

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

G.U., Appellant	)	
	)	
and	)	<b>Docket No. 19-1002</b>
	)	<b>Issued: November 25, 2019</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Harrisburg, PA, Employer	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
JANICE B. ASKIN, Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On April 8, 2019 appellant filed a timely appeal from a March 14, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met his burden of proof to establish a lumbar strain causally related to the accepted January 21, 2019 employment incident.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the March 14, 2019 decision, OWCP received additional evidence. 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.*

## **FACTUAL HISTORY**

On January 29, 2019 appellant, then a 40-year-old mail processing clerk filed a traumatic injury claim (Form CA-1) alleging that on January 21, 2019 he injured his lower back when pulling a tray of mail out of a rack while in the performance of duty.

On January 21, 2019 Sheri Lamparter, a nurse practitioner, referred appellant for a magnetic resonance imaging (MRI) scan of the lumbar spine and diagnosed low back pain. John Noerpel, a nurse practitioner, also examined appellant on January 21, 2019 and noted that appellant experienced increased back pain with left straight leg raising and that he was unable to walk due to pain. Mr. Noerpel diagnosed acute bilateral low back pain without sciatica.

On January 22, 2019 Dr. Thomas Z. Pineo, an osteopath, diagnosed lumbar strain. He recounted that appellant developed low back pain at work while lifting and transferring 20-pound boxes. Dr. Pineo reported that appellant had experienced a similar event four years prior which was not as severe. He reviewed appellant's January 22, 2019 MRI scan and found a disc bulge at L4-5 consistent with an annular fissure as well as minimal central canal narrowing and mild bilateral neural foraminal narrowing. Dr. Pineo also provided appellant with a work release note excusing appellant from work for the period January 21 to February 4, 2019.

In a January 22, 2019 statement, appellant's supervisor, A.Z., reported that, as appellant was pulling trays off of a rack, he felt a sharp lower back pain which prevented him from standing straight or walking. He helped appellant into a wheelchair and pushed him to the office. Appellant reported that this was an old injury and that he experienced pain occasionally, but this pain was "too strong." He indicated that he did not want transportation to the hospital and his wife came to pick him up.

In a February 4, 2019 development letter, OWCP advised appellant of the deficiencies of his claim. It requested additional factual and medical evidence from him and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

On February 4, 2019 Ali Saleh, a physician assistant, diagnosed other dorsalgia. Appellant also provided notes from Abigail Lind, a physical therapist.

In a note dated February 6, 2019, Dr. Ronald W. Lippe, a Board-certified orthopedic surgeon, examined appellant and noted appellant's history of injury of transferring a tray of mail and developing pain in his back. He diagnosed low back pain.

By decision dated March 14, 2019, OWCP denied appellant's traumatic injury claim finding that he failed to submit any medical evidence containing a medical diagnosis in connection with the accepted January 21, 2019 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

## **LEGAL PRECEDENT**

An employee seeking benefits under FECA 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,<sup>3</sup> 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 the employment injury.<sup>4</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>5</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.<sup>6</sup> First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.<sup>7</sup> Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.<sup>8</sup>

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence sufficient to establish such causal relationship.<sup>9</sup> The opinion of the physician must be based on a complete factual and medical background, 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.<sup>10</sup>

In any case 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 a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>11</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish lumbar strain causally related to the accepted January 21, 2019 employment incident.

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<sup>3</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *K.C.*, Docket No. 19-0834 (issued October 28, 2019); *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).

<sup>6</sup> *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

<sup>7</sup> *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>9</sup> *K.V.*, Docket No. 18-0723 (issued November 9, 2018).

<sup>10</sup> *F.C.*, Docket No. 19-0594 (issued August 13, 2019); *I.J.*, 59 ECAB 408 (2008).

<sup>11</sup> *J.F.*, Docket No. 19-0456 (issued July 12, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

In support of his claim, appellant submitted a note dated January 22, 2019 from Dr. Pineo, an osteopath, diagnosing lumbar strain. Dr. Pineo reported that appellant developed low back pain at work while lifting and transferring 20-pound boxes. While he provided a diagnosis of lumbar strain, and related appellant's history of injury, his report is insufficient to establish appellant's traumatic injury claim because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how the incident on January 21, 2019 actually caused the diagnosed condition of back strain.<sup>12</sup> Such generalized statements do not establish causal relationship and as such this report is insufficient to satisfy appellant's burden of proof with respect to causal relationship.<sup>13</sup>

On February 6, 2019 Dr. Lippe examined appellant and noted his history of injury of transferring a tray of mail and diagnosed low back pain. The Board has held that pain is a symptom, not a compensable medical diagnosis.<sup>14</sup> The Board has also held that a medical report is of no probative value if it does not provide a firm diagnosis of a particular medical condition, or offer a specific opinion as to whether the accepted employment incident caused or aggravated the claimed condition.<sup>15</sup> As such, Dr. Lippe's report is insufficient to establish the claim.

The January 22, 2019 MRI scan is insufficient to establish appellant's traumatic injury claim. The Board has held that diagnostic reports lack probative value as they fail to provide an opinion on the causal relationship between his employment duties and the diagnosed conditions.<sup>16</sup>

The notes from Ms. Lamparter and Mr. Noerpel, nurse practitioners, Ms. Saleh, a practitioner physician assistant, and Ms. Lind, a physical therapist, are also insufficient to meet appellant's burden of proof. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA. Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.<sup>17</sup>

For these reasons, the Board finds that the evidence of record is insufficient to meet appellant's burden of proof on the issue of causal relationship.

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<sup>12</sup> *J.B.*, Docket No. 18-1006 (issued May 3, 2019); *K.W.*, 59 ECAB 271, 279 (2007).

<sup>13</sup> *J.K.*, Docket No. 19-0462 (issued August 5, 2019).

<sup>14</sup> *J.C.*, Docket No. 18-1503 (issued May 2, 2019); *C.M.*, Docket No. 18-0146 (issued August 16, 2018); *D.D.*, 57 ECAB 734, 738 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004).

<sup>15</sup> *L.E.*, Docket No. 19-0470 (issued August 12, 2019); *M.J.*, Docket No. 18-1114 (issued February 5, 2019).

<sup>16</sup> *K.S.*, Docket No. 18-1781 (issued April 8, 2019); *G.S.*, Docket No. 18-1696 (issued March 26, 2019); *J.M.*, Docket No. 17-1688 (issued December 13, 2018).

<sup>17</sup> *J.T.*, Docket No. 18-0664 (issued August 12, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). *Supra* note 11 at Chapter 2.805.3.a(1) (January 2013).

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 lumbar strain causally related to the accepted January 21, 2019 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 14, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 25, 2019  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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