplane engine when he felt a pop in his back. Dr. Stevens indicated that appellant had ongoing chronic pain, and had undergone an anterior and posterior fusion. He noted appellant's chronic pain, but he did not provide a specific diagnosis.¹⁶ While Dr. Stevens opined that the need for treatment and surgery were the result of the work-related injury, he did not provide medical rationale supporting his conclusion that the condition or the procedure were related to his accepted employment injury. Medical conclusions unsupported by rationale are of little probative value.¹⁷

In a June 28, 2018 report, Dr. Wilson noted appellant's history of injury and his prior spine injury at work in December 2008. He provided diagnoses of lumbar intervertebral disc displacement, lumbar radiculopathy, and status post anterior and posterior lumbar fusion at L4-5. Dr. Wilson explained that the employment incident on June 24, 2014 caused a significant increase in appellant's back pain, along with bilateral lower extremity radicular symptoms, which were not present until the June 24, 2014 injury. He opined, "[t]herefore, in my medical opinion, based upon a reasonable degree of medical certainty, the sole and major cause of the significant and identifiable injury and need for treatment to the lumbar spine is directly related to the event that he was involved in on June 24, 2014, while at work." The Board finds that while Dr. Wilson opined that the accepted employment incident was the sole and major cause of her lumbar spine condition, his opinion is merely conclusory in nature and fails to provide the necessary medical rationale to explain, physiologically, how the employment incident was sufficient to cause the conditions.¹⁸ The Board has held that a medical opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury, but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.¹⁹ Therefore, the June 28, 2018 report of Dr. Wilson is insufficient to meet appellant's burden of proof to establish his claim.

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 a lumbar condition causally related to the accepted June 24, 2014 employment incident.

¹⁶ *A.T.*, Docket No. 19-0410 (issued August 13, 2019); *Robert Broome*, 57 ECAB 339, 342 (2004) (the Board has consistently held that a diagnosis of pain does not constitute a basis for payment of compensation, as pain is a symptom, not a specific diagnosis).

¹⁷ *See T.A.*, Docket No. 18-0431 (issued November 7, 2018).

¹⁸ *Id.*

¹⁹ *K.R.*, Docket No. 18-1388 (issued January 9, 2019); *E.D.*, Docket No. 16-1854 (issued March 3, 2017); *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

ORDER

IT IS HEREBY ORDERED THAT the March 20, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 20, 2019
Washington, DC

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

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

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