United States Department of Labor
Employees' Compensation Appeals Board

C.C., Appellant	)	
and	)	**Docket No. 22-1311**
	)	**Issued: April 7, 2023**
U.S. POSTAL SERVICE, POST OFFICE, Tampa, FL, Employer	)	

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
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On September 12, 2022 appellant filed a timely appeal from an August 10, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 November 28, 2021 employment incident.

FACTUAL HISTORY

On December 8, 2021 appellant, then a 61-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 28, 2021 he sustained lumbar sprain and bulging discs while moving a large box from the back of his truck while in the performance of duty. On

[1] 5 U.S.C. § 8101 *et seq.*

the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty. The form indicated that he stopped work on November 28, 2021.

In an attending physician's report (Form CA-20) dated November 30, 2021, Dr. Bradley Nine, Board-certified in family medicine, reiterated appellant's history of injury and diagnosed lumbar sprain and bulging discs. He indicated by checking a box marked "Yes" that the diagnosed conditions were causally related to the employment activity described. Dr. Nine also indicated by checking a box marked "Yes" that there was history or evidence of concurrent or preexisting injury, disease, or physical impairment.

By development letter dated December 9, 2021, OWCP informed appellant that additional factual and medical evidence was necessary to establish his claim. A questionnaire was provided to appellant to substantiate the factual elements of his claim. Further, he was requested to provide a narrative report from a physician containing a detailed description of findings and a diagnosis, as well as a medical explanation of how the work incident caused or aggravated a medical condition. OWCP afforded appellant 30 days to respond.

In a letter dated December 12, 2021, the employing establishment controverted appellant's claim, contending that he had a "serious preexisting condition" and that the injury was not caused by his employment. The letter also indicated that appellant was previously off work until November 7, 2021 after "throwing [appellant's] back out" at home or at his other job.

On December 20, 2021 appellant was seen by Dr. Constantine Bouchlas, Board-certified in physical medicine and rehabilitation. He related that he was removing heavy boxes from his delivery truck and felt an immediate onset of back pain. Appellant was seen in an emergency room and was assessed with bulging discs and lumbar sprain. He noted that he had been improving, but continued to have low back pain and intermittent pain down the right leg. Appellant further related a previous back injury from 20 years prior unrelated to his employment, but he had recovered from the T12 compression fracture that had developed from the prior injury. Dr. Bouchlas diagnosed lumbar sprain, discogenic lumbar pain, and lumbar degenerative disc disease. He related that degenerative disc disease referred to a syndrome in which a compromised disc caused low back pain, and usually started with a torsion twisting injury to the back. Dr. Bouchlas further related that a subtle finding on magnetic resonance imaging (MRI) scan was more consistent with natural aging. He did not specifically address the cause of appellant's diagnosed conditions.

In a form dated December 20, 2021, Dr. Bouchlas indicated that appellant would be incapacitated from December 20, 2021 to January 20, 2022, and would also be receiving physical therapy.

By decision dated January 19, 2022, OWCP accepted that the November 28, 2021 employment incident occurred as alleged and that a medical condition was diagnosed. However, it denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed condition and the accepted November 28, 2021 employment incident.

A computerized tomography (CT) scan report of appellant's left spine dated November 30, 2021, signed by Dr. Timothy Manda, a Board-certified diagnostic radiologist, noted wedging of the T12 vertebral body with small amount of bony repulsion and multilevel disc disease and spondylosis.

In a January 28, 2022 MRI scan report of appellant's lumbar spine, Dr. Jayson A. Lord, a Board-certified diagnostic radiologist, noted compression fracture at T12 and L3-5 disc bulge.

On January 31, 2022 appellant was seen by Dr. Bouchlas for a follow-up where he related continued back pain with radiation down the right leg. Dr. Bouchlas opined that the employment injury was soft tissue in nature. However, he also noted that appellant had L4-5 bulge with disc herniation and annular tear, mild-to-moderate left-sided stenosis, mild bilateral foraminal narrowing, and L5-S1 bulge with left foraminal disc herniation of protrusion-type left foraminal narrowing. OWCP received a work status note from Dr. Bouchlas dated January 31, 2022 excusing appellant from work from January 21 until March 1, 2022.

Appellant submitted physical therapy progress notes dated from February 1, 2022. These notes also diagnosed lumbar sprain and discogenic lumbar sprain.

Appellant submitted additional statements reiterating the history and causal relationship of his injury.

On May 14, 2022 appellant requested reconsideration.

By decision dated August 10, 2022, OWCP reviewed the merits of appellant's claim and denied modification, as the evidence presented was not of sufficient probative value to alter the prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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, 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.[3] 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.[4]

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

[2] *Id.*

[3] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[4] *B.H.*, Docket No. 20-0777 (issued October 21, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

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, 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.[5]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[6] A physician's opinion on whether there is a causal relationship between the diagnosed condition and the employment injury must be based on a complete factual and medical background.[7] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's employment injury.[8] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[9]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a back condition causally related to the accepted November 28, 2021 employment incident.

Appellant submitted progress notes from Dr. Bouchlas dated December 20, 2021 and January 31, 2022, as well as a work status notes of even date. On December 20, 2021 Dr. Bouchlas diagnosed lumbar sprain, discogenic lumbar pain, and degenerative disc disease. While he noted the cause of degenerative disease in general terms, he did not specifically address the cause of appellant's diagnosed conditions. The Board has held that medical evidence offering no opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[10] On January 31, 2022 appellant was seen by Dr. Bouchlas, following his review of appellant's CT and MRI scans, he related that he opined that appellant's employment injury was soft tissue in nature, but similarly did not provide a rationalized medical opinion as to causal relationship. In work restrictions notes dated December 20, 2021 and January 31, 2022, Dr. Bouchlas related appellant's restrictions, but did not provide an opinion regarding causal relationship. As previously noted, medical evidence that does not offer an opinion regarding the

[5] *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).

[6] *R.P.*, Docket No. 21-1189 (issued July 29, 2022); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[7] *R.P.*, *id.*; *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[8] *Id.*

[9] *T.M.*, Docket No. 22-0220 (issued July 29, 2022); *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *see also J.L.*, Docket No. 18-1804 (issued April 12, 2019).

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

cause of an employee's condition is of no probative value on the issue of causal relationship.[11] The Board further notes that a well-rationalized opinion is particularly warranted when there is a history of a preexisting condition.[12] As such, these medical notes lack the specificity and detail needed to establish that appellant's condition is a result of the accepted employment injury and are thus insufficient to establish appellant's claim.[13]

Appellant submitted an attending physician's report (Form CA-20) dated November 30, 2021 and signed by Dr. Nine reiterating appellant's history of injury and diagnosed lumbar sprain and bulging discs. While Dr. Nine indicated by checking a box marked "Yes" that the diagnosed conditions were causally related to the employment activity described and that there was evidence of a preexisting condition, he did not specifically explain how the employment incident itself physiologically caused the lumbar sprain and bulging discs. The Board has held that reports that address causal relationship only by checkmark, without medical rationale explaining how the employment incident caused or aggravated the diagnosed condition, are of diminished probative value.[14]

OWCP also received a CT scan report of appellant's lumbar spine dated November 30, 2021 and an MRI scan of the lumbar spine dated January 28, 2022. However, diagnostic studies standing alone, lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.[15]

OWCP received physical therapy progress notes dated from February 1, 2022. These notes also diagnosed lumbar sprain and discogenic lumbar sprain. However, certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA and their reports do not constitute competent medical evidence.[16] These reports are therefore of no probative value and are insufficient to establish appellant's claim.

Appellant also submitted statements reiterating the history and causal relationship of his injury. As noted above, causal relationship is a medical question that requires rationalized medical

[11] *Id.*

[12] *J.H.*, Docket No. 20-1645 (issued August 11, 2021); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

[13] *Id.*; *see also T.C.*, Docket No. 19-0227 (issued July 11, 2019).

[14] *See J.O.*, Docket No. 22-0240 (issued June 8, 2022); *R.C.*, Docket No. 20-1525 (issued June 8, 2021); *D.A.*, Docket No. 20-0951 (issued November 6, 2020); *K.R.*, Docket No. 19-0375 (issued July 3, 2019); *Deborah L. Beatty*, 54 ECAB 340 (2003).

[15] *A.O.*, Docket No. 21-0968 (issued March 18, 2022); *see M.S.*, Docket No. 19-0587 (issued July 22, 2019).

[16] 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 H.S.*, Docket No. 20-0939 (issued February 12, 2021) (physician assistants are not considered physicians as defined under FECA).

opinion evidence to resolve the issue.[17] Thus, his statements are insufficient to establish causal relationship.

As appellant has not submitted rationalized medical evidence establishing causal relationship between his diagnosed medical conditions and the accepted November 28, 2021 employment incident, the Board finds that he has not met his burden of proof to establish his claim.

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 November 28, 2021 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the August 10, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 7, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

[17] *Supra* note 6.