

**United States Department of Labor
Employees' Compensation Appeals Board**

_____)
D.J., Appellant)

and)

U.S. POSTAL SERVICE, FAYETTEVILLE)
PROCESSING & DISTRIBUTION FACILITY,)
Fayetteville, AR, Employer)

Docket No. 21-0414
Issued: October 14, 2021

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 11, 2021 appellant filed a timely appeal from an October 1, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees'

¹ Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of his oral argument request, he asserted that oral argument should be granted to allow him to explain alleged malfeasance by the employing establishment in processing his claim. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.³

ISSUE

The issue is whether appellant has met his burden of proof to establish a medical condition causally related to the accepted April 26, 2020 employment incident.

FACTUAL HISTORY

On May 3, 2020 appellant, then a 29-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on April 26, 2020 he sustained low back strain when he bent down to retrieve mail from the bottom row of a sorting machine while in the performance of duty. He did not stop work.

In a development letter dated May 7, 2020, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In response, appellant submitted a May 4, 2020 work excuse note signed by a medical provider whose signature is illegible, holding him off work through May 17, 2020.

In a May 8, 2020 report, Dr. Al Gordon, a Board-certified family practitioner, noted a history of low back strain, improved with medication. He diagnosed a muscle strain. Dr. Gordon noted that he advised the employing establishment that appellant must be evaluated by a physical therapist prior to returning to work. He prescribed physical therapy on May 11, 2020. In a May 14, 2020 letter, Dr. Gordon held appellant off work due to a lumbar muscle strain/tear.

OWCP, in a development letter dated June 12, 2020, informed appellant that the additional evidence submitted was insufficient to establish his claim. It afforded him an additional 30 days to submit the necessary evidence.

In response, appellant submitted May 4, 2020 unsigned discharge instructions from a hospital emergency department for lumbar strain.

In a May 20, 2020 report, Dr. Gordon noted examining appellant that day. He prescribed medication and physical therapy. Dr. Gordon held appellant off work for one week.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that appellant submitted additional evidence to OWCP following the October 1, 2020 decision. 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.*

OWCP also received June 19 and July 7, 2020 reports by Travis Alexander, a physical therapist. In reports dated July 10, 2020, Dr. Kenton L. Hagan, a Board-certified physiatrist, noted the onset of lumbar pain on April 26, 2020 significantly increased when squatting on May 3, 2020 with left-sided radiculopathy. On examination he noted limited lumbar range of motion with pain, positive straight leg raise test on the left, full strength in all muscle groups of the lower extremities, and a normal neurologic examination of both lower extremities. Dr. Hagan diagnosed lumbar spondylosis without myelopathy or radiculopathy, lumbar radiculitis, and myofascial pain. He explained that lumbar spondylosis was the degenerative wear and tear of the bones and joints of the spine, and that risk factors for development of the condition included jobs with repetitive stress to the spine, and trauma. Dr. Hagan ordered imaging studies as appellant had spondylolisthesis or degenerative disease of the spine with progressively severe symptoms despite conservative management. He administered thoracolumbar trigger point injections. Dr. Hagan prescribed medication and physical therapy.⁴

By decision dated July 28, 2020, OWCP accepted that the April 26, 2020 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that he had not submitted medical evidence supporting a causal relationship between the diagnosed conditions and the accepted employment incident.

On July 30, 2020 appellant requested reconsideration. He contended that Dr. Hagan's opinion was sufficient to establish causal relationship.

In a July 30, 2020 attending physician's report (Form CA-20), Dr. Hagan attributed appellant's lumbar radiculitis, lower back pain, and myofascial pain to squatting down while at work on May 3, 2020. He noted work restrictions.

By decision dated October 1, 2020, OWCP denied modification of its July 28, 2020 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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,⁶ 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

⁴ Appellant also submitted a report by Dr. Gordon and a physical therapy report, which were not legible. He filed claims for compensation (Form CA-7) for the period June 23 through July 17, 2020.

⁵ *Supra* note 1.

⁶ *S.D.*, Docket No. 21-0292 (issued June 29, 2021); *V.L.*, Docket No. 20-0884 (issued February 12, 2021); *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).

employment injury.⁷ 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.⁸

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. 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 sufficient evidence to establish that the employment incident caused a personal injury.⁹

The medical evidence required to establish causal relationship is rationalized medical opinion evidence.¹⁰ 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 incidents identified by the employee.¹¹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted April 26, 2020 employment incident.

In support of his claim, appellant provided reports from Dr. Gordon dated from May 8 through 20, 2020, diagnosing a low back strain and holding appellant off from work. Dr. Gordon did not provide medical rationale supporting a causal relationship between the accepted April 26, 2020 employment incident and the diagnosed low back strain. 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.¹² Thus, these reports are insufficient to establish appellant's claim.

Appellant also submitted July 10 and 30, 2020 reports from Dr. Hagan, who opined that appellant's lumbar spondylosis, lumbar radiculitis, and myofascial pain were initially caused by the accepted April 26, 2020 employment incident, and contributed to by the subsequent May 3, 2020 incident where appellant squatted down while at work. Dr. Hagan opined that trauma, and

⁷ *C.H.*, Docket No. 20-1212 (issued February 12, 2021); *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁸ *S.D.*, *supra* note 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).

⁹ *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *C.H.*, *supra* note 7; *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).

¹¹ *S.D.*, *supra* note 6; *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).

¹² *See C.W.*, Docket No. 20-0965 (issued February 5, 2021); *B.H.*, Docket No. 20-0777 (issued October 21, 2020); *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

jobs that repetitively stressed the spine, were risk factors for the development of degenerative lumbar spondylosis. Dr. Hagan did not provide medical rationale to support his opinion that the April 26, 2020 employment incident caused or contributed to the development of a lumbar condition. A medical opinion must provide an explanation of how the specific employment incident or employment factors physiologically caused or aggravated the diagnosed conditions.¹³ Dr. Hagan's opinions are, therefore, insufficient to meet appellant's burden of proof to establish causal relationship.¹⁴

Appellant also provided a May 4, 2020 work excuse note signed by a medical provider whose signature is illegible, and unsigned May 4, 2020 hospital discharge instructions. The Board has held that reports that bear illegible signatures cannot be considered probative medical evidence because they lack proper identification that the author is a physician.¹⁵ These forms, therefore, do not constitute probative medical evidence as they were not signed or reviewed by a physician.¹⁶

OWCP also received reports by Mr. Alexander, a physical therapist. The Board has held that medical reports signed solely by a physical therapist are of no probative value, as a physical therapist is not considered a physician as defined under FECA and, therefore, is not competent to provide a medical opinion.¹⁷ As such, these reports are of no probative value.¹⁸

As appellant has not submitted rationalized medical evidence establishing a medical condition causally related to the accepted employment incident of April 26, 2020, the Board finds that he has not met his burden of proof.

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.

¹³ *R.B.*, Docket No. 20-1602 (issued May 26, 2021); *G.L.*, Docket No. 18-1057 (issued April 14, 2020).

¹⁴ *S.C.*, Docket No. 20-0327 (issued May 6, 2021); *C.V.*, Docket No. 18-1106 (issued March 20, 2019); *M.E.*, Docket No. 18-0330 (issued September 14, 2018); *A.D.*, 58 ECAB 149 (2006).

¹⁵ *Merton J. Sills*, 39 ECAB 572, 575 (1988); *see also R.H.*, Docket No. 20-1684 (issued August 27, 2021); *M.W.*, Docket No. 19-1667 (issued June 29, 2020).

¹⁶ *Id.*

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* 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 M.C.*, Docket No. 19-1074 (issued June 12, 2020); *B.S.*, Docket No. 20-0895 (issued June 15, 2021).

¹⁸ *B.S.*, *id.*

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted April 26, 2020 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the October 1, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 14, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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