United States Department of Labor
Employees' Compensation Appeals Board

S.C., Appellant	)	
and	)	**Docket No. 20-0492**
	)	**Issued: May 6, 2021**
U.S. POSTAL SERVICE, POST OFFICE, Lyndhurst, NJ, Employer	)	

Appearances:
Jason Lomax, 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 2, 2020 appellant, through counsel, filed a timely appeal from a July 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 low back condition causally related to the accepted November 15, 2018 employment incident.

FACTUAL HISTORY

On November 29, 2018 appellant, then a 34-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on November 15, 2018 he was descending stairs after delivering mail and fell, injuring his low back while in the performance of duty. He stopped work on November 19, 2018.

On November 20, 2018 Dr. Marivi De Jesus, a Board-certified anesthesiologist, treated appellant for low back pain with radicular symptoms. She noted that x-rays of the lumbar spine revealed lumbar spondylosis. Dr. De Jesus recommended medication, physical therapy, and limitation of activities. She returned appellant to work on November 26, 2018.

On November 26, 2018 Dr. Michael Acanfora, a chiropractor, reported treating appellant on November 19, 2018 for severe low back and hip pain. He returned appellant to work on December 3, 2018.

Appellant was treated in the emergency room on November 28, 2018 by an unidentified healthcare provider who diagnosed lumbosacral radiculopathy at S1, lumbar disc herniation, and elevated blood pressure.

In a November 29, 2018 authorization for examination and/or treatment (Form CA-16), the employing establishment authorized appellant to seek medical care for sprain and strain of the middle back.

In a December 19, 2018 development letter, OWCP advised that, when appellant's claim was received, it appeared to be a minor injury that resulted in minimal or no lost time for work. Therefore, payment of a limited amount of medical expenses was administratively approved without formal consideration of the merits of his claim. OWCP opened appellant's claim for consideration of the merits. It advised him of the deficiencies of his claim and requested that he submit additional factual and medical evidence. OWCP afforded appellant 30 days to respond.

OWCP received an x-ray of the lumbar spine dated August 31, 2018 which revealed a 15-millimeter anterolisthesis of L5 on S1, suspected bilateral spondylolysis, and L5-S1 disc space narrowing. A November 28, 2018 magnetic resonance imaging (MRI) scan of the lumbar spine revealed mild disc bulges at L3-4 and L4-5, spondylolisthesis at L5-S1, loss of height and defect along the inferior endplate of L5, and mild impaction injury at S1.

On December 14, 2018 Dr. Acanfora treated appellant for back and hip pain, which began on November 11, 2018. He reviewed an MRI scan revealing severe lumbar spinal issues and recommended chiropractic adjustments, physical therapy, and therapeutic exercise.

Appellant was seen in consultation by Dr. Alfred A. Steinberger, a neurosurgeon, on December 19, 2018 for back pain radiating into his left leg. His history was significant for a motor

vehicle accident in 2005 in which he sustained a back injury. Dr. Steinberger reported appellant's current symptoms began after a work-related accident on November 15, 2018 when he slipped during a snow storm and fell backwards onto his left low back and developed severe low back and leg pain and numbness radiating into the buttocks, calf, ankle, and foot. Findings on examination revealed limited range of motion of the back, tenderness of the lumbar vertebral, paraspinal tenderness, pain with straight leg raising, antalgic gait, weakness of the left leg, and patchy decreased sensation of the left foot and calf. Dr. Steinberger reviewed the November 28, 2018 MRI scan and diagnosed grade II spondylolisthesis at L5-S1, severe degenerative disc disease, foraminal stenosis, and diminished L5 vertebral body. In separate note dated December 19, 2018, he diagnosed spondylolisthesis, severe degenerative disc disease, loss of vertebral height at L5, and severe foraminal stenosis. Dr. Steinberger reported that appellant had a preexisting condition, but he was doing well and carrying out all his normal activities of daily living until the work-related accident of November 15, 2018. He opined that "It is clearly the work-related accident that unequivocally exacerbated his preexisting condition…." Dr. Steinberger recommended surgery.

By decision dated February 7, 2019, OWCP denied appellant's traumatic injury claim, finding that the medical evidence submitted was insufficient to establish causal relationship between his diagnosed conditions and the accepted November 15, 2018 employment incident.

On February 19, 2019 appellant requested a telephonic oral hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on May 29, 2019.

OWCP continued to receive evidence. Appellant was treated in follow-up by Dr. Steinberger on March 27, 2019 and reported persistent symptoms of back pain, left leg pain, numbness, paresthesias, and weakness in the left leg. Dr. Steinberger diagnosed grade II spondylolisthesis L5-S1, severe degenerative disc disease, foraminal stenosis, and diminished L5 vertebral body. He returned appellant to light duty and again recommended surgical intervention. On June 14, 2019 Dr. Steinberger advised that appellant's symptoms were markedly exacerbated after the work-related accident on November 15, 2018 when he slipped and fell during a snow storm. He noted that appellant had preexisting spinal degenerative condition, but was functioning normally until the November 15, 2018 accident. Dr. Steinberger diagnosed grade II spondylolisthesis L5-S1, severe degenerative disc disease, foraminal stenosis, diminished L5 vertebral body. He opined that this accident was responsible for the exacerbations of his symptoms which required surgery.

By decision dated July 11, 2019, an OWCP hearing representative affirmed the February 7, 2019 decision.

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 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

[3] *Id.*

limitation of FECA,[4] 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.[5] 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.[6]

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.[7]

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[8] 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.[9]

In any case where 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.[10]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a low back condition causally related to the accepted November 15, 2018 employment incident.

---

[4] *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).

[5] *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).

[6] *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).

[7] *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).

[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] *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).

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *See R.D.*, Docket No. 18-1551 (issued March 1, 2019).

On December 19, 2018 Dr. Steinberger diagnosed spondylolisthesis, severe degenerative disc disease, loss of vertebral height at L5, and severe foraminal stenosis. Appellant reported a preexisting low back condition, but was asymptomatic until the work-related accident of November 15, 2018. Dr. Steinberger opined that "It is clearly the work-related accident that unequivocally exacerbated his preexisting condition…" Similarly, in another report dated December 19, 2018 report, he diagnosed grade II spondylolisthesis at L5-S1, severe degenerative disc disease, and foraminal stenosis diminished L5 vertebral body and noted that appellant's current low back symptoms began after a work-related accident on November 15, 2018. The Board has held that the mere fact that symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between a diagnosed condition and employment factors.[11] A medical opinion must explain how the implicated employment factors physiologically caused, contributed to, or aggravated the specific diagnosed conditions.[12] Lacking such an explanation, Dr. Steinberger's opinion is insufficient to meet appellant's burden of proof.[13]

Appellant was treated in follow up by Dr. Steinberger on March 27, 2019 who reiterated his previous diagnoses. However, Dr. Steinberger did not render an opinion on causation. 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.[14]

On June 14, 2019 Dr. Steinberger again reiterated his diagnoses and noted that appellant had preexisting spinal degenerative condition, but was asymptomatic until the accident on November 15, 2018. He opined that the work-related slip and fall on November 15, 2018 was responsible for the exacerbations of appellant's symptoms and required surgery. Dr. Steinberger, however, did not provide medical rationale supporting his conclusory opinion. The Board has held that a medical opinion is of limited value if it is conclusory in nature.[15] A medical opinion must explain how the implicated employment factors physiologically caused, contributed to, or aggravated the specific diagnosed conditions.[16] Without this explanation, Dr. Steinberger's reports are insufficient to meet appellant's burden of proof to establish his claim.[17]

On November 20, 2018 Dr. De Jesus treated appellant for lower back pain with radicular symptoms. She noted that x-rays of the lumbar spine revealed lumbar spondylosis. However, Dr. De Jesus did not offer a medical diagnosis or provide an opinion as to whether a diagnosed condition was causally related to the accepted employment incident. The Board has held that medical evidence that does not include a firm diagnosis or an opinion regarding the cause of an

[11] *A.S.*, Docket No. 19-1955 (issued April 9, 2020).

[12] *C.M.*, Docket No. 19-0360 (issued February 25, 2020).

[13] *C.M.*, *id*.

[14] *Id.*

[15] *C.M.*, *supra* note 12; *B.H.*, Docket No. 18-1219 (issued January 25, 2019).

[16] *C.M.*, *id.*; *K.G.*, Docket No. 18-1598 (issued January 7, 2020).

[17] *Id.*

employee's condition is of no probative value on the issue of causal relationship.[18] This report is, therefore, insufficient to establish appellant's claim.

Appellant was treated by Dr. Acanfora, a chiropractor, on November 11 and 26, 2018 for severe low back and hip pain. Dr. Acanfora reviewed an MRI scan, which revealed severe lumbar spinal issues. Under FECA,[19] the term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. OWCP's regulations at 20 C.F.R. § 10.5(bb) have defined subluxation as an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrable on an x-ray film to an individual trained in the reading of x-rays.[20] If the diagnosis of a subluxation as demonstrated by x-ray is not established, the chiropractor is not a physician as defined under FECA and his or her report is of no probative value to the medical issue presented.[21] The Board notes that Dr. Acanfora did not diagnose subluxations as demonstrated by an x-ray and he is, therefore, not considered a physician under FECA.[22]

Appellant submitted an emergency room note dated November 28, 2018 from an unidentified care provider. The Board has held that a medical note containing an illegible signature or which is unsigned has no probative value, as it is not established that the author is a physician.[23] Appellant also submitted multiple diagnostic studies including an x-ray of the lumbar spine and an MRI scan of the lumbar spine. The Board has held that diagnostic studies, standing alone, lack probative value as they do not provide an opinion on causal relationship between accepted employment factors and a claimant's diagnosed conditions.[24] This evidence is, therefore, insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence establishing that his injury is causally related to the accepted November 15, 2018 work accident, 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.

---

[18] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[19] 5 U.S.C. § 8101 *et seq.*

[20] 20 C.F.R. § 10.5(bb).

[21] *R.P.*, Docket No. 18-0860 (issued December 4, 2018); *Mary A. Ceglia*, 55 ECAB 626 (2004); *Jack B. Wood*, 40 ECAB 95, 109 (1988).

[22] 5 U.S.C. § 8101 *et seq.*; 20 C.F.R. § 10.5(bb).

[23] *See Z.G.*, 19-0967 (issued October 21, 2019); *see R.M.*, 59 ECAB 690 (2008); *Bradford L. Sullivan*, 33 ECAB 1568(1982) (where the Board held that a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a "physician" as defined in FECA).

[24] *See I.C.*, Docket No. 19-0804 (issued August 23, 2019).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a low back condition causally related to the accepted November 15, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the July 11, 2019 decision of the Office of Workers' Compensation Programs is affirmed.[25]

Issued: May 6, 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

[25] The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form 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* 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).