

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

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<b>H.L., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 19-1326</b>
	)	<b>Issued: February 4, 2020</b>
<b>U.S. POSTAL SERVICE, PROCESSING &amp; DISTRIBUTION CENTER, Brooklyn, NY, Employer</b>	)	
	)	
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*Appearances:*  
*Appellant, pro se*  
*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 May 28, 2019 appellant filed a timely appeal from a February 28, 2019 merit decision of the Office of Workers’ Compensation Programs (OWCP).<sup>1</sup> 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 to consider the merits of this case.

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<sup>1</sup> The Board notes that, following the February 28, 2019 decision, OWCP received additional evidence. Appellant also 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.*

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

## ISSUE

The issue is whether appellant has met his burden of proof to establish a lumbar injury causally related to the accepted July 26, 2018 employment incident.

## FACTUAL HISTORY

On August 26, 2018 appellant, then a 53-year-old mail handler in modified duty status,<sup>3</sup> filed a notice of recurrence (Form CA-2a), alleging that on July 26, 2018 he lifted heavy buckets of mail while in the performance of duty and aggravated a May 19, 2007 lumbar injury accepted by OWCP for lumbosacral neuritis or radiculitis under File No. xxxxxxxx213. He stopped work on July 30, 2018 and did not return. In a November 7, 2018 statement, appellant asserted that he exceeded his work limitations on July 26, 2018 by lifting heavy buckets.

In support of his claim, appellant submitted an August 6, 2018 report by Dr. Diane Lam, Board-certified in anesthesiology and pain management, who noted a history of a lumbar injury approximately 10 years prior, with a recent exacerbation of symptoms.<sup>4</sup> Dr. Trina Barman, Board-certified in emergency medicine, provided August 29, 2018 reports relating appellant's 10-year history of chronic lumbar pain with a flare-up in July 2018. She noted that appellant worked at the employing establishment had performed "a lot of heavy lifting and pulling." Dr. Barman diagnosed spinal stenosis at L5-S1.

In September 3 and 4, 2018 reports, Dr. Teresa M. Amato, Board-certified in emergency medicine, noted appellant's complaints of lumbar pain with right-sided radiculopathy.

Appellant underwent an L5-S1 hemilaminectomy on September 5, 2018.<sup>5</sup>

On November 20, 2018 OWCP administratively created a new traumatic injury claim as appellant had alleged a new traumatic incident, rather than a spontaneous worsening of the accepted May 19, 2007 lumbar injury.

In a development letter dated November 26, 2018, OWCP advised appellant that his recurrence claim had been administratively converted to one for traumatic injury. It also advised him of the deficiencies of his claim and instructed him as to the factual and medical evidence necessary to establish his claim. It afforded appellant 30 days to submit additional evidence and respond to its inquiries.

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<sup>3</sup> Following an accepted lumbar injury in OWCP File No. xxxxxx213, appellant returned to work on August 4, 2009 for six hours per day, facing up metered mail and patching ripped letters and flats.

<sup>4</sup> An August 22, 2018 magnetic resonance imaging (MRI) scan of the lumbar spine demonstrated severe central spinal canal stenosis, mild encroachment of the right neural foramen at L5-S1, disc herniation and mild stenosis at L4-5 with neuroforaminal encroachment, disc bulges with mild neuroforaminal encroachment at L2-3 and L3-4, and facet arthropathy.

<sup>5</sup> In a report dated September 14, 2018, Dr. Saba Sami, a Board-certified neurologist, diagnosed postoperative lumbar pain with right foot weakness due to persistent soft tissue in the lateral recess at L5-S1. October 11, 2018 lumbar x-rays demonstrated spondylosis with mild-to-moderate disc space narrowing from L2 through S1.

In response, appellant submitted a September 6, 2018 report by Dr. Steven Factor, a Board-certified neurophysiologist, who diagnosed a recurrent L5-S1 disc.

In a report dated December 5, 2018, Dr. William C. Wang, a physiatrist, noted that appellant sustained a lumbar injury while at work on May 19, 2007, with severe lumbar pain and left-sided radiculopathy. He indicated that physical therapy improved appellant's symptoms and he had returned to limited-duty work, but he experienced a severe flare-up of lumbar symptoms on July 30, 2018. Dr. Wang held him off work through December 30, 2018.

By decision dated January 7, 2019, OWCP accepted that the July 26, 2018 employment incident occurred as alleged, but denied the claim as causal relationship was not established. It concluded, therefore, that the requirements had not been met to establish an employment-related injury and/or medical condition.

On February 11, 2019 appellant requested reconsideration. He submitted a January 29, 2019 report from Dr. Wang, who opined that the accepted July 26, 2018 employment incident "aggravated an earlier injury from May 2007." Dr. Wang noted that appellant believed that the cumulative effect of lifting and carrying heavy objects while at work had contributed to the severe flare-up of lumbar radiculopathy on July 26, 2018.

By decision dated February 28, 2019, OWCP denied modification of its prior decision.

### **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>6</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>7</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>8</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>9</sup> First, the employee must submit sufficient evidence to establish that he or she actually experienced the

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<sup>6</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>7</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>8</sup> *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>9</sup> *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).

employment incident at the time, place, and in the manner alleged.<sup>10</sup> 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.<sup>11</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>12</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>13</sup> 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 accepted employment incident.<sup>14</sup>

In a case in which 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>15</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a lumbar injury causally related to the accepted July 26, 2018 employment incident.

Dr. Lam and Dr. Barman noted appellant's accepted May 19, 2007 lumbar injury and his exacerbation of symptoms in July 2018. In September 3 and 4, 2018 reports, Dr. Amato noted right-sided lumbar radiculopathy. In his September 6, 2018 report, Dr. Factor diagnosed a recurrent L5-S1 disc. However, these physicians did not address whether the accepted July 26, 2018 employment incident had caused or contributed to the diagnosed lumbar conditions. 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>16</sup> These reports, therefore, are insufficient to establish appellant's claim.

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<sup>10</sup> *S.F.*, Docket No. 18-0296 (issued July 26, 2018); *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

<sup>11</sup> *J.B.*, Docket No. 19-1101 (issued November 20, 2019); *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).

<sup>12</sup> *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>13</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

<sup>14</sup> *S.K.*, Docket No. 19-0391 (issued December 13, 2019). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>15</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *M.S.*, Docket No. 19-0913 (issued November 25, 2019).

<sup>16</sup> *S.K.*, *supra* note 14; *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

Dr. Wang generated both December 5, 2018 and January 29, 2019 reports noting the accepted May 19, 2007 employment injury, with a new workplace incident in late July 2018. He recounted that appellant attributed his condition, in part, to repetitive heavy lifting at work. However, Dr. Wang did not provide an independent medical opinion on the issue. The mere recitation of patient history does not suffice for purposes of establishing causal relationship between a diagnosed condition and the employment incident.<sup>17</sup> Without explaining physiologically how the accepted employment incident caused or contributed to the diagnosed condition, the physician's reports are of limited probative value.<sup>18</sup>

Dr. Wang opined that lifting a heavy bucket on July 26, 2018 had aggravated the accepted May 2007 lumbar injury, but did not explain how or why the accepted July 26, 2018 employment incident would have caused or aggravated the diagnosed lumbar conditions. A physician must provide a reasoned opinion on whether the employment incident caused or contributed to a diagnosed medical condition.<sup>19</sup> Such rationale is particularly necessary given appellant's history of a prior lumbar condition.<sup>20</sup> Consequently, Dr. Wang's opinion is insufficient to meet appellant's burden of proof to establish his claim.

OWCP also received several imaging study reports. The Board has held that reports of diagnostic tests lack probative value as they do not provide an opinion on causal relationship between an employment incident and a diagnosed condition.<sup>21</sup> Therefore, it is insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence sufficient to establish an injury causally related to the accepted employment incident, the Board finds that he has not met his burden of proof.

On appeal appellant contends that he sustained a recurrence of disability rather than a new traumatic injury. As noted above, he clearly identified a new July 26, 2018 employment incident rather than a spontaneous worsening of the lumbar condition accepted under OWCP File No. xxxxxx213.

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.

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<sup>17</sup> *N.S.*, Docket No. 19-0167 (issued June 21, 2019); *J.G.*, Docket No. 17-1382 (issued October 18, 2017).

<sup>18</sup> *M.N.*, Docket No. 19-0694 (issued September 3, 2019); *A.B.*, Docket No. 16-1163 (issued September 8, 2017).

<sup>19</sup> *Id.*; *K.K.*, Docket No. 19-1193 (issued October 21, 2019).

<sup>20</sup> *S.K.*, *supra* note 14; *M.E.*, Docket No. 18-0940 (issued June 11, 2019).

<sup>21</sup> *See C.F.*, Docket No. 18-1156 (issued January 22, 2019); *M.M.*, Docket No. 19-0061 (issued November 21, 2019).

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a lumbar injury causally related to the accepted July 26, 2018 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 28, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 4, 2020  
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