



Federal Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

### **ISSUE**

The issue is whether appellant has met his burden of proof to establish a lumbar condition causally related to the accepted September 11, 2018 employment incident.

### **FACTUAL HISTORY**

On January 9, 2019 appellant, then a 46-year-old plumber, filed a traumatic injury claim (Form CA-1) alleging that on September 11, 2018 he injured his back while he was turning a water key to turn the water back on while in the performance of duty. He claimed that he strained his back and experienced severe pain that worsened over time. Appellant stopped work on September 17, 2018.

In an October 29, 2018 medical report, Dr. Jamal Taha, a Board-certified neurosurgeon, evaluated appellant for lower back pain. He noted that appellant had experienced pain in his back on and off for several years, but it had gotten worse in the past month. Dr. Taha diagnosed other intervertebral disc displacement, lumbar region and referred him to physical therapy. He opined that appellant was unable to perform his required duties given the severity of his pain at work and recommended that he remain out of work until he could be reevaluated.

In medical reports dated from November 14 to December 19, 2018, Nathaniel McNiel, a physician assistant, evaluated appellant after receiving epidural steroid injections (ESI) to treat his lower back pain. He noted appellant's diagnosis of degenerative disc disease at L4-5 with spondylosis and opined that it was likely the cause of his back pain. Mr. McNiel scheduled appellant for diagnostic bilateral L4-5 facet injections as he did not want to proceed with invasive surgery to treat his condition.

Appellant also submitted a position description of his duties as a plumber.

In a development letter dated January 18, 2019, OWCP advised appellant of the factual and medical deficiencies of his claim. It informed him of the evidence necessary to establish his claim and requested a narrative medical report from appellant's treating physician, which contained a detailed description of findings and diagnoses, explaining how the alleged incident caused, contributed to, or aggravated his medical conditions. OWCP afforded appellant 30 days to submit the necessary evidence.

In medical notes dated from September 20, 2018 to January 24, 2019, Dr. Julio Soto, Board-certified in family medicine, and Mr. McNiel requested that appellant be excused for various dates ranging from September 17, 2018 until he is reevaluated again on January 31, 2019.

---

<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

In a January 14, 2019 witness statement, K.H., appellant's coworker, explained that on September 11, 2018 he and appellant were involved with closing and opening approximately 12 underground water main valves to isolate a water main break.

By decision dated February 22, 2019, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record did not establish that his previously-diagnosed lumbar region other intervertebral disc displacement was causally related to the accepted September 11, 2018 employment incident.

OWCP continued to receive evidence. In an October 29, 2018 diagnostic report, Dr. Jerome Puryear, a Board-certified diagnostic radiologist, performed an x-ray of appellant's lumbar spine. He noted a previous September 27, 2018 x-ray and diagnosed mild discogenic and nondiscogenic changes and no significant changes from the prior examination.

In operative reports dated from October 31, 2018 to January 16, 2019, Dr. Taha documented the ESIs and facet injections appellant received to treat his lumbar spondylosis and lumbar disc displacement.

In a February 6, 2019 medical report, Dr. Taha noted that appellant had experienced no real improvements since his facet injections. He recommended that appellant not seek surgery and suggested that he seek chiropractic treatment instead.

On March 5, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

A telephonic hearing was held before an OWCP hearing representative on June 10, 2019. Appellant recounted the September 11, 2018 employment incident in which he was tasked with correcting a water main break and stated that his back began to bother him after turning off approximately 8 to 10 of the water valves that day. He indicated that he had experienced back and muscle spasms in the past, but otherwise had no prior problems with his lower back. The hearing representative explained that appellant would need a narrative report from his treating physician providing an explanation of how his condition was causally related to his employment incident. She held the case record open for 30 days for the submission of additional evidence. No additional evidence was received.

By decision dated July 11, 2019, OWCP's hearing representative affirmed the February 22, 2019 decision.

OWCP continued to receive evidence. In medical reports dated April 5 and July 2, 2019, Dr. Soto evaluated appellant and noted his diagnoses of a bulging of intervertebral disc between L4 and L5 and anxiety.

In a July 30, 2019 medical report, Dr. Lance Tigyer, a Board-certified orthopedic surgeon, evaluated appellant for lower back pain. On evaluation of appellant and his diagnostic reports, he diagnosed lumbar disc herniation with radiculopathy at L1-L4 and recommended that he undergo an ESI to treat his condition.

In operative reports dated August 12 and 26, 2019, Dr. Tigyer documented ESIs appellant received in order to treat his lumbar herniated nucleus pulposus with radiculopathy.

In a September 11, 2019 medical report, Dr. Soto evaluated appellant for his lower back related to the September 11, 2018<sup>4</sup> employment incident. Appellant informed him that he was seeking medical retirement as his condition had kept him out of work for a year and interfered with his activities of daily living (ADLs). Dr. Soto diagnosed a bulging of intervertebral disc between L4 and L5 and a lumbar herniated disc L4-L5.

Appellant also submitted multiple medical reports previously received by OWCP.

On October 15, 2019 appellant, through counsel, requested reconsideration of OWCP's July 11, 2019 decision.

Appellant submitted a February 25, 2017 medical report in which Dr. Soto evaluated appellant for several medical conditions, including a lumbar strain. Dr. Soto noted that appellant exacerbated his condition when he was outside working and that he experienced spasms as a result.

By decision dated January 2, 2020, OWCP affirmed its July 11, 2019 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>5</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>6</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>7</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>8</sup> First, the employee must submit sufficient evidence to establish that she actually experienced the

---

<sup>4</sup> Dr. Soto's report appears to contain a typographical error as he noted the date of injury as September 18, 2018.

<sup>5</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>6</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>7</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>8</sup> *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

employment incident at the time, place, and in the manner alleged.<sup>9</sup> Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.<sup>10</sup>

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence sufficient to establish such causal relationship.<sup>11</sup> 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 the diagnosed condition and the specific employment factors identified by the claimant.<sup>12</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>13</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a lumbar condition causally related to the accepted September 11, 2018 employment incident.

In an October 29, 2018 medical report, Dr. Taha evaluated appellant's lower back pain and noted that he had experienced pain his back on and off for several years but it had gotten worse in the past month. He diagnosed other intervertebral disc displacement, lumbar region and opined that appellant was unable to perform his required duties at work and recommended that he remain out of work until he could be reevaluated. 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>14</sup> Additionally, the Board has held that a well-rationalized opinion is particularly warranted when there is a history of a preexisting condition, as in this case.<sup>15</sup> For these reasons, Dr. Taha's October 29, 2018 medical report is insufficient to meet appellant's burden of proof.

Dr. Taha's remaining medical evidence consists of operative reports dated from October 31, 2018 to January 16, 2019 and a February 6, 2019 medical report in which he described ESIs and facet injections he provided to appellant in order to treat his lumbar conditions. As stated

---

<sup>9</sup> *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>10</sup> *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>11</sup> *K.V.*, Docket No. 18-0723 (issued November 9, 2018).

<sup>12</sup> *I.J.*, 59 ECAB 408 (2008).

<sup>13</sup> *R.C.*, Docket No. 19-0376 (issued July 15, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

<sup>14</sup> *R.Z.*, Docket No. 19-0408 (issued June 26 2019); *P.S.*, Docket No. 18-1222 (issued January 8, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018)..

<sup>15</sup> *M.E.*, Docket No. 18-1135 (issued January 4, 2019); *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

above, medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issues of causal relationship.<sup>16</sup>

Dr. Soto's medical evidence consisted of medical reports dated from April 5 to September 11, 2019 in which he evaluated appellant for lower back pain related to the September 11, 2018 employment incident and diagnosed a bulging of the intervertebral disc between L4 and L5 as well as medical notes dated from September 20, 2018 to January 24, 2019 in which he requested that appellant be excused from work. Although his evidence generally supported causal relationship between appellant's lumbar condition and the accepted employment incident, Dr. Soto did not provide sufficient rationale explaining these conclusions. Without explaining how turning the water keys caused or contributed to his injuries, Dr. Soto's opinion is of limited probative value.<sup>17</sup> His remaining medical evidence does not offer an opinion regarding the cause of an employee's condition, and therefore is of no probative value on the issues of causal relationship.<sup>18</sup>

Similarly, in his July 30, 2019 medical report, Dr. Tigyer evaluated appellant for lower back pain and diagnosed lumbar disc herniation with radiculopathy at L1-L4. He then provided operative reports dated August 12 and 26, 2019 in which he treated appellant's condition with ESIs. As Dr. Tigyer's medical evidence did not offer an opinion regarding the cause of appellant's condition, it is of no probative value on the issues of causal relationship.<sup>19</sup>

In his October 29, 2018 diagnostic report, Dr. Puryear performed an x-ray of appellant's lumbar spine and diagnosed mild discogenic and nondiscogenic changes. He also noted that there were no significant changes from appellant's previous September 27, 2018 examination. The Board has held that diagnostic studies, such as an x-ray, standing alone, lack probative value as to the issues of causal relationship as they do not address whether the employment incident caused the diagnosed condition.<sup>20</sup> For this reason, Dr. Puryear's October 29, 2018 diagnostic report is insufficient to meet appellant's burden of proof.

Appellant also submitted medical evidence dated from November 14, 2018 to January 24, 2019 from Mr. McNiel, a physician assistant. Certain healthcare providers such as physical therapists, nurses, physician assistants, and social workers are not considered physician[s] as

---

<sup>16</sup> *Supra* note 13.

<sup>17</sup> *See A.P.*, Docket No. 19-0224 (issued July 11, 2019).

<sup>18</sup> *Supra* note 13.

<sup>19</sup> *Id.*

<sup>20</sup> *M.L.*, Docket No. 18-0153 (issued January 22, 2020); *see J.S.*, Docket No. 17-1039 (issued October 6, 2017).

defined under FECA.<sup>21</sup> Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.<sup>22</sup>

The remaining medical evidence consists of a February 25, 2017 medical report from Dr. Soto. However, this evidence is of no probative value as it is dated prior to the September 11, 2018 employment incident.

As appellant has not submitted rationalized medical evidence establishing that his lumbar condition is causally related to the accepted September 11, 2018 employment incident, the Board finds that he has not met his burden of proof to establish his claim.

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 condition causally related to the accepted September 11, 2018 employment incident.

---

<sup>21</sup> 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

<sup>22</sup> See *M.F.*, Docket No. 17-1973 (issued December 31, 2018); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 2, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 25, 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