United States Department of Labor
Employees' Compensation Appeals Board

K.S., Appellant	)	
and	)	
DEPARTMENT OF HOMELAND SECURITY, FEDERAL AIR MARSHAL SERVICE, East Elmhurst, NY, Employer	)	**Docket No. 19-1623** **Issued: March 19, 2020**

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
JANICE B. ASKIN, Judge

JURISDICTION

On July 26, 2019 appellant filed a timely appeal from a March 13, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

[1] The Board notes that, following the March 13, 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.*

[2] 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 November 26, 2018 employment incident.

FACTUAL HISTORY

On November 28, 2018 appellant, then a 31-year-old federal air marshal, filed a traumatic injury claim (Form CA-1) alleging that he sustained L4, L5, and S1 disc herniations on November 27, 2018 when he performed a squat jump during a training exercise while in the performance of duty. The employing establishment corrected the date of injury to November 26, 2018 and noted that he had been transported to a hospital emergency department by ambulance. Appellant stopped work on November 26, 2018.[3]

In support of his claim, appellant submitted a November 26, 2018 employing establishment light-duty form signed by Dr. Ugo Enzekwele, Board-certified in emergency medicine, finding him unable to perform light- or limited-duty work due to an unspecified condition. OWCP also received hospital emergency department reports dated November 26, 2018 from Jimmy Lee, a physician assistant, and Kerstin Andersen, a registered nurse.[4]

Dr. Sergai N. DeLamora, a Board-certified orthopedic surgeon, provided reports dated from November 28, 2018 to January 9, 2019 diagnosing lumbar pain and bilateral lumbar radiculopathy along with a sprain and strain due to performing jump squats while at work on November 26, 2018. In an attending physician's report (Form CA-20) dated December 5, 2018, he checked a box marked "yes" indicating that the diagnosed lumbar pain was caused or aggravated by the November 26, 2018 employment incident. Dr. DeLamora held appellant off work.[5]

In a February 6, 2019 development letter, OWCP advised appellant of the factual and medical deficiencies of his claim. It informed him of the evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In response, appellant provided a March 7, 2019 statement alleging that while performing a squat jump during required physical training at work on November 26, 2018, he felt three pops in his back and experienced the immediate onset of lumbar pain. He submitted additional medical evidence.

[3] Appellant filed claims for wage-loss compensation for the period January 11 to March 1, 2019.

[4] A November 26, 2018 lumbar computerized tomography (CT) scan demonstrated moderate disc degeneration, disc bulges at L3-4 and L4-5 with moderate neural foraminal narrowing, and a diffuse L5-S1 disc bulge. A November 30, 2018 lumbar magnetic resonance imaging (MRI) scan demonstrated disc bulges at L2-3 and L3-4 with mild bilateral neural foraminal stenosis, an L4-5 posterior annular tear with a large left paracentral disc herniation and compression of the left L4 and L5 and right L5 nerve roots, and a L5-S1 posterior annular tear.

[5] Appellant participated in physical therapy treatments from December 12, 2018 to February 27, 2019.

In February 5 and 6, 2019 reports, Dr. DeLamora held appellant off work due to lumbar pain. In a February 27, 2019 report, he returned appellant to full-duty work. In an attending physician's report (Form CA-20) of even date, Dr. DeLamora checked a box marked "yes" indicating that the November 26, 2018 employment incident caused appellant's lumbar pain. In a narrative report of even date, he noted appellant's account of performing jump squats during physical training at work when he landed awkwardly and "felt a pop in his back." A lumbar spine MRI scan revealed a disc herniation and annular tear. Dr. DeLamora opined that "this work incident caused [appellant's] symptoms."

By decision dated March 13, 2019, OWCP accepted that the November 26, 2018 employment incident occurred as alleged, but denied appellant's claim as causal relationship was not established.

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,[6] 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.[7] 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.[8]

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.[9] First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and, place, and in the manner alleged.[10] 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.[11]

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

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

[8] *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).

[9] *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).

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

[11] *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).

Causal relationship is a medical issue, and rationalized medical opinion evidence is required to establish causal relationship.[12] The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between a diagnosed condition and the specific employment incident identified by the claimant.[13]

ANALYSIS

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

Dr. Enzekwele found appellant disabled for work on November 26, 2018, but did not provide a medical diagnosis or reference the accepted employment incident. The Board has held that medical reports which do not provide a firm diagnosis and render an opinion on causal relationship are of no probative value and are insufficient to establish the claim.[14]

In attending physician's reports (Form CA-20) dated November 28, 2018, December 5, 2018 and February 27, 2019, Dr. DeLamora checked a box marked "yes" indicating that the November 26, 2018 employment incident caused appellant's lumbar condition. However, the checking of a box marked "yes" in a form report, without additional explanation or rationale, is insufficient to establish causal relationship.[15]

Dr. DeLamora opined in a February 27, 2019 narrative report that performing jump squats while at work on November 26, 2018 caused appellant's symptoms. However, he did not provide medical reasoning to explain how the accepted employment incident caused appellant's lumbar conditions. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition was related to an accepted employment incident.[16] Dr. DeLamora's opinion is therefore insufficient to establish appellant's claim.

[12] *J.B., id.*; *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[13] *See B.J.*, Docket No. 18-1276 (issued February 4, 2019); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[14] *I.M.*, Docket No. 19-1038 (issued January 23, 2020); *V.U.*, Docket No. 19-0755 (issued November 25, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, No. 17-1549 (issued July 6, 2018).

[15] *L.S.*, Docket No. 18-0264 (issued January 28, 2020); *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

[16] *G.R.*, Docket No. 19-0940 (issued December 20, 2019); *D.L.*, Docket No. 19-0900 (issued October 28, 2019); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017); *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

Appellant also submitted reports by Mr. Lee, a physician assistant, and Ms. Andersen, a nurse. As physician assistants and nurses are not considered physicians as defined under FECA, their medical findings and opinions are insufficient to establish entitlement to compensation benefits.[17]

Finally, appellant submitted results from diagnostic testing. The Board has held, however, that diagnostic studies are of limited probative value as they do not address whether the employment incident caused any of the diagnosed conditions.[18] These reports are therefore insufficient to establish the 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 submitted all medical evidence available to him. As determined above, the medical evidence of record is insufficient to establish a causal relationship between the accepted November 26, 2018 employment incident and the diagnosed lumbar conditions.

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.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a lumbar injury causally related to the accepted November 26, 2018 employment incident.[19]

[17] 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 id.* at § 8101(2); *T.K.*, Docket No. 19-0055 (issued May 2, 2019); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants, and physical therapists are not competent to render a medical opinion under FECA). *See also Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

[18] *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *see J.S.*, Docket No. 17-1039 (issued October 6, 2017).

[19] The case record contains a form for authorization for examination and/or treatment (Form CA-16) executed by the employing establishment on November 26, 2018. The Board notes that where an employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for a work-related injury, the Form CA-16 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 Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c).

ORDER

IT IS HEREBY ORDERED THAT the March 13, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 19, 2020
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board