United States Department of Labor
Employees' Compensation Appeals Board

C.C., Appellant	)	
	)	
and	)	**Docket No. 22-0609**
	)	**Issued: October 25, 2022**
U.S. POSTAL SERVICE, DELTONA PINES POST OFFICE, Deltona, FL, Employer	)	

Appearances:
Wayne Johnson, Esq., for the appellant[1]
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 March 21, 2022 appellant, through counsel, filed a timely appeal from a September 22, 2021 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 medical condition causally related to the accepted May 3, 2018 employment incident.

FACTUAL HISTORY

On May 4, 2018 appellant, then a 54-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 3, 2018 he sustained a lower back injury as he was turning holding a parcel while in the performance of duty. He did not immediately stop work.

In support of his claim, appellant submitted a form report from Dr. Timothy Hendrix, a Board-certified family practitioner, dated May 4, 2018. Dr. Hendrix noted that appellant sustained a work-related injury on May 3, 2018. He diagnosed strain of the lumbar region and muscle spasm and indicated that appellant was disabled from work.

On May 4, 2018 appellant was also treated by Andy M. Campos, a physician assistant, for back pain attributed to lifting a heavy object while at work on May 3, 2018. Mr. Campos diagnosed strain of the lumbar region and muscle spasm and advised that appellant was disabled from work. In a visit summary dated May 4, 2018, he diagnosed strain of the lumbar region, initial encounter and muscle spasm. In an accompanying duty status report (Form CA-17) dated May 4, 2018, Mr. Campos diagnosed lumbar strain and advised that appellant could not resume work.

On May 7, 2018 Dr. Donald Kennedy, a Board-certified family practitioner, treated appellant and diagnosed strain of the lumbar region and lumbar disc disease with radiculopathy and advised that appellant was totally disabled. In a visit summary of even date, he diagnosed strain of the lumbar region, subsequent encounter and lumbar disc disease with radiculopathy. In a form report dated May 7, 2018, Dr. Kennedy noted that appellant was totally disabled from work. On May 21, 2018 he released appellant to work with restrictions.

Dr. Craig Dean, a Board-certified family practitioner, treated appellant on May 11, 2018 for lower back pain radiating into the left thigh that he attributed to lifting an object at work. He diagnosed acute left-sided low back pain, left-sided sciatica, and workplace accident and returned appellant to work with restrictions. In a visit summary of even date, Dr. Dean diagnosed acute left-sided low back pain with left-sided sciatica and acute workplace accident. In a form report of even date, he released appellant to work with restrictions.

On May 17, 2018 the employing establishment offered appellant a modified city carrier assignment effective the same day. Appellant accepted the position and returned to work.

On May 30, 2018 Dr. Christopher McCarthy, a Board-certified orthopedist, reported that appellant had a complicated medical history including a back injury sustained in the military in 1988 when a wooden beam fell off the top of a structure striking him in the low back. Appellant subsequently experienced chronic back pain and spasm and in 2013 through 2014 his back pain became markedly worse. He reported undergoing a C4 to C6 fusion in November 2017. Appellant returned to work on May 3, 2018 at which time he bent down and lifted a heavy box and experienced a sudden onset of severe shooting pain and numbness going down his right leg.

Dr. McCarthy noted findings of antalgic gait and decreased sensation to both light touch and pinprick in the L5 distribution on the right. He diagnosed lumbar radiculopathy and lumbago. Dr. McCarthy opined that appellant "appears" to have developed severe acute right-sided lumbar radiculopathy involving L5 that occurred when lifting a heavy box on May 3, 2018. In an undated form report, he diagnosed lumbar radiculopathy and low back pain. Dr. McCarthy noted appellant's condition was work related and returned him to limited-duty work.[3] Similarly, in a June 14, 2018 form report, he treated appellant in follow up for a May 3, 2018 work-related injury and diagnosed herniated discs at L3-4 and L4-5, lumbar radiculopathy, and lumbar facet arthritis and recommended surgery. In a Form CA-17 dated June 14, 2018, Dr. McCarthy diagnosed multiple lumbar herniated discs and returned appellant to light-duty work.

A magnetic resonance imaging (MRI) scan of the lumbar spine dated June 13, 2018 revealed lumbar spondylotic changes predominant at L2-3, L3-4, and L4-5, multilevel neural foraminal narrowing, and small disc herniations at L3-4 and L4-5 levels with associated annulus fissures. An x-ray of the lumbar spine of even date revealed mild-to-moderate spondyloarthropathy.

In a development letter dated July 27, 2018, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of additional evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.[4]

By decision dated September 6, 2018, OWCP denied appellant's traumatic injury claim, finding that the medical evidence submitted was insufficient to establish causal relationship between his diagnosed conditions and the accepted May 3, 2018 employment incident.

OWCP received additional evidence. On June 14, 2018 Dr. McCarthy treated appellant in follow up and noted reviewing an MRI scan and lumbar x-rays dated June 13, 2018. He noted findings on physical examination of antalgic gait, motor strength of 4/5 in the left tibialis anterior, extensor hallucis, and gastric soleus complex, and decreased sensation to light touch and pinprick at L5. Dr. McCarthy diagnosed lumbar radiculopathy, herniated discs at L2-3, L3-4, L4-5, and L5-S1, and facetogenic low back pain/facet joint arthritis.

On October 6, 2018 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on February 13, 2019.

By decision dated May 30, 2019, OWCP's hearing representative affirmed the September 6, 2018 decision.

On October 10, 2019 Dr. Stephen M. Reed, a Board-certified orthopedist, treated appellant for low back pain which started after lifting packages at work in May 2018. His history was significant for a work injury to the cervical spine in 2015. Dr. Reed noted findings on examination

[3] On June 4, 2018 the employing establishment indicated that appellant filed a claim for a back injury that occurred on December 15, 2015 under OWCP File No. xxxxxx646. This claim was accepted by OWCP for a cervical strain.

[4] On August 3, 2018 appellant filed a claim for compensation (Form CA-7) for disability from work for the period July 21 through August 3, 2018.

of tenderness at the midline and diagnosed lumbar disc radiculopathy, low back pain, and other spondylosis with radiculopathy. On October 24, 2019 he reevaluated appellant for low back pain and radiculopathy. Dr. Reed diagnosed L3-4 and L4-5 disc herniations with stenosis causing left-sided radicular symptoms, spondylosis of the lumbar region, intervertebral disc disorders with radiculopathy, lumbar radiculopathy, and low back pain.[5]

On May 30, 2020 appellant, through counsel, requested reconsideration.

By decision dated August 27, 2020, OWCP denied modification of the May 30, 2019 decision.

In reports dated November 8, 2019 through July 29, 2020, Dr. Rabinder Bhatti, a Board-certified physiatrist, treated appellant for chronic radiating low back pain. He noted findings on examination of limited range of motion of the lumbar spine and positive straight leg test on the left. Dr. Bhatti diagnosed lumbosacral radiculopathy, other intervertebral disc disorder of the lumbosacral region, spinal stenosis, and spondylosis of the lumbar region. He performed a series of intra-articular injections at L3-4 and L4-5.

On August 27, 2021 appellant, through counsel, requested reconsideration.

By decision dated September 22, 2021, OWCP denied modification of the August 27, 2020 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[6] 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,[7] 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.[8] 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.[9]

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

[5] Dr. Reed treated appellant for left knee osteoarthritis on October 15, 2019.

[6] *Supra* note 2.

[7] *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).

[8] *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).

[9] *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).

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.[10]

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence.[11] 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.[12]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted May 3, 2018 employment incident.

Appellant submitted a form report from Dr. Hendrix dated May 4, 2018 who noted he sustained a work-related injury on May 3, 2018. Dr. Hendrix diagnosed strain of the lumbar region and muscle spasm. On May 7, 2018 Dr. Kennedy treated appellant for back pain after lifting a heavy object while at work on May 3, 2018. He diagnosed strain of the lumbar region and lumbar disc disease with radiculopathy. Similarly, in several reports dated May 11, 2018, Dr. Dean treated appellant for a work injury that occurred when he was lifting an object. He diagnosed acute left-sided low back pain with left-sided sciatica and acute workplace accident. Likewise, on June 14, 2018, Dr. McCarthy diagnosed herniated discs at L3-4 and L4-5, lumbar radiculopathy, and lumbar facet arthritis and noted appellant's condition was work related. Other reports from Dr. Reed dated October 10 and 24, 2019 noted treatment for low back pain, which started after a work injury in May 2018 when he was lifting packages. He diagnosed L3-4 and L4-5 disc herniations with stenosis causing left-sided radicular symptoms, spondylosis of the lumbar region, intervertebral disc disorders with radiculopathy, radiculopathy and low back pain. While Drs. Hendrix, Kennedy, Dean, McCarthy, and Reed indicated that appellant's low back condition was work related, they failed to provide medical rationale explaining the basis of their opinion. Without explaining, physiologically, how the specific employment incident or employment factors caused or aggravated the diagnosed condition, Drs. Hendrix, Kennedy, Dean, McCarthy, and Reed's opinions on causal relationship are of limited probative value and insufficient to establish appellant's claim.[13]

On June 14, 2018 Dr. McCarthy diagnosed lumbar radiculopathy, herniated discs at L2-3, L3-4, L4-5, and L5-S1, and facetogenic low back pain/facet joint arthritis. In Form CA-17 dated

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[10] *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).

[11] *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).

[12] *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).

[13] *G.L.,* Docket No. 18-1057 (issued April 14, 2020); *J.P.,* 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

June 14, 2018, he diagnosed multiple lumbar herniated discs. Similarly, in a visit summary, Dr. Kennedy diagnosed strain of the lumbar region, subsequent encounter and lumbar disc disease with radiculopathy. In form reports dated May 7 and 21, 2018, he noted that appellant was totally disabled from work and on May 21, 2018 released him to work with restrictions. Likewise, in reports dated November 8, 2019 through July 29, 2020, Dr. Bhatti diagnosed lumbosacral radiculopathy, other intervertebral disc disorder of the lumbosacral region, spinal stenosis, and spondylosis of the lumbar region and performed a series of transforaminal epidural steroid injections. However, these physicians did not specifically relate the diagnosed conditions to the accepted May 3, 2018 employment incident. The Board has held that medical evidence that does not offer an opinion regarding the cause of a diagnosed condition or disability is of no probative value on the issue of causal relationship.[14] Therefore, these reports are insufficient to meet appellant's burden of proof.

On May 30, 2018 Dr. McCarthy noted that appellant's history was significant for a back injury sustained in the military in 1988, a C4 to C6 fusion in November 2017, and work injury on May 3, 2018 when lifting a heavy box. He diagnosed lumbar radiculopathy and lumbago. Dr. McCarthy opined that appellant "appears" to have developed severe acute right-sided lumbar radiculopathy involving L5 that occurred when lifting a heavy box on May 3, 2018 which became progressively more symptomatic. The Board has held that medical opinions that are speculative or equivocal are of diminished probative value.[15] An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between his claimed condition and her employment.[16]

Appellant submitted reports from a physician assistant. However, certain healthcare providers such as physician assistants[17] are not considered "physician[s]" as defined under FECA.[18] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[19]

Appellant also submitted an MRI scan and x-rays of his lumbar spine. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as

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

[15] *H.A.,* Docket No. 18-1455 (issued August 23, 2019).

[16] *See id.*

[17] *C.P.,* Docket No. 19-1716 (issued March 11, 2020) (a physician assistant is not a physician as defined under FECA).

[18] 5 U.S.C. § 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 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 S.S.,* Docket No. 21-1140 (issued June 29, 2022) (physician assistants are not considered physicians under FECA and are not competent to provide medical opinions); *George H. Clark,* 56 ECAB 162 (2004) (physician assistants are not considered physicians under FECA).

[19] *Id.*

they do not provide an opinion as to whether the employment incident caused any of the diagnosed conditions.[20] This evidence is therefore insufficient to establish appellant's claim.

As the record lacks rationalized medical evidence establishing causal relationship between a medical condition and the accepted May 3, 2018 employment incident, the Board finds that appellant 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 medical condition causally related to the accepted May 3, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the September 22, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 25, 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

[20] *C.B.,* Docket No. 20-0464 (issued July 21, 2020).