United States Department of Labor
Employees' Compensation Appeals Board

L.S., Appellant	)	
and	)	**Docket No. 18-0650**
	)	**Issued: September 3, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Atlanta, GA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 5, 2018 appellant filed a timely appeal from a November 1, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant met his burden of proof to establish neck and back conditions causally related to the accepted May 9, 2017 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] 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.*

FACTUAL HISTORY

On May 9, 2017 appellant, then a 56-year-old tractor trailer operator, filed a traumatic injury claim (Form CA-1) alleging that on May 9, 2017 he felt a sharp pain in his neck and back after he finished loading a truck and moved the dock plate away from the trailer while in the performance of duty. On the reverse side of the claim form, the employing establishment controverted the claim and asserted that appellant had a preexisting back injury.

OWCP received position descriptions for a motor vehicle operator and tractor trailer operator.

An authorization for examination and/or treatment (Form CA-16) was completed by an employing establishment official on May 9, 2017. It described appellant's injury as back pain and noted a date of injury of May 9, 2017. In the attending physician's report (Part B of Form CA-16), Dr. Brandon Dawkins, Board-certified in occupational medicine, recounted a history of injury of "pain upper and lower back." He checked a box marked "Yes" indicating that the condition was caused or aggravated by the described employment activity.

In a May 9, 2017 examination note, Dr. Dawkins reported that he treated appellant for an injury sustained on May 9, 2017. He recounted that appellant was performing his normal job activities, which included lifting a dock plate, when he felt pain in his upper and lower back. Upon physical examination of appellant's lumbar spine, Dr. Dawkins observed mild tenderness to palpation of the sacral region and no palpable muscle spasm. Straight leg raise testing was negative. Dr. Dawkins diagnosed lumbar spine sprain. He reported that appellant could work with restrictions and provided a duty status report (Form CA-17) with specified restrictions.

A May 9, 2017 lumbar spine x-ray revealed a normal lumbar spine.

In a May 12, 2017 examination report by Dr. Stephen Dawkins, Board-certified in occupational medicine, appellant related his complaints of upper and lower back pain from an injury he suffered on May 9, 2017. He described that around 11:45 a.m. he was performing his normal job duties, including lifting dock plates, when he felt pain in his back. Dr. Dawkins noted that appellant was scheduled to have back surgery in the following month. He noted a past medical history of chronic back pain status/post a fall in 1996. Upon examination of appellant's lumbar spine, Dr. Dawkins observed mild tenderness to palpation and no palpable muscle spasm. Range of motion was full with pain. Straight leg raise testing was negative. Dr. Dawkins diagnosed lumbar spine sprain and completed a duty status report (Form CA-17) indicating that appellant could return to work with restrictions.

In a May 15, 2017 work excuse note, Dr. Thomas J. Morrison, III, a Board-certified neurological surgeon, indicated that appellant had been under his care for cervical spondylosis with myelopathy. He related that appellant was incapacitated and unable to work beginning May 15, 2017. Dr. Morrison noted that appellant would undergo neck surgery on June 7, 2017 and continue to be out of work for three months postoperatively.

Dr. Morrison completed a May 31, 2017 attending physician's report (Form CA-20), which noted a date of injury of May 9, 2017. He indicated that appellant complained of numbness in the hands, bilateral arm pain, and balance decline for one year. Dr. Morrison diagnosed cervical spinal cord compression, myelomalacia of the cervical cord, cervical spondylosis with myelopathy, and

cervical spinal stenosis. He checked a box marked "No" indicating that appellant's condition was not caused or aggravated by an employment activity. Dr. Morrison reported: "[Appellant] did not mention any injury at work." He related that appellant was scheduled for cervical surgery on June 7, 2017.

On June 7, 2017 appellant underwent cervical surgery. The operative report indicated a pre-and postoperative diagnosis of cervical spondylitic myelopathy with radiculopathy.

In a letter dated June 9, 2017, the employing establishment controverted appellant's claim. It contended that Dr. Morrison's May 31, 2017 Form CA-20 was inconsistent with the injury claimed as he "did not mention any injury at work."

In a June 15, 2017 examination report, Dr. S. Dawkins related appellant's complaints of continued lower back pain following a May 9, 2017 work injury. He reviewed appellant's history and provided examination findings. Dr. Dawkins diagnosed lumbar spine sprain.

Dr. Morrison completed a Form CA-20 dated June 21, 2017. He noted a May 9, 2017 date of injury and diagnoses of cervical spondylosis with myelopathy, myelomalacia of the cervical cord, and cervical spinal stenosis. Dr. Morrison again checked a box marked "No" indicating that appellant's condition was not caused or aggravated by the employment activity. He reported: "[Appellant] did not mention any injury at work." Dr. Morrison related that appellant was recovering from surgery and was totally disabled beginning May 15, 2017.

On June 21, 2017 OWCP received an occupational disease claim (Form CA-2) dated May 23, 2017 signed by appellant. Appellant indicated that he experienced pain in his upper and lower back when he moved a dock plate from the rear of a trailer. He related that he first became aware of his condition and first realized that it resulted from his federal employment on May 9, 2017.

In a development letter dated June 21, 2017, OWCP informed appellant that his case was initially accepted as a minor injury, but was now being reopened for consideration of the merits of his claim. It requested that he respond to an attached development questionnaire and provide medical evidence to establish that he sustained a diagnosed condition as a result of the alleged incident. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP received a June 21, 2017 examination note by Matthew G. Sartorio, a physician assistant. Mr. Sartorio related that appellant had cervical surgery on June 7, 2017 and recounted improved paresthesia in appellant's hands and slowly improving balance. He provided examination findings and diagnosed cervical spondylosis with myelopathy, cervical spinal stenosis, and myelomalacia of the cervical cord.

OWCP received a February 22, 2017 examination note by Dr. Morrison regarding appellant's treatment for complaints of paresthesia in the hands, bilateral arm pain, bilateral shoulder pain, and balance decline.

On July 3, 2017 OWCP received appellant's response to its development questionnaire. Appellant indicated that he was a tractor trailer operator and described that when he moved the dock plate from the tractor trailer he felt a sharp pain from his lower back to his shoulders. He noted that he had a previous injury under OWCP File No. xxxxxx661.

On July 10, 2017 appellant filed a claim for wage-loss compensation (Form CA-7) beginning June 24, 2017. He continued to file wage-loss compensation claims (Form CA-7) for total disability.

By decision dated July 26, 2017, OWCP denied appellant's claim. It accepted the May 9, 2017 employment incident had occurred as alleged and that he had a diagnosed back condition. OWCP denied appellant's claim, however, because the medical evidence of record was insufficient to establish that his back condition was causally related to the accepted incident.

OWCP received a July 19, 2017 examination note by Mr. Sartorio, a certified physician's assistant. Mr. Sartorio related that appellant underwent cervical surgery on June 7, 2017 and recounted improvement after surgery. He provided examination findings and diagnosed cervical spondylosis with myelopathy, cervical spinal stenosis, and myelomalacia of the cervical cord.

On August 29, 2017 appellant requested reconsideration. In an August 25, 2017 statement, he related that he had worked for the employing establishment since 1992 as a tractor trailer driver. Appellant reported that he had incurred many injuries due to his work and described various challenges that he had faced. He indicated that his driving duties also required him to move heavy dock plates, which sometimes caused strain on his back. Appellant explained that he never had medical problems with his back until his injuries at work. He described a 1998 incident when he slipped and fell on black ice and a 2003 incident when he was loading his trailer and injured his back. Appellant reported that because of these injuries he was hospitalized in July 2017 for a medical procedure that his physician determined resulted from his previous injuries while working over the years. He believed that "over time these injuries have caught up with me and [he] had no other alternative, but to seek the medical attention needed to correct [his] condition."

By decision dated November 1, 2017, OWCP denied modification of the July 26, 2017 decision. It found that the medical evidence of record was insufficient to establish that appellant's back condition was causally related to the accepted May 9, 2017 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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,[4] 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

[3] *Supra* note 1.

[4] *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.[5] 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.[6]

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.[7] First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.[8] 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.[9] 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.[10]

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.[11] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 factor(s) identified by the employee.[12] The weight of the 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.[13]

In a 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.[14]

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

[6] *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).

[7] *R.B.*, Docket No. 17-2014 (issued February 14, 2019); *B.F.*, Docket No. 09-0060 (issued March 17, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[8] *S.F.*, Docket No. 18-0296 (issued July 26, 2018); *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

[9] *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008), *Bonnie A. Contreras*, *supra* note 7.

[10] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[11] *See S.A.*, Docket No. 18-0399 (issued October 16, 2018); *see also Robert G. Morris*, 48 ECAB 238 (1996).

[12] *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[13] *James Mack*, 43 ECAB 321 (1991).

[14] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish neck and back conditions casually related to the accepted May 9, 2017 employment incident.

Appellant received medical treatment from Dr. B. Dawkins. In a May 9, 2017 examination note, Form CA-20, and Form CA-17, Dr. B. Dawkins noted a May 9, 2017 date of injury and described that appellant lifted a dock plate at work when he felt pain in his upper and lower back. He provided examination findings and diagnosed lumbar spine sprain. In a Form CA-20, Dr. Dawkins checked a box marked "Yes" indicating that the condition was caused or aggravated by the described employment activity. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.[15] Because Dr. B. Dawkins did not provide an explanation for how appellant's condition was caused or aggravated by the May 9, 2017 incident, his opinion is insufficient to establish causal relationship.

Dr. S. Dawkins also treated appellant. In reports dated May 12 and June 15, 2017, he related that on May 9, 2017 appellant was performing his normal job duties when he lifted a dock plate and felt back pain. Dr. S. Dawkins recounted a past medical history of chronic back pain status/post a fall in 1996, provided examination findings, and diagnosed lumbar spine sprain. He, however, did not opine on whether appellant's neck and back conditions resulted from the May 9, 2017 employment incident. 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.[16] Dr. S. Dawkins reports therefore are insufficient to establish appellant's claim.

In reports dated May 15 to June 21, 2017, Dr. Morrison indicated that he had treated appellant for cervical spondylosis with myelopathy and noted a May 9, 2017 date of injury. In May 31 and June 21, 2017 CA-20 forms, he checked a box marked "No" indicating that appellant's condition was not caused or aggravated by an employment activity. Dr. Morrison reported that "[appellant] did not mention any injury at work." As he did not provide an affirmative opinion on causal relationship, the Board finds that this report is insufficient to establish her claim.[17]

The February 22 to July 19, 2017 examination notes by Mr. Sartorio, a certified physician assistant, are also insufficient to establish appellant's claim because a physician assistant is not considered a "physician" under section 8102(2) of FECA, and therefore his opinion does not constitute competent medical evidence.[18]

[15] *D.D.*, 57 ECAB 734, 738 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

[16] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[17] *Id*.

[18] 5 U.S.C. § 8101(2) provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *See V.C.*, Docket No. 16-0642 (issued April 19, 2016); *Allen C. Hundley*, 53 ECAB 551, 554 (2002) (a physician assistant is not considered a physician as defined under FECA).

In order to obtain benefits under FECA an employee has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence.[19] Because appellant has failed to provide such evidence demonstrating that his diagnosed back condition was causally related to the accepted May 9, 2017 employment incident, he has not met his burden of proof to establish his traumatic injury claim. The need for rationalized medical opinion evidence is particularly important in light of the reference to preexisting conditions.[20]

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.[21]

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish neck and back conditions causally related to the accepted May 9, 2017 employment incident.

[19] *Supra* note 6.

[20] *See B.R.*, Docket No. 16-0456 (issued April 25, 2016).

[21] The employing establishment issued a signed authorization for examination and/or treatment (Form CA-16) authorizing medical treatment. The Board has held that when an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation which does not involve the employee directly to pay the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. §§ 10.300, 10.304; *see also T.S.*, Docket No. 18-0150 (issued April 12, 2019); *R.W.*, Docket No. 18-0894 (issued December 4, 2018).

ORDER

IT IS HEREBY ORDERED THAT the November 1, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 3, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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