

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

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C.B., Appellant )

and )

U.S. POSTAL SERVICE, WESTLAKE POST )  
OFFICE, Bethesda, MD, Employer )

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**Docket No. 20-0250  
Issued: April 28, 2020**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

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

**JURISDICTION**

On October 28, 2019 appellant filed a timely appeal from an October 8, 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 medical condition causally related to the accepted April 8, 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 October 8, 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 April 13, 2019 appellant, then a 55-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 8, 2019 he experienced pain in his lower back after putting a tray of magazines in a hamper while in the performance of duty. He noted that the pain spread from the lower right side of his back down to his right leg, making it difficult to walk. On the reverse side of the claim form, appellant's supervisor controverted the claim noting that appellant had not reported the incident on the date of occurrence. Appellant stopped work on April 11, 2019.

In a development letter dated April 18, 2019, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In an April 11, 2019 report, Dr. Ranisha Patel, a Board-certified specialist in internal medicine, noted appellant's complaints of pain in the lower right back radiating down the back of the leg with numbness and tingling. She examined appellant and diagnosed acute right-sided low back pain with right-sided sciatica.

On April 18, 2019 the employing establishment issued an authorization for examination and/or treatment (Form CA-16), which allowed appellant to seek treatment for his alleged injury. In an April 22, 2019 attending physician's report, Part B of the Form CA-16, a physical therapist with an illegible signature reported that appellant began experiencing pain after moving a weighted packet at work. The physical therapist diagnosed low back pain and right leg pain. The physical therapist checked a box marked "yes" indicating that the diagnosed conditions were caused or aggravated by the described employment activity. The physical therapist further indicated that appellant could resume work on April 22, 2019 with the restriction that he avoid heavy lifting and bending/twisting activities.

In an April 18, 2019 certification report, Dr. Patel noted that she saw appellant on April 11, 2019 and referred him for physical therapy treatment. She opined that he had significant back pain limiting ambulation and other movement. Dr. Patel noted that appellant would be incapacitated for approximately 10 days.

In an April 24, 2019 duty status report (Form CA-17), a physical therapist with an illegible signature diagnosed low back pain with femoral nerve impingement. The physical therapist noted that appellant was unable to perform his regular work duties.

In an April 25, 2019 statement, appellant responded to OWCP's development questionnaire. He indicated that on April 8, 2019 he felt a slight pain in his back after putting a tray of magazines, weighing approximately 20 pounds, in a hamper. Appellant noted that he did not think much of it at the time and completed his assignment for the day. He reported that the next morning he awoke with pain in his right leg that made it difficult to walk. Appellant indicated that he did not sustain any other injury between the date of the employment incident and the date he reported the incident.

On May 5, 2019 Dr. Patel updated her April 18, 2019 certification report, indicating that appellant's symptoms were resolving and that he was able to perform his required job functions at that time.

By decision dated May 29, 2019, OWCP accepted that the April 8, 2019 employment incident occurred as alleged, but denied appellant's claim finding that he had not established a firm medical diagnosis in connection with the accepted employment incident and, thus, the requirements had not been met for establishing an injury as defined by FECA.

On June 7, 2019 appellant requested a review of the written record by an OWCP hearing representative. He submitted a referral form dated April 11, 2019 along with his request, which showed that Dr. Patel referred him for physical therapy treatment for acute right-sided low back pain with right-sided sciatica.

By decision dated October 8, 2019, OWCP's hearing representative affirmed the May 29, 2019 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</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,<sup>4</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>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 if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. 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.<sup>7</sup> The second component is whether the employment incident caused a personal injury.<sup>8</sup>

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *R.S.*, Docket No. 19-1484 (issued January 13, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *L.L.*, Docket No. 19-1106 (issued October 18, 2019); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> 20 C.F.R. § 10.115; *M.S.*, Docket No. 19-1096 (issued November 12, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *T.G.*, Docket No. 19-0904 (issued November 25, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> *M.H.*, Docket No. 19-0162 (issued July 3, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>9</sup> 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 incident identified by the claimant.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted April 8, 2019 employment incident.

Appellant submitted an April 11, 2019 report from Dr. Patel in which she diagnosed acute right-sided low back pain with right-sided sciatica. In an April 18, 2019 certification report, Dr. Patel opined that he had significant back pain limiting ambulation and other movement. On May 5, 2019 she updated her certification report and reported that appellant's symptoms were resolving and that he was able to perform his required job functions. The Board has long held that pain is a symptom, not a compensable medical diagnosis.<sup>11</sup> Sciatica refers to pain along the sciatic nerve which runs from the lower back down the back of each leg. As such, sciatica is also a description of a symptom, not a compensable medical diagnosis.<sup>12</sup> Accordingly, Dr. Patel's reports are insufficient to establish a medical diagnosis in connection with the accepted April 8, 2019 employment incident.<sup>13</sup>

Appellant also submitted an April 22, 2019 attending physician's report (Part B of the Form CA-16) and an April 24, 2019 duty status report (Form CA-17) from a physical therapist with an illegible signature. The Board has held that reports signed solely by physical therapists are of no probative value as physical therapists are not considered physicians as defined under FECA.<sup>14</sup> These reports are therefore insufficient to establish appellant's claim.

As appellant has failed to submit rationalized medical evidence diagnosing a medical condition in connection with the accepted April 8, 2019 employment incident, the Board finds that he has not met his burden of proof to establish his claim.

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<sup>9</sup> *J.D.*, Docket No. 19-0382 (issued January 3, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>10</sup> *M.H.*, Docket No. 18-0873 (issued December 18, 2019); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>11</sup> *M.H.*, *supra* note 8.

<sup>12</sup> *See E.C.*, Docket No. 18-0274 (issued January 6, 2020).

<sup>13</sup> *T.G.*, *supra* note 7.

<sup>14</sup> Section 8101(2) of FECA provides that 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). *See also David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *D.H.*, Docket No. 18-0072 (issued January 21, 2020) (physical therapists are not considered physicians under FECA).

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.<sup>15</sup>

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted April 8, 2019 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 8, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 28, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>15</sup> The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).