United States Department of Labor
Employees' Compensation Appeals Board

D.S., Appellant	)	
and	)	**Docket No. 20-0584**
	)	**Issued: June 15, 2021**
U S. POSTAL SERVICE, WYKAGYL POST OFFICE, New Rochelle, NY, Employer	)	

Appearances:
Paul Kalker, 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
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 17, 2020 appellant, through counsel, filed a timely appeal from a December 11, 2019 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.

[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.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a lumbar condition causally related to the accepted July 24, 2018 employment incident.

FACTUAL HISTORY

On February 1, 2019 appellant, then a 63-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 24, 2018 he stepped in a small hole in a lawn and twisted his right leg while in the performance of duty. He notified his supervisor on February 1, 2019. On the reverse side of the claim form, appellant's supervisor controverted the claim, asserting that appellant had not reported the incident until six months later and had also admitted to moving a heavy object in his garage.

In an accompanying narrative statement, appellant reported that on July 24, 2018 he stepped in a small hole in a lawn, causing him terrible pain in his right leg and lower body, and some pain in his left leg. The fall caused him to limp, but he continued to finish his mail route as he thought he had just twisted his leg. Appellant reported that his limp continued for several weeks. On August 6, 2019 he went to arrange his garage after work and just barely pushed the lawn mower to the side when his pain flared up more than before. Appellant sought medical treatment the following day and despite treatment, however, his condition did not improve.

In support of his claim, appellant submitted a February 1, 2019 note from Dr. Nilo Herrera, Board-certified in internal medicine. Dr. Herrera reported that appellant was unable to work pending surgery and could return to work on March 4, 2019.

In a statement dated February 1, 2019, M.J., a customer service supervisor, reported that appellant had not reported an accident to her while on duty in order for her to conduct a thorough investigation.

In a letter dated February 4, 2019, the employing establishment controverted the claim. It noted the July 24, 2018 incident. However, the employing establishment also noted that appellant did not seek medical treatment until August 6, 2018, after he was arranging his garage and pushed his lawn mower to the side, causing a flare up of pain. It indicated that he had informed his supervisor that he was moving heavy objects in his garage and only sought medical treatment after that activity. The employing establishment argued that the medical evidence submitted failed to provide support for a work-related injury on July 24, 2018.

In a development letter dated February 15, 2019, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised appellant of the factual and medical evidence necessary, and provided a questionnaire for his completion. OWCP afforded him 30 days to submit the necessary evidence.

Dr. Herrera, in a January 3, 2019 report, indicated that appellant was a postal worker with a long-standing history of lower back pain. He noted that appellant was evaluated in August 2018 and an x-ray of the lumbar spine revealed significant disc space narrowing at L5-S1. Dr. Herrera reported that, since that time, his pain had been variable in intensity and duration until it became

so severe that appellant sought physical therapy treatment. Appellant reported that his condition would flare up while on his mail route, causing pain in both legs, right worse than left. Dr. Herrera diagnosed chronic right knee pain, chronic bilateral low back pain with bilateral sciatica, and right-sided lumbago with sciatica.

A January 4, 2019 magnetic resonance imaging (MRI) scan of the lumbar spine performed by Dr. Sandra Santiago, a Board-certified radiologist, revealed diagnostic findings of multilevel degenerative changes, most significant at L4-5 disc bulge with a large central/left paracentral/left lateral recess broad-based herniation with facet disease causing mild-to-moderate central canal stenosis and a right foraminal herniation abutting the right L4 nerve root causing moderate-to-marked right neural foraminal narrowing, left paracentral/lateral recess/foraminal disc protrusion at T12-L1, and incompletely evaluated small central disc herniation at T11-12.

In a January 28, 2019 report, Dr. Jacob Handszer, Board-certified in pain management, reported that appellant complained of low back and bilateral leg pain, left greater than right, which had been present for about two years after he fell into a hole and twisted his ankle. He reviewed the lumbar spine MRI and diagnosed radiculopathy of the lumbar region. Dr. Handszer opined that appellant suffered from lumbar disc herniation causing lumbar radiculopathy. He recommended a lumbar epidural steroid injection at L4-5, noting that appellant had not improved with oral steroids and physical therapy treatment.

In a February 1, 2019 medical report, Dr. Herrera noted that, while delivering mail, appellant twisted his back on a lawn causing radicular symptoms into the right lower extremity. Appellant informed him that, when he returned to work, a supervisor saw him limping and expressed concern, but he continued to work despite his radicular symptoms. Dr. Herrera noted that, while moving a lawnmower, appellant exacerbated his back pain causing him to seek treatment in their office with a nurse practitioner who referred him for physical therapy. Appellant began physical therapy on August 7, 2018 and returned to work in September despite continued pain and subsequently sought treatment on January 3, 2019 due to worsening pain. He was referred for a lumbar spine MRI scan, which revealed a large herniated disc with impingement of the L4 nerve root. Dr. Herrera diagnosed lumbar radiculopathy and recommended another epidural block injection.

Appellant responded to OWCP's questionnaire in a narrative statement dated March 8, 2019. He discussed his delay in reporting the July 24, 2018 incident, stating that he did not initially realize his injury was serious and thought that it was an episodic flare-up of his nonwork-related arthritic condition. Appellant explained that he often experienced arthritis flare-ups when delivering mail outside, which typically subsided after a few days. In this instance, he mistook what was later diagnosed as lumbar radiculopathy for his arthritic condition, causing his delay in filing a claim. Appellant reported that, following the employment incident, his pain continued to worsen and that, from July 24 through August 6, 2018, he had to use his hands to force his legs into his mail delivery truck. While at home on August 6, 2018, he tried to clean his garage and bent down to push the front wheel of his parked lawnmower to its inner side when he experienced pain similar to what he felt when he fell on his route. Appellant further described the July 24, 2018 incident and reported that he never discussed the incident with his supervisors or provided an explanation as to why he was out sick as his supervisors changed daily.

By decision dated May 1, 2019, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the July 24, 2018 employment incident occurred as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On October 25, 2019 appellant, through counsel, requested reconsideration and submitted an August 13, 2019 narrative report, wherein Dr. Herrera reported that appellant was delivering mail on July 24, 2018, when he stepped into a hole twisted his back in order to avoid falling, and developed a radiculopathy. He noted that appellant was limping, but continued to work, further noting that he also sprained his ankle. Dr. Herrera indicated that, subsequently, appellant closed the door of his garage, which caused a worsening of his radicular symptoms that had developed as a consequence of putting his foot in the hole and twisting his back and ankle. He reported that appellant was not working with his lawnmower because he did not cut his own grass. Dr. Herrera opined that the competent cause of appellant's right L4 nerve root impingement was the fall caused by the hole. He noted that appellant's discogenic disease and facet hypertrophy were part of the normal aging process, but that appellant did not have right L4 radiculopathy until he stepped into the hole. Dr. Herrera opined that the problem that caused his inability to work was his L4 radiculopathy, and that the competent cause was the injury sustained on July 24, 2018. He explained that, prior to that event, appellant was able to perform all of his duties and did not have complaints of radiculopathy.

By decision dated December 11, 2019, OWCP modified the May 1, 2019 decision, finding that the employment incident occurred as alleged. However, it denied the traumatic injury claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted July 24, 2018 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 filed within the applicable time limitation period of FECA, that an injury was sustained while 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.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[5]

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first

[3] *Supra* note 2.

[4] *J.R.*, Docket No. 20-0496 (issued August 13, 2020); *D.K.*, Docket No. 17-1186 (issued June 11, 2018); *Gary J. Watling*, 52 ECAB 278 (2001).

[5] *B.M.*, Docket No. 19-1341 (issued August 12, 2020); *T.C.*, Docket No. 18-1498 (issued February 13, 2019); *Michael E. Smith*, 50 ECAB 313 (1999).

component is whether the employee actually experienced the employment incident that allegedly occurred.[6] The second component is whether the employment incident caused a personal injury.[7]

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.[8] 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 incident identified by the employee.[9] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[10]

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.[11]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a lumbar condition causally related to the accepted July 24, 2018 employment incident.

In a January 3, 2019 report, Dr. Herrera reported that appellant was a postal worker with a long-standing history of lower back pain. He noted that appellant was evaluated in August 2018 and an x-ray of the lumbar spine revealed significant disc space narrowing at L5-S1. Dr. Herrera diagnosed chronic right knee pain, chronic bilateral low back pain with bilateral sciatica, and right-sided lumbago with sciatica, but did not provide an opinion on a cause of appellant's diagnosed conditions. The Board has held that medical evidence that does not offer an opinion regarding the

[6] *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *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).

[9] *R.F.*, Docket No. 20-1181 (issued February 11, 2021); *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

[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] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *See also A.J.*, Docket No. 20-0484 (issued September 2, 2020); *S.K.*, Docket No. 18-1411 (issued July 22, 2020); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

cause of an employee's condition is of no probative value on the issue of causal relationship.[12] As Dr. Herrera has not offered an opinion as to whether appellant's conditions are causally related to the accepted July 24, 2018 employment incident, his report is of no probative value and insufficient to meet appellant's burden of proof.

In a February 1, 2019 medical report, Dr. Herrera noted that, while delivering mail, appellant twisted his back on a lawn, causing radicular symptoms into the right lower extremity. He noted that appellant returned to work despite continued radicular symptoms and subsequently exacerbated his back pain while moving a lawnmower. He diagnosed lumbar radiculopathy and recommended another epidural block injection. In this report, Dr. Herrera did not offer an opinion as to whether the diagnosed condition was causally related to the accepted July 24, 2018 employment incident.[13] Thus, this report is of no probative value and insufficient to establish that appellant sustained an employment-related injury on July 24, 2018.

In a separate February 1, 2019 note, Dr. Herrera reported that appellant was unable to work pending surgery and could return to work on March 4, 2019. However, he failed to diagnose a medical condition, nor did he offer an opinion as to whether a diagnosed condition was causally related to the accepted employment incident, this note is of no probative value and is also insufficient to establish appellant's claim.[14]

In an August 13, 2019 narrative report, Dr. Herrera reported that appellant was delivering mail on July 24, 2018, when he stepped into a hole and twisted his back in order to avoid falling, and developed a radiculopathy. He opined that the competent cause of appellant's right L4 nerve root impingement and radiculopathy was the fall caused by the hole. Dr. Herrera did not, however, explain with sufficient rationale how the incident would cause or result in the diagnosed conditions. Furthermore, he failed to provide medical rationale for his opinion, only generally noting that, prior to that event, appellant was able to perform all of his duties and did not have complaints of radiculopathy.[15] The Board has held that an opinion that a condition is causally related because the employee was asymptomatic before the injury is insufficient, without adequate rationale, to establish causal relationship.[16] Thus, Dr. Herrera did not provide sufficient rationale for his opinion and, therefore, the report is insufficient to meet appellant's burden of proof.

Appellant also submitted a January 28, 2019 medical report from Dr. Handszer, who noted complaints of low back and bilateral leg pain, which had been present for about two years after he fell into a hole and twisted his ankle. However, while Dr. Handszer provided a diagnosis of lumbar disc herniation causing lumbar radiculopathy, he failed to provide an opinion on the cause of

[12] *L.G.*, Docket No. 20-0433 (issued August 6, 2020); *S.D.*, Docket No. 20-0413 (issued July 28, 2020); *S.K.*, Docket No. 20-0102 (issued June 12, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[13] *Id*.

[14] *Id*.

[15] *See J.I.*, Docket No. 20-1374 (issued March 3, 2021); *H.A.*, Docket No. 18-1466 (issued August 23, 2019).

[16] *D.M.*, Docket No. 20-0266 (issued January 8, 2021); *R.V.*, Docket No. 18-1037 (issued March 26, 2019); *J.S.*, Docket No. 16-1769 (issued May 24, 2017).

appellant's condition.[17] As such, his report is of no probative value and therefore insufficient to establish the claim.[18]

While OWCP also received a January 4, 2019 lumbar MRI scan, the Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the employment incident caused any of the diagnosed conditions.[19] Such reports are therefore 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 condition and the accepted July 24, 2018 employment incident, the Board finds that appellant has not met his burden of proof.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's 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 July 24, 2018 employment incident.

[17] *M.G.*, Docket No. 18-1616 (issued April 9, 2020).

[18] *Id.*

[19] *See T.J.*, Docket No. 19-1339 (issued March 4, 2020); *F.D.*, Docket No. 19-0932 (issued October 3, 2019); *D.N.*, Docket No. 19-0070 (issued May 10, 2019); *R.B.*, Docket No. 18-1327 (issued December 31, 2018).

ORDER

IT IS HEREBY ORDERED THAT the December 11, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 15, 2021
Washington, DC

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

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

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