

ISSUE

The issue is whether appellant has met his burden of proof to establish that his diagnosed lumbar conditions were causally related to the accepted January 8, 2018³ employment incident.

FACTUAL HISTORY

On April 10, 2019 appellant, then a 58-year-old shipbuilding specialist, filed a traumatic injury claim (Form CA-1) alleging that on January 6, 2018 he sustained a lumbar injury when he slipped on ice, grabbed his vehicle, and felt something pop in his lower back like a rubber band while in the performance of duty. He asserted that the incident resulted in a right paracentral disc protrusion with an annular tear at L3-4 severely flattening thecal sac and a diffused disc bulge with a protrusion annular tear at L2-3. Appellant first received medical care on January 9, 2018. On the reverse side of the form, his supervisor indicated that his knowledge of the facts agreed with the statements made by appellant. He further indicated that the medical reports showed that appellant was disabled from work.

By development letter dated April 10, 2019, OWCP informed appellant that the factual and medical evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence necessary, to establish his claim, and provided a questionnaire for his completion regarding the events and circumstances surrounding the alleged January 6, 2018 employment incident. Appellant was afforded 30 days to submit the necessary evidence.

Hospital admission forms were subsequently submitted documenting treatment on January 9 and 16, 2018.

OWCP also received a January 12, 2018 magnetic resonance imaging (MRI) scan of appellant's lumbar spine, which was interpreted by Dr. Seema Hasan, a Board-certified diagnostic radiologist. Dr. Hasan provided findings of right paracentral disc protrusion with annular tear at L3-4 severely flattening the thecal sac. She reported that the disc protrusion was new since the prior study. Dr. Hasan also provided findings of diffuse disc bulge with posterior annular tear at L2-3 and posterior fusion of L4-5 and L5-S1.

In an April 9, 2019 attending physician's report (Form CA-20), Dr. Theresa Jackson, Board-certified in physical medicine and rehabilitation, reported that on January 8, 2018 appellant slipped on ice, grabbed a rail, and felt a pop in his back which felt like a rubber band snapping. She reported that he has chronic low back pain, postlaminectomy chronic back syndrome. Dr. Jackson discussed diagnostic findings and stated that appellant's January 12, 2018 lumbar MRI scan revealed a new disc protrusion with annular tear at L3-4. She diagnosed lumbar herniated nucleus pulposus (HNP), right leg weakness, and postlaminectomy chronic back syndrome. Dr. Jackson checked the box marked "Yes" indicating that appellant's conditions were caused by the described employment incident, noting that appellant was injured/aggravated by the slip and fall at work. She also provided April 9, 2019 work restrictions.

³ Appellant initially alleged a January 6, 2018 date of injury. However, OWCP accepted that the incident occurred based upon appellant's response to a development questionnaire. Therefore the date of the accepted incident is January 8, 2018.

By decision dated May 15, 2019, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish that the January 6, 2018 employment incident occurred as alleged. It noted that he had not responded to the April 10, 2019 factual development questionnaire and therefore had not substantiated the factual element of his claim.

OWCP subsequently received signed statements dated May 23 and June 1, 2019, wherein appellant responded to OWCP's development letter and discussed his federal employment duties which began in July 2012. Appellant described the circumstances surrounding the January 6, 2018 injury, explaining that a winter storm had left snow on the ground and the shipyard had moved the snow from its roads and parking lot with plows, pushing it to the ends of the asphalt areas. He reported that on January 8, 2018 he was walking and slipped on some black ice that had accumulated, causing him to reach out and grab two parked cars to prevent himself from falling. While doing so, appellant felt a pop in his back which felt like a rubber band snapping. He initially thought that he hurt the area of his back that he had previously undergone fusion surgery for at L4-S1. Appellant indicated that the immediate effects of the injury were slight, as he went back to the ship and was able to walk the ship to determine the repairs need, as well as crawl in tanks and spaces. He reported that evening, his back began to spasm and tighten to the point that he could barely move without extreme pain. Appellant reported sustaining no other injuries as a result of the employment incident, but indicated that he aggravated a prior work-related neck injury from a concussion received in September 2015 under OWCP File No. xxxxxx159. He reported seeking treatment with his physician on January 9, 2018 because his back pain made it increasingly difficult to walk. X-rays and an MRI scan of the lumbar spine were taken which revealed disc bulge, disc protrusion, and annular tears. Appellant discussed his prior lumbar injuries, stating that in 2004 he ruptured his L5 disc and had a discectomy. In 2007, he underwent an L4-S1 fusion. Appellant reported that he began working for the employing establishment in 2012 with full ability to complete his assigned employment duties.

On July 9, 2019 appellant requested reconsideration of OWCP's May 15, 2019 decision. In support of his claim, he submitted progress notes documenting continued medication renewals, lumbar MRI scans dated January 29 and October 5, 2015 and diagnostic studies pertaining to the cervical spine.

In a January 16, 2018 report, Dr. Jackson noted a history of lumbar pain and that appellant complained of pain in the lower back that radiated into the anterior thigh. Appellant reported experiencing severe lower back pain after he was "playing in the snow." He described what felt like a rubber band snapping which was followed by severe pain, causing him to drop to the ground. Dr. Jackson diagnosed acute midline low back pain with right sided sciatica, lumbar HNP, right leg weakness, gait abnormality, and postlaminectomy syndrome of the lumbar region. She reported that appellant's January 12, 2018 lumbar MRI scan revealed a new right paracentral disc protrusion with annular tear at L3-4. A January 16, 2018 work restriction note was provided.

In an October 9, 2018 medical report, Dr. Jackson reported that appellant was a long standing patient at her practice and he had undergone multiple spine surgeries, including two cervical and two lumbar surgeries, of which two had been major fusion procedures. She reported that appellant's spine conditions prevented him from fully being able to perform physical work and he had permanent work restrictions which would require telework.

In a May 29, 2019 medical report, Dr. Jackson reported that appellant was first examined after a slip and fall on January 8, 2018, which felt like a rubber band popped in his lower back. Lumbar x-rays were obtained and appellant was reevaluated on January 19, 2018. The findings from the January 12, 2018 lumbar MRI scan were reviewed and Dr. Jackson diagnosed acute midline low back pain with right-sided sciatica, right leg weakness, lumbar HNP, gait abnormality, muscle spasm of back, and postlaminectomy syndrome. She explained that the January 2018 lumbar MRI scan demonstrated a new right L3-4 disc protrusion status post the near fall on January 8, 2018. Dr. Jackson reported that appellant was in severe pain after this incident and the near fall likely caused the new disc protrusion and pain that followed. An undated Form CA-20 was also provided by her, wherein she noted appellant's January 8, 2018 date of injury, and related diagnoses of postlaminectomy cervical and lumbar syndrome. Dr. Jackson also checked a box "Yes" indicating that appellant's slip and fall aggravated his diagnosed conditions.

By decision dated August 23, 2019, OWCP affirmed the May 15, 2019 decision, as modified. It found that the January 8, 2018 employment incident occurred as alleged, but the claim remained denied as the evidence of record was insufficient to establish that the diagnosed medical conditions was causally related to the accepted employment incident.

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,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 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 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. Generally, 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.⁷ The second component is whether the employment incident caused a personal injury.⁸

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, must be

⁴ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 *J.P.*, Docket No. 19-1206 (issued February 11, 2020); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

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.⁹

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.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that his diagnosed lumbar conditions were causally related to the accepted January 8, 2018 employment incident.

In a January 16, 2018 report, Dr. Jackson related that appellant experienced severe lower back pain after he was playing in the snow which felt like a rubber band snapping followed by severe pain, causing him to drop to the ground. This history is inconsistent with the slip and near fall incident accepted as factual by OWCP. A medical opinion should reflect a correct history and offer a medically sound explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions.¹¹ Therefore, this report is insufficient to establish appellant's claim.

The October 9, 2018 progress report from Dr. Jackson documenting treatment is also of diminished probative value as she did not address whether appellant's lumbar condition was causally related to the accepted employment incident.¹² 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.¹³ OWCP also received a record of appellant's medical prescriptions, and several work restriction notes from Dr. Jackson. However, none of these reports addressed causal relationship. Accordingly, these reports are also insufficient to meet appellant's burden of proof.¹⁴

In an April 9, 2019 Form CA-20 and a separate undated Form CA-20, Dr. Jackson provided a history of the January 8, 2018 incident and indicated by check mark that appellant's diagnosed cervical and lumbar conditions were causally related to the incident. The Board has explained that a report that addresses causal relationship with a check mark, without further medical rationale explaining how the employment incident caused or aggravated the alleged injury, is of diminished

⁹ S.S., Docket No. 18-1488 (issued March 11, 2019).

¹⁰ 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).

¹¹ See J.M., Docket No. 17-1002 (issued August 22, 2017).

¹² T.O., Docket No. 18-0139 (issued May 24, 2018).

¹³ R.J., Docket No. 19-0593 (issued September 9, 2019).

¹⁴ See M.S., Docket No. 18-1280 (issued March 12, 2019); A.B., Docket No. 17-0301 (issued May 19, 2017).

probative value and insufficient to establish causal relationship.¹⁵ These reports were therefore also insufficient to establish appellant's claim.

In a subsequent May 29, 2019 report, Dr. Jackson discussed a January 8, 2018 incident when appellant slipped on ice and had a near fall which felt like a rubber band popping in his lower back. The Board notes that while Dr. Jackson's subsequent May 29, 2019 report corroborated appellant's account of the January 8, 2018 incident, however, her description of the events contradicts the history of injury provided in her earlier January 16, 2018 report which was authored shortly after the alleged injury. The Board has held that a contemporaneous statement describing an incident is entitled to greater weight than a different description by the same person made after an interval of several months or years.¹⁶ Dr. Jackson has not explained the discrepancy in the history of injury that she has provided, which diminishes the probative value of her opinion.¹⁷ She also reported that appellant's January 2018 lumbar MRI scan demonstrated a new right L3-4 disc protrusion status post the near fall on January 8, 2018 when compared to his prior lumbar spine studies. Dr. Jackson opined that appellant was in severe pain after the January 8, 2018 incident and the near fall likely caused the new disc protrusion and pain that followed. The Board finds that the opinion of Dr. Jackson is not well rationalized and is highly speculative as to the cause of appellant's injury.¹⁸ While the January 12, 2018 lumbar MRI scan showed a new condition not previously seen on prior studies, the diagnostic report fails to establish that the injury occurred as a result of the accepted employment incident. Dr. Jackson has indicated that appellant has a long-standing history of preexisting lumbar injuries which required multiple surgeries. However, she failed to discuss whether appellant's preexisting injury had progressed beyond what might be expected from the natural progression of that condition, and how the January 8, 2018 incident physiologically caused the current condition.¹⁹ A well-rationalized opinion is particularly warranted when there is a history of a preexisting condition.²⁰ This report from Dr. Jackson is therefore also insufficient to establish appellant's claim.

The remaining medical evidence of record is also insufficient to establish appellant's traumatic injury claim.²¹ The various diagnostic studies submitted fail to establish a work-related traumatic injury.²² The Board has held, however, that reports of diagnostic tests standing alone

¹⁵ *J.A.*, Docket No. 17-1936 (issued August 13, 2018).

¹⁶ *Paul K. Willis*, Docket No. 97-0946 (issued January 19, 1999); *Herman Pischel*, 26 ECAB 280 (1975).

¹⁷ *Id.*

¹⁸ *G.M.*, Docket No. 18-1057 (issued April 14, 2020).

¹⁹ *See generally K.D.*, Docket No. 19-1405 (issued April 9, 2020); *R.E.*, Docket No. 14-0868 (issued September 24, 2014).

²⁰ *E.B.*, Docket No. 17-1497 (issued March 19, 2019); *R.E., id.*; *T.M.*, Docket No. 08-0975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

²¹ *K.L.*, Docket No. 18-1029 (issued January 9, 2019).

²² *See J.H.*, Docket No. 19-0838 (issued October 1, 2019).

lack probative value as they do not provide an opinion on causal relationship between an employment incident and a diagnosed condition.²³

The record lacks rationalized medical evidence establishing a causal relationship between the accepted January 8, 2018 employment incident and appellant's lumbar conditions. Thus, the Board finds that he has not met his burden of proof.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's 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 diagnosed lumbar conditions were causally related to the accepted January 8, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the August 23, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 17, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

²³ *J.M.*, Docket No. 17-1688 (issued December 13, 2018).