United States Department of Labor
Employees' Compensation Appeals Board

O.G., Appellant	)	
and	)	**Docket No. 21-0471**
	)	**Issued: August 10, 2021**
U.S. POSTAL SERVICE, ALICE POST OFFICE, Alice, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 5, 2021 appellant filed a timely appeal from a November 16, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 diagnosed medical condition causally related to the accepted September 17, 2019 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the November 16, 2020 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*.

FACTUAL HISTORY

This case has been previously before the Board.[3] The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On September 17, 2019 appellant, then a 28-year-old sales and services distribution associate, filed a traumatic injury claim (Form CA-1) alleging that on that date he suffered a left-sided lower back strain when pulling on a postal container while in the performance of duty. On the reverse side of the claim form the employing establishment acknowledged that appellant was injured in the performance of duty, but noted that he had a preexisting back injury from his previous employment. Appellant stopped work on September 18, 2019 and returned on September 26, 2019.

X-rays of appellant's lumbar spine, dated September 18, 2019, revealed no evidence of spondylolysis, spondylolisthesis, bone destruction, or fracture.

In a development letter dated October 2, 2019, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a September 18, 2019 report, Dr. Roberto Diaz, a Board-certified internist, noted that appellant felt a pop in his lower back when he applied extra force to close a container at work. He indicated that appellant's lower back pain radiated down his thigh, leg, and knee. Dr. Diaz provided physical examination findings and diagnosed low back pain and left-sided sciatica. In an accompanying work status report, he listed appellant's work restrictions and indicated that he could return to work with restrictions on September 25, 2019.

Dr. Diaz noted in a September 25, 2019 report that appellant was experiencing continued back pain. He reviewed x-rays of appellant's lumbar spine and again diagnosed low back pain and left-sided sciatica. In an accompanying work status report, Dr. Diaz diagnosed lower back strain. He listed appellant's work restrictions and advised that they were expected to last through October 2, 2019.

In an October 2, 2019 report, Dr. Diaz noted that appellant had continued lower back pain radiating to the bilateral lower legs with sporadic numbness and tingling. He provided physical examination findings and diagnosed low back pain and left-sided sciatica. In an accompanying work status report, Dr. Diaz diagnosed lower back strain. He listed appellant's work restrictions and advised that they were expected to last through October 16, 2019.

Dr. Diaz noted in an October 16, 2019 report that appellant was experiencing ongoing, intermittent back pain. He provided physical examination findings and diagnosed low back pain and left-sided sciatica. Dr. Diaz referred appellant for a maximum medical improvement (MMI) evaluation. In an accompanying work status report, he again diagnosed lower back strain.

[3] Docket No. 20-0399 (issued July 20, 2020).

Dr. Diaz listed appellant's work restrictions and advised that they were expected to last through October 30, 2019.

By decision dated November 8, 2019, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the incident occurred as alleged. It found that appellant had not responded to its October 2, 2019 development letter requesting specific factual information as to whether he had any similar symptoms or disability prior to the employment incident after the employing establishment alleged that he had a previous back injury from prior employment. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP subsequently received an October 29, 2019 report from Dr. Diaz who noted that appellant experienced intermittent, moderate lower back pain. Dr. Diaz provided physical examination findings and diagnosed low back pain and left-sided sciatica. In an accompanying work status report, he diagnosed lower back strain and listed appellant's work restrictions.

On December 10, 2019 appellant appealed to the Board. By decision dated July 20, 2020,[4] the Board set aside OWCP's November 8, 2019 decision and remanded the case for consideration of the medical evidence of record, finding that the evidence of record established the occurrence of the September 17, 2019 incident in the performance of duty, as alleged.

Upon return of the case record, by decision dated November 16, 2020, OWCP denied appellant's claim, finding that he had not submitted medical evidence containing a medical diagnosis in connection with the accepted September 17, 2019 employment incident. Consequently, it concluded that he had not met the requirements to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] has the burden of proof to establish the essential elements of his or her claim, including 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,[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

[4] *Id.*

[5] *Supra* note 1.

[6] *S.O.*, Docket No. 21-0002 (issued April 29, 2021); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 first must be determined whether fact of injury has been established. There are two components involved in establishing 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. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[9]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[10] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 specific employment factors identified by the employee.[11]

ANALYSIS

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

Dr. Diaz, in reports dated September 18 through October 29, 2019, described the accepted employment incident, discussed appellant's history of low back pain, and provided physical examination findings. In work status reports, dated September 25 through October 29, 2019, he listed appellant's work restrictions and diagnosed lower back strain. The Board, therefore, finds that the diagnosis of lower back strain constitutes a diagnosed medical condition.[12]

OWCP has not reviewed the medical evidence of record. As the medical evidence of record establishes a diagnosed medical condition, the case must be remanded for consideration of the

[7] *R.J.*, Docket No. 20-1630 (issued April 27, 2021); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[8] *J.C.*, Docket No. 20-1584 (issued April 23, 2021); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[9] *K.M.*, Docket No. 21-0016 (issued April 21, 2021); *Elaine Pendleton*, 40 ECAB 1143 (1989); *John J. Carlone*, 41 ECAB 354 (1989).

[10] *J.B.*, Docket No. 21-0011 (issued April 20, 2021); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[11] *P.C.*, Docket No. 20-0855 (issued November 23, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[12] *See S.A.*, Docket No. 20-1498 (issued March 11, 2021); *A.H.*, Docket No. 20-0730 (issued October 27, 2020); *B.C.*, Docket No. 20-0079 (issued October 16, 2020).

medical evidence with regard to the issue of causal relationship. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.[13]

CONCLUSION

The Board finds that appellant has met his burden of proof to establish a diagnosed medical condition. The Board further finds, however, that the case is not in posture for decision as to whether his diagnosed condition is causally related to the accepted September 17, 2019 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the November 16, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 10, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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

[13] *Id.*