

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

C.W., Appellant)	
)	
and)	Docket No. 19-1884
)	Issued: May 29, 2020
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Charleston, WV, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 12, 2019 appellant filed a timely appeal from a July 24, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 has met his burden of proof to establish a lower back condition causally related to the accepted February 28, 2019 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 March 12, 2019 appellant, then a 41-year-old labor custodian, filed a traumatic injury claim (Form CA-1) alleging that, on February 28, 2019, he sustained a lower back injury when pulling on a dock plate at the trash dumper while in the performance of duty. He stopped work on March 11, 2019.

In support of his claim, appellant submitted a position description and work excuse slips dated March 11 and 25, 2019 from Dr. Jennifer Runyan, a chiropractor, restricting his return to work until April 1, 2019.

In reports dated March 7, 8, 13, and 18, 2019, Dr. Runyan noted that appellant presented to her office with complaints of low back and buttock pain that was first noticed one week prior after lifting a heavy object at work. She diagnosed lumbar sprain and strain of lower back.

On March 11, 2019 Lindsay Pittman, a licensed massage therapist, provided palliative care in the form of manipulation and myofascial release in accordance with appellant's treatment plan.

In a March 29, 2019 development letter, OWCP advised appellant of the deficiencies in his claim. It informed him of the type of evidence necessary to establish his claim and provided a questionnaire for his completion regarding the facts and circumstances of the injury. OWCP afforded appellant 30 days to respond.

Appellant submitted a narrative statement dated April 1, 2019 indicating that on February 28, 2019 he was at the end of the dock with, a coworker, S.D., waiting for a trash container to be replaced. The container was replaced, but the dock plate was left in an upright position and needed to be lifted up and swiveled out in order to dump the hoppers. Appellant proceeded to squat down, grip the dock plate, and attempt to lift and swivel it, but it was very heavy and he felt a strain as if his lower back gave out. He noted that the dock plate was very old, appeared bent, and was not easy to operate due to excessive weight and rough operation. Appellant alleged that over the course of a week his pain became gradually worse and he experienced sharp back pain, limited mobility, and was unable to lean forward. He denied similar disability or symptoms before the injury.

In an x-ray report dated March 7, 2019 and a medical report of even date, Dr. Runyan diagnosed subluxation of the left pelvis, L5, right L4, sacrum, and right pelvis, as well as lumbago, sacroiliitis, and muscle spasm of back.

Appellant submitted additional reports from Dr. Runyan dated March 19 through April 19, 2019 in which she continued to note her findings on examination and the treatment provided.

In an April 5, 2019 work excuse slip, Dr. Runyan released appellant to work on April 6, 2019 with restrictions of no lifting over 15 pounds and no prolonged standing or sitting. An April 18, 2019 magnetic resonance imaging (MRI) scan of the lumbar spine, signed by Dr. James J. Baek, a Board-certified diagnostic radiologist, revealed a moderate-sized disc protrusion at L4-5 asymmetric to the left with minimal canal and foraminal stenosis and minimal left neural foraminal narrowing at L5-S1.

In a duty status report (Form CA-17) dated April 24, 2019, Dr. Runyan diagnosed myospasm, subluxation, and antalgic lean and indicated that appellant could resume full-time work with restrictions. She opined that appellant injured his back on “February 8, 2019” while lifting a dock plate.

In an attending physician’s report (Form CA-20) dated April 24, 2019, Dr. Runyan noted a history of lower back pain and right leg pain due to a lifting injury at the loading dock. She diagnosed degenerative disc disease, disc herniation, subluxation, myospasm, and noted an altered gait/posture. Dr. Runyan checked a box marked “Yes” indicating her opinion that appellant’s conditions were caused or aggravated by an employment activity and noted that he had no prior pain before lifting the dock plate at work.

On May 1, 2019 appellant accepted a modified limited-duty assignment as a maintenance mechanic.

By decision dated May 6, 2019, OWCP denied the claim finding that the evidence of record was insufficient to establish causal relationship between the accepted February 28, 2019 employment incident and appellant’s diagnosed conditions.

On May 29, 2019 appellant requested reconsideration and submitted a series of reports dated March 7 through May 20, 2019 from Dr. Runyan who continued to diagnose lumbar sprain, strain of lower back, lumbago with sciatica, right side, sacroiliitis, and muscle spasm of back. On May 20, 2019 Dr. Runyan concluded that appellant had reached the goal of returning to preinjury status.

In a May 23, 2019 narrative report, Dr. Runyan again noted that appellant first presented to her office on May 7, 2019, following a February 28, 2019 work injury. At that time, he described that his pain had started immediately after lifting/pulling on a dock plate and indicated that an incident report had been filed with his employer. Dr. Runyan was treated for the injury and was released to work on April 6, 2019. He opined that appellant’s injury was a direct result of him lifting/pulling the loading dock plate on February 28, 2019.

By decision dated July 24, 2019, OWCP denied appellant’s claim, as modified, finding that the evidence of record was insufficient to establish a valid medical diagnosis from a qualified physician in connection with the accepted February 28, 2019 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 See *supra* note 1.

⁴ *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *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 first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. 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. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷

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 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 factors identified by the claimant.⁸ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that a disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁹

ANALYSIS

The Board finds that the case is not in posture for decision.

Section 8101(2) of FECA¹⁰ provides that the term physician, as used therein, includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct subluxation, as demonstrated by x-ray to exist and subject to regulations by the Secretary.¹¹ As Dr. Runyan diagnosed subluxation based on her review of an x-ray report dated March 7, 2019, she is a qualified physician under FECA and her opinion constitutes competent medical evidence.¹² In a series of medical reports she provided diagnoses. In reports dated March 8, 13, and 18, 2019, Dr. Runyan diagnosed lumbar sprain and strain of lower back. On March 7, 2019 she diagnosed subluxation at of the left pelvis, L5, right

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 *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

⁸ *H.B.*, Docket No. 18-0781 (issued September 5, 2018).

⁹ *D.H.*, Docket No. 18-1410 (issued March 21, 2019).

¹⁰ 5 U.S.C. § 8101(2).

¹¹ *See* 20 C.F.R. § 10.311; *R.H.*, Docket No. 18-1544 (issued March 4, 2019); *M.B.*, Docket No. 17-1378 (issued December 13, 2018).

¹² *Id.*; *see also* *R.A.*, Docket No. 19-0650 (issued January 15, 2020).

L4, sacrum, and right pelvis, as well as lumbago, sacroiliitis, and muscle spasm of back. On April 24, 2019 Dr. Runyan diagnosed degenerative disc disease, disc herniation, surluxation, myospasm, and noted an altered gait/posture. The Board thus finds that Dr. Runyan has provided valid medical diagnoses in association with appellant's claim.

Additionally, the record contains medical evidence from Dr. Baek who diagnosed disc protrusion at L4-5 and left neural foraminal narrowing at L5-S1 based on an April 18, 2019 MRI scan of the lumbar spine.

As the medical evidence of record establishes diagnosed conditions, the case must be remanded for consideration of the medical evidence with regard to the issue of causal relationship.¹³ Following such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹⁴

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the July 24, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: May 29, 2020
Washington, DC

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

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

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

¹³ *D.P.*, Docket No. 19-1407 (issued February 13, 2020).

¹⁴ *E.C.*, Docket No. 19-0854 (issued October 17, 2019).