United States Department of Labor
Employees' Compensation Appeals Board

C.S, Appellant	)	
and	)	**Docket No. 22-0415**
	)	**Issued: September 2, 2022**
U.S. POSTAL SERVICE, ALBANY ANNEX POST OFFICE, Albany, NY, Employer	)	

Appearances:
J. Michael Naughton, 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 September 15, 2021 appellant, through counsel, filed a timely appeal from an August 30, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP).[2]

[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] The Board notes that appellant, through counsel, requested reconsideration before OWCP on September 16, 2021 and by decision dated December 7, 2021, OWCP denied modification of its August 30, 2021 decision. The Board and OWCP may not exercise simultaneous jurisdiction over the same issues in a case on appeal. 20 C.F.R. § 501.2(c)(3). Following the docketing of an appeal before the Board, OWCP does not retain jurisdiction to render a further decision regarding the issue(s) on appeal until after the Board relinquishes jurisdiction. *Id*. Therefore, the subsequent decision of OWCP dated December 7, 2021 is null and void. *See* 20 C.F.R. § 10.626; *see also A.C.*, Docket No. 18-1730 (issued July 23, 2019); *M.C.*, Docket No. 18-1278, n.1 (issued March 7, 2019); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).

Pursuant to the Federal Employees' Compensation Act[3] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[4]

ISSUE

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

FACTUAL HISTORY

On January 21, 2021 appellant, then a 26-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 7, 2021 he injured his lower back when he lifted tubs of mail from his vehicle into a hamper while in the performance of duty. He did not stop work.

Appellant submitted a first aid form dated January 8, 2021, wherein he related that on January 7, 2021 he injured his back when he improperly lifted an object. In a medical report of even date, Adrienne Coble, a physician assistant, noted that, on the date of injury, he developed low and mid back pain from lifting a box. She indicated that appellant could return to work with restrictive duties of no more than 15 pounds of pushing and pulling. An urgent care report also dated January 8, 2021 from Ms. Coble noted his diagnosis and recommended medical treatment and work restrictions.

A progress report dated January 12, 2021 from Elecia Novak, a physician assistant, noted that appellant was experiencing ongoing pain in his legs. She diagnosed a fascia and tendon strain of the lower back. In a return to work note of even date, Ms. Coble indicated that appellant could return to work with restrictive duties of no lifting greater than 15 pounds.

On January 13, 2021 the employing establishment offered appellant a modified assignment (limited duty) as a city carrier assistant. Appellant accepted the offer on the same date.

In a progress report dated January 19, 2021, Amy Garner, a physician assistant, examined appellant for a low back condition and restricted him to no lifting of greater than 20 pounds, no prolonged carrying of more than 10 pounds, and no sudden bending or twisting. She diagnosed a strain of the fascia and tendon of the lower back.

In an authorization for examination and/or treatment (Form CA-16) dated January 21, 2021, the employing establishment noted that appellant sustained a lower back condition on January 7, 2021.

[3] 5 U.S.C. § 8101 *et seq*.

[4] The Board notes that, following the August 30, 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*.

A return to work note dated January 27, 2021 from Dr. Charles J. Buttaci, an osteopath Board-certified in physiatry and pain medicine, indicated that appellant could return to work on the same date with restrictive duties of no lifting of more than 10 pounds and a workday shift of up to eight hours.

On February 17, 2021 Dr. Buttaci noted that appellant had been seen for ongoing low back pain. He reviewed appellant's lumbar spine x-rays and diagnosed lower back pain in the lumbar spine and spondylosis. Dr. Buttaci opined, by indicating "Yes," that his diagnosed conditions were caused by the described workplace incident.

In a March 17, 2021 follow-up report, Dr. Buttaci indicated by responding "Yes" that appellant was experiencing ongoing symptoms due to his low back pain and spondylosis conditions. He recommended a magnetic resonance imaging (MRI) scan of the lumbar spine.

On April 3, 2021 Dr. Won Hong Ung, a Board-certified radiologist, performed an MRI scan on appellant's lumbar spine, which revealed disc desiccation and mild space narrowing at L5-S1 and broad-based posterior disc central protrusion.

An April 21, 2021 follow-up report from Dr. Buttaci noted that appellant had not experienced any improvement to his lower back pain, which Dr. Buttaci affirmatively noted was employment related, and indicated that appellant should continue medical treatment.

A return to work note dated May 5, 2021 from Dr. Buttaci held appellant off work for three weeks.

In a May 26, 2021 follow-up report, Dr. Buttaci related that appellant had seen some improvement from medical treatment, but that he was experiencing ongoing lower back pain, which he affirmatively related to the claimed employment injury. A return to work note of even date held appellant off work until his follow-up appointment.

On June 16, 2021 Dr. Buttaci indicated that appellant could return to work on June 22, 2021.

In a report of work status (Form CA-3) dated July 1, 2021, the employing establishment noted that appellant returned to full-duty work with no restrictions on June 22, 2021.

Appellant submitted claims for compensation (Form CA-7) dated July 14 and 21, 2021 claiming periods of disability from May 5 through June 21, 2021.

In a development letter dated July 22, 2021, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP also requested a narrative medical report from appellant's treating physician containing a detailed description of findings and a diagnosis, explaining how his work incident caused or aggravated a medical condition. It afforded him 30 days to respond.

On July 15, 2021 Theresa Ayala, a nurse practitioner, opined that appellant's low back condition was related to the workplace incident and noted that he recently returned to full-time

duties with no restrictions. In a return to work note of even date, Ms. Ayala held him off work through August 4, 2021.

Appellant filed a notice of recurrence (Form CA-2a) dated July 16, 2021 alleging that he experienced back pain on July 15, 2021 causally related to the January 7, 2021 employment incident. He contended that limited work duties and medical treatment did not improve his low back condition.

By decision dated August 30, 2021, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish a low back condition causally related to the accepted January 7, 2021 employment incident.

LEGAL PRECEDENT

A claimant seeking benefits under FECA[5] 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 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. There are two components involved in establishing fact of injury. The first component is that 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. The second component is whether the employment incident caused a personal injury.[9]

The medical evidence required to establish causal relationship is rationalized medical opinion evidence.[10] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the

[5] *Supra* note 3.

[6] *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[7] *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).

[8] *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.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).

[10] *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).

physician must be based on a complete factual and medical background of the claimant, 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 claimant.[11]

ANALYSIS

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

In medical reports dated February 17, March 17, April 21, and May 26, 2021, Dr. Buttaci diagnosed lower back myofascial pain and spondylosis, and further replied by indicating "Yes," in response to whether he believed that appellant's diagnosed conditions were caused or aggravated by the described employment incident. The Board has held that an opinion on causal relationship, which consists of a physician by responding affirmatively to a question without providing supporting medical rationale, is of little probative value.[12] While Dr. Buttaci opined that appellant's lower back pain and spondylosis were causally related to the January 7, 2021 employment incident, he did not explain with medical rationale how he concluded his affirmative opinion on causal relationship.[13] These reports are therefore of diminished probative value and insufficient to establish that appellant's conditions should be accepted as employment related.[14]

The remaining medical evidence of record consists of notes containing medical diagnoses and findings dated January 8, 12, and 19, 2021 from physician assistants and a July 15, 2021 medical report from Ms. Ayala, a nurse practitioner. The Board has long held that certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered qualified physicians as defined under FECA. Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.[15] Consequently, this evidence is of no probative value and insufficient to establish appellant's burden of proof.

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[11] *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 O.N.*, Docket No. 20-0902 (issued May 21, 2021); *see A.R.*, Docket No. 19-0465 (issued August 10, 2020); *C.T.*, Docket No. 20-0020 (issued April 29, 2020); *M.R.*, Docket No. 17-1388 (issued November 2, 2017); *Gary J. Watling*, 52 ECAB 278 (2001).

[13] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *See R.D.*, Docket No. 18-1551 (issued March 1, 2019).

[14] *Id*.

[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 id*. at 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 J.D.*, Docket No. 21-0164 (issued June 15, 2021) (nurse practitioners are not physicians as defined under FECA); *A.C.*, Docket No. 20-1510 (issued April 23, 2021) (physician assistants are not physicians as defined by FECA).

As there is no rationalized medical evidence explaining how appellant's accepted employment factors caused or aggravated his diagnosed condition, the Board finds that he has not met his burden of proof to establish a low back condition causally related to the accepted January 7, 2021 employment incident.

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 proof to establish a low back condition causally related to the accepted January 7, 2021 employment incident.[16]

ORDER

IT IS HEREBY ORDERED THAT the August 30, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 2, 2022
Washington, D.C.

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

[16] The Board notes that the employing establishment issued a Form CA-16. 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.D.*, Docket No. 22-0286 (issued June 15, 2022); *V.S.*, Docket No. 20-1034 (issued November 25, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).