

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

_____)
A.D., Appellant)

and)

U.S. POSTAL SERVICE, CARROLL REECE)
POST OFFICE, Johnson City, TN, Employer)
_____)

Docket No. 22-0551
Issued: October 5, 2022

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On March 3, 2022 appellant filed a timely appeal from a February 9, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 diagnosed medical condition causally related to the accepted December 28, 2020 employment incident.

FACTUAL HISTORY

On December 28, 2020 appellant, then a 34-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging on that date he sustained a low back strain when he bent over sorting

¹ 5 U.S.C. § 8101 *et seq.*

flats and felt a “pop” in his lower back while in the performance of duty. He stopped work on December 28, 2020 and returned on December 29, 2020.

In support of his claim, appellant submitted a note from Dr. Steven M. Fitzgerald, a Board-certified internist, dated December 28, 2020, who treated him in the emergency room and returned him to work on December 29, 2020 with restrictions of no lifting over 10 pounds.

On December 29, 2020 the employing establishment offered appellant a limited-duty position as a rural carrier subject to restrictions. Appellant accepted the position and returned to work on December 29, 2020.

In an August 13, 2021 development letter, OWCP advised appellant of the deficiencies in his claim. It requested that he submit additional factual and medical information, including a comprehensive report from his physician regarding how a specific work incident contributed to his claimed injury. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP received additional evidence. In an attending physician’s report (Form CA-20) dated August 23, 2021, Ashley Seale, a physician assistant, indicated that appellant developed back pain on December 28, 2020 after lifting packages. She diagnosed chronic bilateral low back pain without sciatica and checked a box marked “Yes” indicating that appellant’s condition had been caused or aggravated by the December 28, 2020 employment activity. Ms. Seale noted that appellant was totally disabled from December 28, 2020 through March 28, 2021.

By decision dated September 14, 2021, OWCP accepted that the December 28, 2020 employment incident occurred as alleged. However, it denied appellant’s traumatic injury claim, finding that he had not submitted medical evidence containing a diagnosis in connection with the accepted employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

OWCP received an emergency department report from Dr. Fitzgerald dated December 28, 2020 who treated appellant for back pain. Appellant reported that he was bent over sorting items and lifting heavy objects when he felt a “pop” in his lower back and immediately fell to his knees. Findings on physical examination revealed mild tenderness to palpation over L1 and L2 and paraspinal muscle tenderness. An x-ray of the lumbar spine revealed no acute fracture or malalignment and vertebral body heights and intervertebral disc spaces were maintained. Dr. Fitzgerald diagnosed strain of the lumbar region, initial encounter and recommended that he follow up with his primary care doctor for further evaluation.

On September 20, 2021 appellant requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review. The hearing was held on January 5, 2022.

OWCP received a Form CA-20 dated September 23, 2021 that identified Dr. Kevin Sweet, a Board-certified internist, as the countersigner; however, the signature was blacked out and illegible.

By decision dated February 9, 2022, OWCP’s hearing representative affirmed the September 14, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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,³ 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.⁴ 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.⁵

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 and place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁶

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence.⁷ 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 incident identified by the employee.⁸

ANALYSIS

The Board finds that this case is not in posture for decision.

In support of his claim, appellant submitted an emergency department report from Dr. Fitzgerald dated December 28, 2020 who treated him for back pain. He reported that he was bent over sorting items and lifting heavy objects at work when he felt a “pop” in his lower back and immediately fell to his knees. Dr. Fitzgerald noted physical findings of mild tenderness to

² *Id.*

³ *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).

⁴ *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).

⁵ *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).

⁶ *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).

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).

⁸ *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).

palpation over L1 and L2 and paraspinal tenderness. He diagnosed strain of the lumbar region, initial encounter. The Board, therefore, finds that, based on the report of Dr. Fitzgerald, appellant has met his burden of proof to establish a diagnosed medical condition causally related to the accepted factors of his federal employment.

The Board further finds, however, that the case is not in posture for decision as to whether the diagnosed medical condition is causally related to the accepted December 28, 2020 employment incident. As the medical evidence of record establishes a diagnosed medical condition, the case must be remanded for consideration of the medical evidence with regard to the issue of causal relationship.⁹ Following this and any other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has met his burden of proof to establish a diagnosed medical condition causally related to the accepted December 28, 2020 employment incident. The Board further finds that this case is not in posture for decision as to whether the diagnosed medical condition is causally related to the accepted December 28, 2020 employment incident.

⁹ See *F.D.*, Docket No. 21-1045 (issued December 22, 2021).

ORDER

IT IS HEREBY ORDERED THAT the February 9, 2022 decision of the Office of Workers' Compensation Programs is reversed in part and set aside in part. The case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: October 5, 2022
Washington, DC

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

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

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