United States Department of Labor
Employees' Compensation Appeals Board

S.E., Appellant	)	
and	)	**Docket No. 22-0296**
	)	**Issued: July 1, 2022**
U.S. POSTAL SERVICE, POST OFFICE, Santa Clarita, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On December 20, 2021 appellant filed a timely appeal from an August 19, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish a back condition causally related to the accepted June 7, 2021 employment incident.

[1] The Board notes that, following the August 19, 2021 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 additional evidence for the first time on appeal. *Id*.

[2] 5 U.S.C. § 8101 *et seq*.

FACTUAL HISTORY

On June 8, 2021 appellant, then a 54-year-old postal collect and delivery employee, filed a traumatic injury claim (Form CA-1) alleging that on June 7, 2021 he injured the right side of his lower back when he overreached to place mail into a secure box, while in the performance of duty. On the reverse side of the claim form, appellant's supervisor indicated that appellant was not injured in the performance of duty. Appellant did not stop work.

In support of his claim, appellant submitted a narrative statement dated June 7, 2021, attesting that he overreached while opening a mailbox and pulled his lower back on the right side. He also related that he continued to deliver mail to two additional mailboxes and then called his supervisor.

OWCP received a report dated June 7, 2021 from Dr. Amarjit Mangat, an occupational medicine specialist. Dr. Mangat noted appellant's diagnoses as lumbosacral and pelvis sprain. She related his history of injury that he injured his back at work when he was delivering mail and reached in a twisted position. In a separate report also dated June 7, 2021, Dr. Mangat listed appellant's diagnoses as lumbosacral sprain and sacroiliac joint dysfunction of the right side and indicated his work restrictions.

In a letter dated June 8, 2021, the employing establishment controverted appellant's claim.

OWCP received physical therapy reports dated June 9, 11 and 14, 2021.

In a report dated June 15, 2021, Dr. Mangat related that appellant was seen for a follow-up appointment and was undergoing physical therapy. She noted his continued physical examination findings and related that he could return to work that day with restrictions.

In a development letter dated July 7, 2021, OWCP advised that the evidence of record was insufficient to establish appellant's claim. It noted the type of factual and medical evidence needed and provided him with a questionnaire. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP received a work activity status report from Dr. Mangat dated June 15, 2021 which listed appellant's diagnoses and noted his work restrictions.

By decision dated August 19, 2021, OWCP accepted that the June 7, 2021 employment incident occurred, as alleged, but denied appellant's claim as causal relationship was not established between the diagnosed medical condition and the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury or a medical condition causally related to the accepted 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 that the individual is an employee of the United States within the meaning FECA, that the claim was timely filed within the applicable time limitation period 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 must first be determined whether a fact of injury has been established. There are two components involved in establishing fact of injury. The first component to be established 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.[7]

The medical evidence required to establish 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]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a back condition causally related to the accepted June 7, 2021 employment incident.

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[3] *Id*.

[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).

Appellant submitted reports dated June 7 and 15, 2021 from Dr. Mangat in which she noted his diagnoses of lumbosacral/pelvis sprain and sacroiliac joint dysfunction of right side. In the June 7, 2021 report, Dr. Mangat related in his history of injury that he injured his back at work when he was delivering mail and reached in a twisted position. However, she did not provide her own medical opinion explaining the cause of appellant's diagnosed conditions. Dr. Mangat did not explain a pathophysiological process of how the accepted employment incident caused or contributed to his back condition.[10] The Board has held that a medical opinion that does not offer a medically sound and rationalized explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions is of limited probative value.[11] As such, these reports are insufficient to establish appellant's claim.

Progress notes from physical therapists were also received. Physical therapists are not considered physicians as defined under FECA.[12] As such, this evidence is also of no probative value and insufficient to establish the claim.

As there is no medical evidence of record establishing that appellant's diagnosed back condition was causally related to the accepted June 7, 2021 employment incident, 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.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a back condition causally related to the accepted June 7, 2021 employment incident.

[10] *J.B.*, Docket No. 22-0060 (issued April 26, 2022); *J.B.*, Docket No. 21-0011 (issued April 20, 2021); *A.M.*, Docket No. 19-1394 (issued February 23, 2021).

[11] *Id*.

[12] Section 8101(2) of FECA provides that the term 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 physical therapists are not competent to render a medical opinion under FECA); *see also R.L.*, Docket No. 19-0440 (issued July 8, 2019) (a physical therapist is not considered a physician under FECA).

ORDER

IT IS HEREBY ORDERED THAT the August 19, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 1, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board