United States Department of Labor
Employees' Compensation Appeals Board

L.T., Appellant	)	
and	)	**Docket No. 20-0582**
	)	**Issued: November 15, 2021**
DEPARTMENT OF THE AIR FORCE, TINKER AIR FORCE BASE, OK, 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
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 21, 2020 appellant filed a timely appeal from a November 26, 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 diagnosed medical condition causally related to the accepted July 21, 2015 employment incident.

FACTUAL HISTORY

On August 5, 2015 appellant, then a 59-year-old sheet metal mechanic (aircraft), filed a traumatic injury claim (Form CA-1) alleging that on July 21, 2015 he injured his back when he attempted to turn over a rudder while in the performance of duty. He indicated that he experienced a sharp pain in his lower back and numbness in his hands. Appellant stopped work on that day and returned to work on July 23, 2015.

Appellant also submitted medical evidence dated from 2004 to 2014 from multiple physicians detailing his history of multiple preexisting conditions including chronic back pain and lumbar degenerative disc disease.

In a July 28, 2015 medical report, Dr. Edmond L. Hooks, a family medicine specialist, noted that appellant reported that he sustained a lower back injury on July 22, 2015[3] while turning over a rudder at work. He diagnosed an aggravation of chronic low back pain, bilateral hand numbness, and systematic hypertension. Dr. Hooks opined that appellant's aggravation was not significant enough to conclude that it was work related.

On July 31, 2015, Dr. Jeffrey B. Cruzan, Board-certified in family medicine, placed appellant on restricted duty until September 1, 2015.

In an August 3, 2015 medical report, Dr. Philip M. Beck, Board-certified in family medicine, noted that appellant was seen for recheck of back pain related to the alleged July 21, 2015 employment incident. He noted a history of nonwork-related back pain and provided work restrictions.

In an August 4, 2015 e-mail, appellant reiterated his account of the alleged July 21, 2015 employment incident. In an undated statement, he noted that he experienced aching in his arms and numbness in his hands with loss of grip strength.

In an August 31, 2015 medical report, Dr. Cruzan noted that appellant suffered from chronic neck pain and indicated that he had injured his lower back while moving a heavy object at work a few weeks prior. He observed that appellant developed numbness and tingling in his hands. Appellant related that his grip strength decreased as well as a result of his work injury. Dr. Cruzan diagnosed cervicalgia, diabetes, hyperlipidemia, hypertension, lower back pain, and paresthesia.

[3] The Board notes that Dr. Hooks incorrectly identified the date of injury on his report as July 22, 2015. The record reflects that the accepted incident occurred on July 21, 2015.

In a September 3, 2015 medical report, Dr. Hooks noted that appellant was seen for recheck of back pain related to the alleged July 21, 2015 employment incident. He opined that appellant's chronic back pain was aggravated by the alleged July 21, 2015 employment incident.

In an October 1, 2015 medical report, Dr. Cruzan again diagnosed cervicalgia and chronic lower back pain.

In an October 7, 2015 letter of controversion, on behalf of the employing establishment, Dr. Edward T. King, an employing establishment physician specializing in preventive and occupational medicine, reviewed appellant's history and recommended denial of his claim for chronic cervical degeneration, thoracic and lumbosacral pain, hip pain, bilateral upper and lower extremity radiculopathy-type symptoms, and any related diagnoses. He noted that appellant previously sustained multiple injuries from a nonwork-related motor vehicle accident in 2007. Dr. King opined that appellant's current conditions were preexisting and there was no evidence that there had been more than a minor temporary aggravation caused by his duties at the employing establishment. He concluded that there was no causal relationship between appellant's injuries and his work duties.

In a November 2, 2015 medical report, Dr. Cruzan noted that appellant reported having more pain since the work injury. He diagnosed, cervicalgia, diabetes, hypertension, and lower back pain.

A January 5, 2016 cervical spine x-ray revealed chronic degenerative facet arthritis at C2-C3 and C3-C4 and posterolisthesis at C3-C4.

On May 11, 2016 Dr. Cruzan provided appellant work restrictions.

In an October 11, 2016 return-to-work note, Dr. Carl M. Lindquist, a Board-certified internist, provided work restrictions. In a November 22, 2016 medical report, he indicated that appellant was seen for a chromate examination. Dr. Lindquist noted appellant's preexisting conditions, including hearing loss, cubital tunnel syndrome, numbness, and hypertension, but found no detectable medical condition.

In a June 20, 2017 medical report, Sammual Gunnels, a certified physician assistant, noted that appellant previously underwent left finger surgery in 1982 and left elbow surgery in 2008. He also noted that appellant's pain began in 2007 and gradually became worse in the past two weeks without any major event. Mr. Gunnels diagnosed chronic pain syndrome, low back pain, lumbar spondylosis, lumbar radiculopathy, and other intervertebral lumbosacral disc degeneration.

A June 29, 2017 lumbar spine magnetic resonance imaging (MRI) scan revealed mild facet anthropathy.

In a July 14, 2017 medical report, Dr. Lindquist noted that appellant's July 2015 injury was assessed as nonwork related. He diagnosed nonwork-related chronic back pain and aggravation of his preexisting degenerative disc disease.

In July 17, 2017, August 14, 2017, and September 12, 2017 medical reports, Mr. Gunnels reiterated his examination findings and diagnoses.

In a July 18, 2017 medical report, Dr. Hooks noted that appellant had a history of degenerative disc disease since 2003 and reported that appellant still experienced constant back pain.

In a July 19, 2017 medical note, Dr. Rafael Justiz, Board-certified in pain medicine, noted that appellant underwent epidural steroid injection that day and diagnosed lumbar degenerative disc disease and lumbar radiculitis.

In an August 15, 2017 medical report, Dr. Hooks reiterated his examination findings and diagnosed chronic low back pain.

In an August 16, 2017 medical note, Dr. Justiz noted that appellant underwent epidural steroid injection again that day and diagnosed lumbar degenerative disc disease and lumbar radiculitis.

On September 31, 2017 appellant filed a notice of recurrence (Form CA-2a) for medical treatment. He explained that he had work restrictions following the initial July 21, 2015 employment injury, but suddenly felt a flare up of pain in his lower back radiating down his left buttocks, thigh, leg, and foot when he woke up on June 1, 2017.

In a December 22, 2017 development letter, OWCP advised appellant of the deficiencies of his claim and afforded him 30 days to submit the necessary medical evidence. No additional evidence was received within the time allotted.

By decision dated February 1, 2018, OWCP accepted that the July 21, 2015 employment incident occurred as alleged, but denied his claim, finding that the medical evidence of record failed to provide a medical diagnosis causally related to the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish that he sustained an injury as defined by FECA.

On February 6, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated September 28, 2018, the hearing representative affirmed OWCP's February 1, 2018 decision.

In an August 15, 2019 narrative report, Dr. Cruzan noted that he began treating appellant in 2008 regarding chronic pain related to a previous injury. He indicated that appellant was seen on July 31, 2015 for a routine follow up of chronic conditions. Dr. Cruzan noted, however, that he also reported a recent work-related injury. He explained that his examination findings were consistent with appellant's history of injury. Dr. Cruzan noted that appellant was seen again in August 2015 and the examination findings were again consistent with his history of injury.

On August 30, 2019 appellant, through counsel, requested reconsideration.

By decision dated November 26, 2019, OWCP denied modification of its prior 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. The first component is that 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 nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.[10] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[11]

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[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).

[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] *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ANALYSIS

The Board finds that appellant has met his burden of proof to establish a medical diagnosis. The record establishes that Drs. Lindquist and Justiz provided diagnoses of lumbar degenerative disc disease, aggravation of preexisting degenerative disc disease, and lumbar radiculitis.

The Board further finds, however, that the medical evidence of record is insufficient to establish that the diagnosed conditions were causally related to the accepted July 2, 2015 employment incident.

In the July 28 and September 3, 2015 medical reports, Dr. Hooks opined that appellant's chronic back pain was aggravated by the accepted July 21, 2015 employment incident. The Board has held that pain is a symptom and not a specific medical diagnosis.[12] Furthermore, Dr. Hooks determined that appellant's aggravation was not significant. The Board has long held that a medical report lacking a firm diagnosis and a rationalized medical opinion regarding causal relationship is of no probative value.[13] For these reasons, these medical reports are insufficient to establish appellant's burden of proof.

In other medical reports dated July 18 and August 15, 2017, Dr. Hooks provided a history of preexisting degenerative disc disease and again diagnosed chronic low back pain. As noted, pain is not a valid diagnosis.[14] Furthermore, Dr. Hooks did not mention the accepted July 21, 2015 employment incident. The Board has held that without a valid medical diagnosis of a current medical condition linked to the accepted employment incident, the medical component of fact of injury cannot be met.[15] Thus, these reports are also insufficient to establish the medical component of fact of injury.

In the July 31, 2015 and May 11, 2016 medical notes, Dr. Cruzan provided work restrictions, but did not provide a diagnosis. Similarly, Drs. Beck and Lindquist, in their medical reports dated August 3, 2015 and October 11, 2016, provided work restrictions without a firm diagnosis. As noted, medical evidence lacking a firm diagnosis is of no probative value.[16] Therefore, this medical evidence is insufficient to establish appellant's claim.

Dr. Lindquist's November 22, 2016 and July 14, 2017 medical reports noted a history of preexisting conditions and diagnosed nonwork-related chronic pain and aggravation of low back disc degenerative disease, noting that appellant's July 2015 injury was assessed as nonwork

[12] *M.H.*, Docket No. 18-0873 (issued December 18, 2019); *J.S.*, Docket No. 19-0863 (issued November 4, 2019); *V.B.*, Docket No. 19-0643 (issued September 6, 2019).

[13] *W.G.*, Docket No. 20-0439 (issued July 13, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020); *P.C.*, Docket No. 18-0167 (issued May 7, 2019).

[14] *Supra* note 12.

[15] *K.B.*, Docket No. 16-0122 (issued April 19, 2016); *D.N.*, Docket No. 15-0987 (issued August 3, 2015).

[16] *Supra* note 13.

related. As Dr. Lindquist failed to provide an opinion on causal relationship, his report is of no probative value.[17]

Dr. Cruzan's August 31, 2015 medical report indicated that appellant suffered from chronic neck pain. He did not, however, provide an opinion on causal relationship. In his October 1 and November 2, 2015 reports, Dr. Cruzan again did not provide an opinion on the cause of appellant's diagnosed conditions. Similarly, while Dr. Justiz, in his medical reports dated July 19 and August 16, 2017, diagnosed lumbar degenerative disc disease and radiculitis, he also did not provide an opinion as to whether the accepted July 21, 2015 employment incident caused or contributed to appellant's lumbar conditions. The Board has long held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value.[18] Therefore, these reports are insufficient to establish appellant's claim.

In his August 15, 2019 narrative report, Dr. Cruzan opined that his examination findings in July and August 2015 were consistent with appellant's history of injury. He, however, failed to provide a firm diagnosis in connection with the accepted July 21, 2015 employment incident. As noted above, a medical report lacking a firm diagnosis is of no probative value.[19] Thus, this report is also insufficient to establish appellant's burden of proof.

Appellant submitted medical reports signed by a certified physician assistant. The Board has held, however, that medical reports signed solely by a physician assistant are of no probative value as physician assistants are not considered physicians as defined under FECA.[20] As such, this evidence is of no probative value and is insufficient to establish appellant's claim.

Finally, the record also contains the January 5, 2016 cervical spine x-ray and the June 29, 2017 lumbar spine MRI scan. The Board has long held, however, that diagnostic test reports, standing alone, lack probative value as they do not provide an opinion regarding the cause of the diagnosed conditions.[21] These diagnostic studies are, therefore, insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence establishing a medical diagnosis causally related to the accepted July 21, 2015 employment incident, the Board finds that he has not met his burden of proof.

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

[18] *Id*.

[19] *Supra* note 13.

[20] 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). *See 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). *See also M.W.*, Docket No. 19-1667 (issued June 29, 2020) (physician assistant).

[21] *L.B.*, Docket No. 19-1907 (issued August 14, 2020); *J.K.*, Docket No. 20-0591 (issued August 12, 2020).

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 met his burden of proof to establish a medical diagnosis. The Board further finds, however, that the medical evidence of record is insufficient to establish that the diagnosed conditions were causally related to the accepted July 2, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the November 26, 2019 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: November 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