

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

R.V., Appellant	)	
	)	
and	)	<b>Docket No. 18-1037</b>
	)	<b>Issued: March 26, 2019</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Linden, NJ, Employer	)	
	)	

*Appearances:*  
Robert D. Campbell, Esq., for the appellant<sup>1</sup>  
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 April 23, 2018 appellant, through counsel, filed a timely appeal from a March 27, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish that his lumbar conditions were causally related to the accepted January 6, 2014 employment incident.

## FACTUAL HISTORY

On March 27, 2014 appellant, then a 48-year-old letter carrier, filed a recurrence claim (Form CA-2a) alleging that he sustained a recurrence of disability on January 8, 2014 while at work due to a previously accepted January 24, 2013 employment injury under OWCP File No. xxxxxx570. He explained that he felt pain in his legs and worsening back pain while pushing a hamper of mail on a snow covered parking lot, while in the performance of duty. Appellant stopped work on February 4, 2014. Due to the circumstances of his claim, OWCP determined that the recurrence claim should be adjudicated as a new traumatic injury claim (Form CA-1) and assigned OWCP File No. xxxxxx600.

Along with the claim, appellant filed a claim for wage-loss compensation (Form CA-7) for the period February 4 through May 30, 2014.

In reports dated February 4, 11, and 14, March 4, and June 4, 2014, Dr. Morton Farber, a Board-certified orthopedic surgeon, provided impressions of herniated nucleus pulposus and lumbar and left-sided sciatica and noted that appellant could not return to work.

In a February 14, 2014 attending physician's report (Form CA-20), Dr. Farber noted that appellant had sustained an employment injury on January 24, 2013. He opined that appellant was totally disabled from February 4 through March 4, 2014 due to a displaced lumbar disc and sciatica.

In a June 2, 2014 report, Dr. Nathaniel Sutain, a Board-certified physiatrist, noted that appellant reported that his lower extremity radicular symptoms occurred after pushing a hamper at work on January 7, 2014. He indicated that x-rays showed some loss of disc height in the lumbar spine at L4-5. Dr. Sutain provided an impression of herniated nucleus pulposus, lumbar left. He ordered a magnetic resonance imaging (MRI) scan of appellant's lumbar spine. In a June 4, 2014 work restriction evaluation (OWCP-5c) form, Dr. Sutain held appellant off work for approximately two months. In a June 4, 2014 Form CA-20, he indicated that on January 7, 2014 appellant was pushing a hamper with mail in a parking lot covered with snow, which made it hard to push, when his back and leg began to hurt. Dr. Sutain diagnosed herniated lumbar disc and opined that the diagnosed condition was caused or aggravated by appellant's employment activity as appellant had reported exacerbation of symptoms after the alleged January 2014 employment incident.

In a June 4, 2014 letter, the employing establishment challenged the claim. It reported that appellant's time and attendance record indicated that he was on annual leave when the alleged incident occurred.

By development letter dated June 9, 2014, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him as to the medical and factual evidence

required. OWCP also instructed appellant to complete a questionnaire regarding the factual aspects of his claim. It afforded him 30 days to provide the necessary evidence.

In response, OWCP received appellant's June 25, 2014 signed questionnaire which was otherwise incomplete.<sup>3</sup> It also received a traumatic injury claim (Form CA-1), which noted a date of injury of January 7, 2014, and a June 17, 2014 note from Rosario Davidson, a certified physician assistant.

The employing establishment continued to challenge appellant's claim, however, in a June 23, 2014 letter, T.L., a supervisor, indicated that January 7, 2014 was the correct date of injury.

By decision dated July 11, 2014, OWCP denied the claim as the factual component of fact of injury had not been established. It noted that appellant was on annual leave on January 7, 2014.

On May 18, 2015 appellant, through counsel, requested reconsideration. Counsel argued that the supervisor's statement of August 11, 2014 established the factual aspect of the claim and that the medical evidence of record was sufficient to establish the claim.

In an August 11, 2014 statement, T.L., indicated that appellant had reported to him on January 6, 2014 that appellant's back was bothering him from pushing his hamper through the snow in the parking lot to load his vehicle. He noted that the dates of injury "were incorrectly entered" on the Form CA-2 "and later corrected. After reviewing the dates, I realized the error and correction." T.L. acknowledged that he should have been more diligent before submitting information. Witness statements were received along with medical evidence predating the current claim which referred to the January 24, 2013 work injury.

In a January 8, 2015 report, Dr. Sutain indicated that he first saw appellant on June 3, 2014 for lower extremity radicular symptoms. Appellant reported that his injury occurred on January 6, 2014 when he was pushing a mail hamper and exacerbated a previous employment injury. Dr. Sutain noted appellant's medical course and diagnosed herniated nucleus pulposus, sciatica, and facet arthropathy. He opined that appellant's diagnoses were related to the January 6, 2014 employment incident. Dr. Sutain noted that it was unlikely that appellant would have been able to work prior to the reexacerbation. He also noted the fact that appellant's symptoms were radicular in nature and that he was pushing a large mail hamper supported a finding that his radicular symptoms were causally related to the January 6, 2014 employment incident.

On February 11, 2015 appellant underwent a discectomy at L4-5. On October 27, 2015 he underwent L3-4 and L4-5 fusion surgery.

On February 11, 2016 counsel requested the status of appellant's request for reconsideration.

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<sup>3</sup> Appellant also submitted Form CA-7 claims for compensation for the period beginning February 4, 2014. OWCP advised him, in a June 17, 2014 letter, that until his claim was adjudicated, no action would be taken on his CA-7 form claims.

By decision dated March 28, 2016, OWCP modified its prior decision to reflect the date of injury as January 6, 2014, but affirmed the denial of the claim as causal relationship had not been established between the diagnosed conditions and the accepted employment incident.

On October 12, 2016 counsel requested reconsideration.

In a June 16, 2016 report, Dr. Sutain noted the history of the January 24, 2013 and January 6, 2014 employment incidents. He noted that appellant was on partial duty from the initial injury. Once appellant had the second incident, he was unable to continue working partial duty because of the severity of his pain. Dr. Sutain noted that appellant failed conservative treatment and had to undergo spinal fusion surgery. He opined that appellant had a worsening of his symptoms which correlated to MRI scan findings after the January 6, 2014 injury. Dr. Sutain noted that appellant had significant herniated discs at L3-4, L4-5, and L5-S1 after the initial January 24, 2013 injury, and that those conditions continued after the second injury, caused his symptoms to become refractory to treatment and necessitated a spinal fusion.

By decision dated January 10, 2017, OWCP denied modification of its March 28, 2016 decision. It found that the treating physicians failed to provide a well-reasoned medical explanation, with supporting objective findings, as to how the accepted January 6, 2014 employment incident caused or aggravated the diagnosed conditions.

On January 8, 2018 OWCP received appellant's January 3, 2018 request for reconsideration.

In reports dated June 14 and September 7, 2017, Dr. David Weiss, an osteopath and Board-certified family practitioner, noted the history of appellant's January 6, 2014 employment incident. He related that appellant's medical history and treatment, provided examination findings, and reviewed medical records. Dr. Weiss diagnosed: aggravation and acceleration of preexisting lumbar spine pathology (workers' compensation injury January 2, 2013 with documented disc herniations L3-4, L4-5, and L5-S1); status post interventional pain management with lumbar nerve root block; aggravation of preexisting lumbar spinal stenosis; status post open posterolateral discectomy L4-5, February 11, 2015; recurrent disc herniation L4-5, MRI scan positive May 26, 2015; aggravation of lumbar spinal stenosis; status post L3-4 and L4-5 anterior lumbar interbody fusion with insertion of PEEK cage spacers, October 27, 2015; and status post L3 to L5 posterolateral fusion with pedicle screw instrumentation and posterolateral bony fusion, October 27, 2015. He opined that appellant's aggravation and acceleration his lumbar spine condition following the January 6, 2014 incident necessitated lumbar spine surgery. Dr. Weiss further opined that the mechanism of injury, pushing the mail hamper (stuck in snow) would be conducive to the aggravation and acceleration that appellant sustained. In his September 7, 2017 report, he indicated that "it is my opinion, giv[ing] [appellant's] previous compromised lumbar spine, that the trauma of January 6, 2014 caused additional inflammation thereby impinging the nerve root causing lower extremity pain and increasing his lumbar spine pain."

By decision dated March 27, 2018, OWCP denied modification of its previous decision.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>4</sup> 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 period of FECA, that an injury was sustained 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.<sup>5</sup> 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.<sup>6</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.<sup>7</sup> Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>8</sup>

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 claimant, must be one of reasonable certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident identified by the claimant.<sup>9</sup>

## ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that his lumbar conditions were causally related to the accepted January 6, 2014 employment incident.

Appellant was initially treated by Dr. Farber. While Dr. Farber noted in his February 4, 2014 report that appellant had new back pain and left-sided sciatica and in his February 14, 2014 Form CA-20 report diagnosed displaced lumbar disc and sciatica, he did not provide a history of

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<sup>4</sup> See *supra* note 2.

<sup>5</sup> *M.M.*, Docket No. 18-1366 (issued February 7, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>6</sup> *J.M.*, Docket No. 18-1578 (issued February 27, 2019); *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989). A traumatic injury refers to injury caused by a specific event or incident or series of events or incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift. 20 C.F.R. § 10.5(q), (ee); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

<sup>7</sup> See *M.E.*, Docket No. 18-0330 (September 14, 2018); *D.B.*, 58 ECAB 464 (2007); *Julie B. Hawkins*, 38 ECAB 393 (1987).

<sup>8</sup> See *M.E., id.*; *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>9</sup> See *I.J.*, 59 ECAB 408 (2008); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

injury or offer an opinion as to the cause of appellant's condition. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>10</sup> These reports, therefore, are insufficient to establish appellant's claim.

Appellant also submitted multiple reports from Dr. Sutain. In his June 2, 2014 report, Dr. Sutain noted that appellant reported that his radicular symptoms occurred after pushing a hamper at work on January 7, 2014. While he diagnosed a left lumbar herniated nucleus pulposus and held appellant off work, he did not offer a medical opinion regarding causal relationship between the diagnosed conditions and the January 6, 2014 employment incident.<sup>11</sup> In his June 4, 2014 Form CA-20, Dr. Sutain opined that the diagnosed herniated lumbar disc was caused or aggravated by appellant's employment activity as appellant had reported exacerbation of symptoms after the January 2014 incident. Similarly, in his January 8, 2015 report, he indicated that it was unlikely that appellant would have been able to work prior to the reexacerbation, the Board has held that an opinion that a condition is causally related because the employee was asymptomatic before the injury, without adequate rationale, is insufficient to establish causal relationship.<sup>12</sup> In his June 16, 2016 report, Dr. Sutain opined that appellant had a worsening of his symptoms which correlated to MRI scan findings after the January 6, 2014 injury. He indicated that after the first work injury of January 24, 2013 appellant had significant herniated discs at L3-4, L4-5, and L5-S-1, after the second injury of January 6, 2014 appellant's symptoms to become refractory to treatment and necessitated a spinal fusion. The Board has explained, however, that a physician must provide a narrative description of the identified employment incident and a reasoned opinion explaining how physiologically the employment incident described caused or contributed to appellant's diagnosed conditions.<sup>13</sup> This opinion did not explain the mechanism of injury, but rather, offered a conclusory opinion regarding the cause of an employee's condition, which is of limited probative value on the issue of causal relationship.<sup>14</sup> The Board thus finds that Dr. Sutain's reports are of limited probative value.

Appellant was also treated by Dr. Weiss. Dr. Weiss opined in medical reports dated June 14 and September 7, 2017 that the January 6, 2014 injury aggravated and accelerated appellant's preexisting lumbar spine condition. In his June 14, 2017 report, he concluded that the mechanism of injury of pushing the mail (stuck in snow) would be conducive to the aggravation and acceleration appellant sustained. The Board has previously held that generalized and speculative statements are insufficient to establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how the specific physical activity actually caused the diagnosed conditions.<sup>15</sup> As Dr. Weiss did not explain

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<sup>10</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>11</sup> *Id.*

<sup>12</sup> *M.R.*, Docket No. 14-0011 (issued August 27, 2014).

<sup>13</sup> *D.M.*, Docket No. 18-1434 (issued February 22, 2019); *John W. Montoya*, 54 ECAB 306 (2003).

<sup>14</sup> *A.D.*, 58 ECAB 149 (2006).

<sup>15</sup> *K.W.*, Docket No. 10-0098 (issued September 10, 2010).

how pushing the hamper in snow would have physiologically caused aggravation or acceleration of appellant's lumbar disc conditions, his opinion is of limited probative value.<sup>16</sup> In his September 7, 2017 report, he further attempted to explain that given the claimant's previous compromised lumbar spine, the trauma of January 6, 2014 caused additional inflammation thereby impinging the nerve root which causing lower extremity pain and increased appellant's lumbar spine pain. However, the Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis.<sup>17</sup> As Dr. Weiss did not explain, with medical rationale, how the accepted employment incident caused the diagnosed conditions, his opinions are of limited probative value.<sup>18</sup>

OWCP also received reports from a physician assistant. However, physician assistants are not considered physicians under FECA and their reports, therefore, do not constitute probative medical evidence.<sup>19</sup>

On appeal appellant contends that the medical evidence of record is sufficient to establish his claim. Contrary to his contention, the medical evidence is insufficiently rationalized and fails to explain how the diagnosed lumbar conditions were caused or aggravated by the accepted January 6, 2014 employment incident.

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 that his lumbar conditions were causally related to the accepted January 6, 2014 employment incident.

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<sup>16</sup> *Supra* note 13.

<sup>17</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

<sup>18</sup> *Supra* note 9.

<sup>19</sup> 5 U.S.C. 8102(2) of FECA provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.404; *E.T.*, Docket No. 17-0265 (issued May 25, 2018) (physician assistants are not considered physicians under FECA); *C.P.*, Docket No. 17-0042 (issued December 27, 2016); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006); *Roy L. Humphrey*, 57 ECAB 238 (2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 27, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 26, 2019  
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