United States Department of Labor
Employees' Compensation Appeals Board

W.W., Appellant	)	
and	)	**Docket No. 20-1587**
	)	**Issued: October 13, 2021**
DEPARTMENT OF THE ARMY, INSTALLATION MANAGEMENT COMMAND, Fort Hood, 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 September 1, 2020 appellant filed a timely appeal from an April 7, 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]

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that following the April 7, 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 evidence for the first time on appeal. *Id*.

ISSUE

The issue is whether appellant has met his burden of proof to establish a back condition causally related to the accepted June 24, 2003 employment incident.

FACTUAL HISTORY

On June 24, 2003 appellant, then a 25-year-old information technology specialist, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his back while in the performance of duty. He explained that when he attempted to open a door while carrying a computer he shuffled his computer and twisted himself to get through the door. Appellant indicated that his injury was in the center of his spine, and that he experienced very sharp pain.

A June 25, 2003 authorization for examination and/or treatment (Form CA-16) signed by the employing establishment indicated that appellant sprained his back on June 24, 2003 when he twisted his back while carrying a computer. A June 25, 2003 unsigned attending physician's report, Part B of the Form CA-16, indicated that appellant was injured in a lifting/twisting incident and that he had no concurrent or preexisting injuries. The report listed findings of muscle spasm and diagnosed back strain.

Ron Smith, a physician assistant, indicated in a June 25, 2003 report that appellant was injured on June 24, 2003 at the employing establishment. Appellant related that he was holding a computer central processing unit (CPU) with one hand and twisted his body to open the door, which caused the computer CPU to slip and put pressure on his left upper extremity. He indicated that he experienced a popping sensation in his back and had pain and muscle spasm since then.

A June 24, 2003 x-ray of appellant's lumbar spine revealed transverse lucent lines at the sacrum at the S1 level with increased sclerosis on the right which may represent articulation lines with stress-related changes due to altered biomechanics from transitional vertebrae versus a stress fracture. A June 24, 2003 x-ray of appellant's thoracic spine was interpreted as within normal limits.

On June 27, 2003 Mr. Smith reported that appellant strained his upper back secondary to a lifting/twisting incident at the employing establishment. He conducted a physical examination and diagnosed an upper back strain.

A June 27, 2003 work status report signed by Dr. Michael Kirkpatrick, Board-certified in family practice, indicated that appellant was injured on June 24, 2003 and experienced back pain. Dr. Kirkpatrick diagnosed a back sprain and listed work restrictions.

June 20, 2007 medical reports by Dr. Andrew Letizia, a Board certified internist, indicated that appellant presented with back, neck, and shoulder pain. Dr. Letizia related that appellant had neck pain for four months and lower back pain for three years. He indicated that he reviewed appellant's medical history, conducted a physical examination, and diagnosed lumbago and a neck sprain.

An undated letter received by OWCP on November 29, 2018 from appellant indicated that on June 24, 2003 he was carrying three computers when he encountered a closed door and had to

hold the computers up against the wall and open the door with his free hand. He related that while he did this someone was trying to go through the other side of the door, which caused him to slip, and he twisted in order to avoid getting hit by the door. Appellant indicated that he fell and the computers landed on top of him. He related that the moment he fell, he knew that something was not right, but he was instructed to get back to work. Appellant indicated that he then went home and experienced twitching and spasms in his back. He stated that the next day he went to work and after lunch his supervisor, R.A., questioned if he was really injured and then appellant showed him his back spasms and R.A. said he should go to a doctor. Appellant alleged that the employing establishment tried to sweep his injury under the rug and cover it up. He related that whenever he asked about his case he was told that the investigation was ongoing. Appellant additionally stated that his career was on track until he was injured. He indicated that out of 27 contractors who were hired under a probational temporary contract, he was the only one who was not hired as a permanent employee. Appellant was let go four months after his injury. He proceeded to document his continuing care of his back and neck and requested for his case to be reopened.

On November 29, 2018 appellant filed a notice of recurrence (Form CA-2a) claiming that his original June 24, 2003 injury had continually caused back and neck pain. He related that he returned to work on June 30, 2003 and that he was claiming compensation for medical treatment and time loss from work. Appellant described the effects of the residuals from his alleged employment incident on his work and quality of life.

In a development letter, OWCP requested additional factual and medical evidence from appellant. It provided him with a questionnaire for his completion and afforded him 30 days to respond.

A December 31, 2018 lumbar spine magnetic resonance imaging (MRI) scan revealed a partially lumbarized S1 lumbosacral transition vertebra, arthrosis, right foraminal disc bulge at L5-S1, and foraminal disc bulges and mild arthrosis at L3-L4 with right foraminal stenosis. A December 31, 2018 thoracic spine MRI scan revealed normal results. A December 31, 2018 cervical spine MRI scan revealed osteophytes resulting in neural foraminal stenosis.

A January 15, 2019 response from appellant to OWCP's development questionnaire indicated that on the date of injury when he was walking through the door a customer from the other side pushed it and knocked him down, and the computers he was holding fell on him, causing further injury. He stated that he was given 15 to 20 minutes to get himself together and had to continue working, and was then only given 3 to 5 days off by the physician assistant Mr. Smith. Appellant related that at the time of the employment incident he was holding a few computers. He indicated that the only witness to the event was the customer who pushed the door from the other side who was a solider registering his car with the employing establishment, and the employing establishment did not record his name. Appellant indicated that R.A. had immediate knowledge of his fall as he helped him off of the ground after his fall and said that he could not just lie around, as did the deputy provost Marshal A.H., and he related that he had no similar disability or symptoms prior to employment injury. He alleged that he was made to use his paid time off in order to miss work due to his injury, and he additionally alleged that his employing establishment removed the door where he fell, replaced it with swinging doors, and offered to provide him a cart to move computers around in. Appellant further alleged that he was threatened with losing his job if he did not return to work, and that the base hospital colluded with the employing establishment.

A January 25, 2019 electromyography (EMG) study indicated that appellant presented with pain, numbness, and tingling in his lower and upper extremities, especially on his right side. It indicated that there was evidence supportive of right L5 lumbar radiculopathy.

In a January 29, 2019 report, Dr. Thomas Martens, an osteopathic physician specializing in family medicine, indicated that appellant presented with lumbar spine pain due to a June 2003 work injury which occurred when he was carrying computers, and attempted to go through a door, and fell. He reviewed appellant's history of injury, medical history, and diagnostic studies and conducted a physical examination. Dr. Martens diagnosed lumbar radiculopathy, spinal stenosis of the lumbar region without neurogenic claudification, and unspecified inflammatory spondylopathy of the lumbar region. He opined that the forceful impact from the lumbar spine hitting the concrete floor from appellant's high-energy traumatic fall caused appellant's sacral spine stress fracture. Dr. Martens additionally opined that the June 2003 employment incident caused radiculopathy of the lumbar region, and he explained that the L5 vertebra nerve root exited at the sacrum and irritated the spinal nerve roots, causing lower extremity numbness and weakness. He also stated that the June 4, 2003 employment incident caused appellant's inflammatory spondylopathy and spinal stenosis, and he explained that spinal stenosis was most commonly caused by wear and tear changes in the spine related to osteoarthritis. Dr. Martens indicated that appellant's December 31, 2018 MRI scan of his lumbar spine revealed arthrosis, and he stated that post-traumatic arthritis was a common form of arthritis that was caused by a previous injury or trauma. He additionally noted that inflammatory spondylopathy was also linked to osteoarthritis.

By decision dated February 8, 2019, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that appellant's diagnosed back condition was causally related to the accepted June 24, 2003 employment incident. It concluded, therefore, that the requirements had not been met to establish an employment-related injury or medical condition.

On March 8, 2019 appellant, through former counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a May 7, 2019 report, Andrew Athmer, a nurse practitioner, referred appellant for an MRI scan of his lumbar spine. He listed appellant's diagnoses as muscle spasm of the back, and lumbar and cervical radiculopathy.

A May 10, 2019 MRI scan of appellant's lumbar spine revealed lumbosacral transitional vertebra.

An oral hearing was held on July 12, 2019.

An August 6, 2019 report by Dr. Martens indicated that when appellant was initially seen by Dr. Kirkpatrick he was diagnosed with a lumbar spine sprain/strain. He stated that he agreed with this diagnosis as an initial injury and with the medical evidence that was provided at the time. Dr. Kirkpatrick additionally agreed that the mechanism of injury would substantiate correlation to the injury. He further stated that Dr. Kirkpatrick provided an appropriate mechanism of injury.

By decision dated September 26, 2019, the hearing representative affirmed OWCP's February 8, 2019 decision.

OWCP continued to receive evidence, including appellant's statement and billing records.

In an April 15, 2019 addendum to appellant's lumbar spine, an MRI scan indicated that his lumbar sacral transitional vertebra was a congenital anomaly.

On January 13, 2020 appellant requested reconsideration.

By decision dated April 7, 2020, OWCP denied modification.

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 timely filed within the applicable time 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 the fact of injury has been established. There are two components involved in establishing the 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. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[7]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[8] A physician's opinion on whether there is causal relationship between the diagnosed condition and the accepted employment incident must be based on a complete factual and medical background. Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical

[3] *Supra* note 1.

[4] *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q).

[8] *L.S.*, Docket No. 19-1769 (issued July 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

rationale, explaining the nature of the relationship between the diagnosed condition and the specific employment incident.[9]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a back condition causally related to the accepted June 24, 2003 employment incident.

Dr. Kirkpatrick's June 2003 work status report indicated that appellant was injured on June 24, 2003 and experienced low back pain. He diagnosed a back sprain and listed work restrictions. Dr. Kirkpatrick however offered no 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.[10] Dr. Kirkpatrick's report is therefore insufficient to establish causal relationship.

Dr. Letizia's June 20, 2007 report indicated that appellant presented with back, neck, and shoulder pain. He related that appellant had neck pain for four months and lower back pain for three years. Dr. Letizia indicated that he reviewed appellant's medical history, conducted a physical examination, and diagnosed lumbago and a neck sprain. He however offered no 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.[11] Therefore, this report is insufficient to establish appellant's claim.

Dr. Martens' January 29, 2019 medical report indicated that appellant presented with lumbar spine pain due to a June 2003 work injury where he was carrying computers and attempted to go through a door when he fell. He diagnosed lumbar radiculopathy, spinal stenosis of the lumbar region without neurogenic claudification, and unspecified inflammatory spondylopathy of the lumbar region. Dr. Martens opined that the forceful impact from the lumbar spine hitting the concrete floor from appellant's high-energy traumatic fall caused appellant's sacral spine stress fracture. He additionally opined that the June 2003 employment incident caused radiculopathy of the lumbar region, and he explained that the L5 vertebra nerve root exited at the sacrum and irritated the spinal nerve roots, causing lower extremity numbness and weakness. Dr. Martens also stated that the June 2003 employment incident caused appellant's inflammatory spondylopathy and spinal stenosis. He also explained that spinal stenosis was most commonly caused by wear and tear changes in the spine related to osteoarthritis. Dr. Martens indicated that appellant's December 31, 2018 MRI scan of his lumbar spine revealed arthrosis, and he stated that post-traumatic arthritis was a common form of arthritis that was caused by a previous injury or trauma. He additionally noted that inflammatory spondylopathy was also linked to osteoarthritis. While

[9] *B.C.*, Docket No. 20-0221 (issued July 10, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

[10] *V.L.*, Docket No. 20-0884 (issued February 12, 2021); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[11] *Id*.

Dr. Martens offered an opinion which described a mechanism of injury, his report was based on an inaccurate history of injury, and was therefore insufficient to establish causal relationship.[12]

Dr. Martens thereafter indicated in an August 6, 2019 report that when appellant was initially seen by Dr. Kirkpatrick he was diagnosed with a lumbar spine sprain/strain, and he stated that he agreed with this diagnosis as an initial injury and with the medical evidence that was provided at the time. He additionally agreed that the mechanism of injury would substantiate correlation to the injury, and he further stated that Dr. Kirkpatrick provided an appropriate mechanism of injury. The Board finds that this report was vague and did not clarify Dr. Martens' own understanding of the history of injury or mechanism of injury. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to employment factors.[13] As Dr. Martens did not explain his understanding of the mechanism of injury, and whether his understanding changed from his January 29, 2019 report, this report is insufficient to establish causal relationship.

OWCP also received a number of diagnostic tests. The Board has held, however, that diagnostic tests, standing alone, lack probative value on the issue of causal relationship as they do not address whether the employment incident caused a diagnosed condition.[14]

OWCP also received reports from a nurse practitioner and physician assistant. However, certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[15] Consequently, these reports do not constitute competent medical evidence.

A June 25, 2003 unsigned attending physician's report, Part B of the Form CA-16, indicated that appellant was injured in a lifting/twisting incident and diagnosed a back strain. However, this report is of no probative value as the author has not been identified as a physician

[12] *Supra* note 9.

[13] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition/disability).

[14] *V.Y.*, Docket No. 18-0610 (issued March 6, 2020).

[15] 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* 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); *see also R.L.*, Docket No. 19-0440 (issued July 8, 2019) (physician assistants are not considered physicians under FECA); *S.J.*, Docket No. 17-0783, n.2 (issued April 9, 2018) (nurse practitioners are not considered physicians under FECA).

as defined in 5 U.S.C. § 8101(2), and reports lacking proper identification do not constitute probative medical evidence.[16]

As appellant has not submitted rationalized medical evidence establishing a back condition causally related to the accepted June 24, 2003 employment incident, he has not met his burden of proof to establish his claim.[17]

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]

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a back condition causally related to the accepted June 24, 2003 employment incident.

[16] *A.W.*, Docket No. 21-0298 (issued August 26, 2021); *S.D.*, Docket No. 21-0292 (issued June 29, 2021); *C.B.*, Docket No. 09-2027 (issued May 12, 2010; *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[17] *C.W.*, Docket No. 20-1027 (issued November 18, 2020); *J.T.*, Docket No. 18-1755 (issued April 4, 2019).

[18] A completed Form CA-16 authorization 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).

ORDER

IT IS HEREBY ORDERED THAT the April 7, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 13, 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