United States Department of Labor
Employees' Compensation Appeals Board

I.M., Appellant	)	
and	)	**Docket No. 21-0324**
	)	**Issued: July 9, 2021**
U.S. POSTAL SERVICE, POST OFFICE, Honolulu, HI, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On January 4, 2021 appellant, through counsel, filed a timely appeal from a December 2, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that, following the December 2, 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted May 11, 2020 employment incident.

FACTUAL HISTORY

On May 15, 2020 appellant, then a 44-year-old collect and delivery clerk, filed a traumatic injury claim (Form CA-1) alleging that on May 11, 2020 he injured his back when he turned his body to pull mail closer to him in his mail truck and his back "popped" while in the performance of duty. He explained that he experienced severe pain in the left side of his middle back, radiating through the entire back and limbs. Appellant stopped work on May 11, 2020.

In a May 12, 2020 medical note, an unidentifiable healthcare provider indicated that appellant was totally incapacitated for the period May 12 through 17, 2020.

In a May 26, 2020 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim and provided a factual questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In a May 12, 2020 medical note, Dr. Sean S. Covant, an emergency medicine specialist, diagnosed back pain.

In a May 15, 2020 e-mail, appellant indicated that on the date of injury he initially performed his usual duties. He alleged that at one point during his route, he got back in his vehicle, put on the seatbelt, and turned to the left to pull mail closer to him. Appellant contended that, when he grabbed the mail, he felt his back pop. He noted that he continued to work, but began experiencing a pinching sensation in his back later that day. Appellant asserted that he woke up early the next day because of pain and was unable sit up to get out of his bed.

In a May 18, 2020 report, Dr. Winfred Y.K. Chang, an internal medicine specialist, diagnosed mid-back pain.

In a June 16, 2020 response to OWCP's development questionnaire, appellant indicated that his work hours changed every so often and noted that he was unsure when he started work on the date of injury, but he knows it was "either 8:00 or 8:30." He reiterated his history of injury on May 11, 2020.

In a June 19, 2020 medical note, Dr. Yefim Levy, an internal medicine specialist, provided a date of injury of May 12, 2020 and diagnosed acute bilateral thoracic back pain, soft tissue back injury, myofascial pain, and back strain. He found that appellant was unable to work from June 19 to July 2, 2020.

By decision dated June 25, 2020, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish causal relationship a diagnosed medical condition and the accepted May 11, 2020 employment incident.

A May 12, 2020 magnetic resonance imaging (MRI) scan of the thoracic spine was unremarkable.

In a May 12, 2020 medical report, Dr. Covant noted that appellant presented with complaints of mild thoracic back pain. Appellant recounted that he twisted his back at work while pulling a heavy bundle of mail toward him and felt a pop in his upper back. Dr. Covant conducted a physical examination and diagnosed back pain.

In a June 19, 2020 medical report, Dr. Levy noted that appellant injured his mid back at work on May 11, 2020 by twisting his back. He conducted a physical examination and noted that appellant had moderate-to-severe back pain. Dr. Levy diagnosed acute bilateral thoracic back pain, soft tissue back injury, myofascial pain, and back strain. In a prescription slip of even date, he diagnosed back pain.

Appellant submitted a June 20, 2020 report from Roxana Tamura, a licensed massage therapist, a June 22, 2020 report from Tara Mattes, an acupuncturist, and a June 29, 2020 report from Stephen P. Thomas, a physical therapist.

In a July 2, 2020 medical report, Dr. Levy reiterated his findings and diagnoses. In a medical note of even date, he indicated that the date of injury was May 12, 2020, repeated his diagnoses, and excused appellant from work for the period July 2 through 16, 2020.

OWCP received a July 6, 2020 report from Kilnani Ishii, a physical therapist assistant.

In a July 20, 2020 medical note, Dr. Levy reiterated his diagnoses and excused appellant from work for the period July 16 through 27, 2020.

On July 23, 2020 appellant requested reconsideration and submitted additional evidence, including a July 13, 2020 report from Ms. Ishii and a July 22, 2020 report from Dr. Covant diagnosing thoracic spine pain.

In medical notes dated July 28 through September 26, 2020, Dr. Levy repeated his diagnoses and found that appellant was unable to work from July 28 to September 23, 2020.

In a September 23, 2020 medical note, Dr. Levy diagnosed acute bilateral thoracic back pain, soft tissue back injury, back strain, and right shoulder strain.

In medical notes dated October 1, 15, and 22, 2020, Dr. Levy reiterated his diagnoses and noted that appellant was unable to work from September 30 to October 29, 2020.

An undated and unsigned surgery instructions sheet from the office of Dr. Sydney G. Smith, a Board-certified orthopedic surgeon, indicated that appellant was scheduled for left shoulder surgery on October 27, 2020.

In an unsigned medical note dated October 29, 2020, an unidentifiable healthcare provider diagnosed back strain, myofascial pain, right shoulder strain, and status post shoulder surgery and excused appellant from work for the period October 29 through November 5, 2020.

In a November 5, 2020 medical note, Dr. Levy diagnosed status post shoulder surgery and myofascial pain, and noted that appellant was unable to work from November 5 to 12, 2020.

In a November 12, 2020 medical note, Julie A. Rizzolo, a nurse practitioner, diagnosed status post shoulder surgery, right shoulder strain, back strain, myofascial pain, soft tissue back injury, and acute bilateral thoracic back pain.

By decision dated December 2, 2020, OWCP denied modification of its June 25, 2020 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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,[5] 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.[6] 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.[7]

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.[8]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[9] 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

[4] *Supra* note 2.

[5] *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[7] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[8] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[9] *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.[10]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted May 11, 2020 employment incident.

In medical reports dated June 19, July 2, and August 25, 2020, Dr. Levy noted that appellant pulled his mid back at work on May 11, 2020 by twisting his back. He conducted a physical examination and diagnosed bilateral thoracic back pain, soft tissue back injury, myofascial pain, and back strain. However, such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how the accepted May 11, 2020 employment incident actually caused a diagnosed medical condition.[11] The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.[12] Dr. Levy failed to provide a pathophysiological explanation as to how the accepted employment incident of twisting his back either caused or contributed to appellant's back strain.[13] Thus, these reports are of limited probative value and insufficient to establish that appellant's diagnosed conditions are causally related to the accepted May 11, 2020 employment incident.

In his notes dated June 19 through October 22, 2020, Dr. Levy provided multiple diagnoses and excused appellant from work. Dr. Levy did not, however, offer an opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.[14] As such, the Board finds that these notes are also insufficient to establish causal relationship.

In a May 12, 2020 medical report and note and a July 22, 2020 medical report, Dr. Covant reviewed appellant's history of injury, conducted a physical examination, and diagnosed back pain. Likewise, Dr. Chang's May 18, 2020 report and Dr. Levy's June 19, 2020 prescription slip and November 5, 2020 medical note failed to offer a firm diagnosis. The Board has held that pain is a symptom and not a compensable medical diagnosis.[15] Furthermore, the Board has held that a medical report lacking a firm diagnosis and a rationalized medical opinion regarding causal

[10] *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[11] *See V.L.*, Docket No. 20-0884 (issued February 12, 2021); *J.B.*, Docket No. 18-1006 (issued May 3, 2019).

[12] *Id.*, *see also Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[13] *See T.D.*, Docket No. 19-1779 (issued March 9, 2021).

[14] *J.T.*, Docket No. 20-1486 (issued March 16, 2021); *E.R.*, Docket No. 20-0880 (issued December 2, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[15] *See S.L.*, Docket No. 19-1536 (issued June 26, 2020); *D.Y.*, Docket No. 20-0112 (issued June 25, 2020).

relationship is of no probative value.[16] These reports, therefore, are insufficient to establish causal relationship.

Appellant also submitted multiple reports signed by a nurse practitioner, a licensed massage therapist, an acupuncturist, and physical therapists. The Board has long held that certain healthcare providers such as physical therapists, nurse practitioners, massage therapists, and acupuncturists are not considered physicians as defined under FECA.[17] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.

OWCP also received a May 12, 2020 MRI scan of the thoracic spine. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship, as they do not provide an opinion as to whether the employment incident caused any of the diagnosed conditions.[18] As such, this evidence is insufficient to establish appellant's claim.

Lastly, the record also contains a May 12, 2020 medical note with an illegible signature and an unsigned October 29, 2020 medical note. OWCP also received an undated and unsigned surgical instruction sheet from the office of Dr. Smith indicating that appellant was scheduled for left shoulder surgery. The Board has held that reports that are unsigned or bear an illegible signature cannot be considered probative medical evidence as the author cannot be identified as a physician.[19] Therefore, these notes have no probative value and are insufficient to establish appellant's claim.

As the medical evidence of record does not contain rationalized medical evidence establishing causal relationship between appellant's diagnosed back condition and the accepted May 11, 2020 employment incident, the Board finds that appellant has not met his burden of proof.

On appeal counsel argues that medical evidence provided a pathophysiological explanation on causation as a physician noted that appellant injured his mid back at work on May 11, 2020 by twisting his back. However, as explained above, the evidence of record lacks adequate medical rationale on causal relationship and is, therefore, insufficient to meet appellant's burden of proof to establish his claim.

[16] *W.R.*, Docket No. 20-1101 (issued January 26, 2021); *N.D.*, Docket No. 20-0699 (issued November 16, 2020).

[17] Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *L.G.*, Docket No. 19-1616 (issued March 10, 2020) (massage therapists are not considered physicians under FECA); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (nurse practitioners and physical therapists are not considered physicians under FECA); *K.L.*, Docket No. 18-1018 (April 10, 2019) (acupuncturists are not considered physicians under FECA).

[18] *See C.B.*, Docket No. 20-0464 (issued July 21, 2020).

[19] *C.S.*, Docket No. 20-1354 (issued January 29, 2021); *D.T.*, Docket No. 20-0685 (issued October 8, 2020); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

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 medical condition causally related to the accepted May 11, 2020 employment incident.

ORDER

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

Issued: July 9, 2021
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