

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

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L.M., Appellant)	
)	
and)	Docket No. 23-0946
)	Issued: December 18, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
San Juan, PR, Employer)	
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Appearances:

James D. Muirhead, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On June 30, 2023 appellant, through counsel, filed a timely appeal from a February 2, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 August 28, 2020 employment incident.

FACTUAL HISTORY

On September 2, 2020 appellant, then a 55-year-old postal police officer, filed a traumatic injury claim (Form CA-1) alleging that on August 28, 2020 he sustained right lower back pain while transporting large mailing containers using a hand truck in the performance of duty. He stopped work on August 28, 2020.

Appellant submitted work excuse notes from Dr. Eric R. Javier, a physiatrist, dated August 31 and September 16 and 25, 2020.

In a development letter dated October 5, 2020, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of medical and factual evidence needed, and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

A magnetic resonance imaging (MRI) scan of appellant's lumbar spine dated September 1, 2020 demonstrated diffuse degenerative changes, and a suggestion to correlate for nerve root compression symptoms at L5.

In a letter dated October 21, 2020, Dr. Javier noted that appellant had been under his care since September 14, 2020 for chronic low back pain secondary to L4-L5 and L5-S1 degenerative disc disease with a degenerative facet joint causing foraminal narrowing. He opined that appellant experienced an aggravation of his chronic degenerative condition that worsened while he performed his duties at work.

By decision dated November 10, 2020, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed conditions and the accepted August 28, 2020 employment incident. It concluded, therefore, that the requirements had not been met to establish that he sustained an injury and/or medical condition causally related to the accepted employment incident.

On November 19, 2020 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review.

In a report dated November 19, 2020, Dr. Javier explained that appellant had been instructed to assist with large cases used to transport mail, resulting in injury to his lower back. He opined that there was a causal relationship between this incident and aggravation of appellant's lower back condition. Dr. Javier further noted that patients with chronic degenerative changes frequently develop exacerbations of pain, spasm, loss of motion, and or dysfunction, and may suffer aggravation of the condition and develop further symptoms with trauma or injuries, along with progressive degenerative changes secondary to the abnormal forces of the spine or joints. In an accompanying duty status report (Form CA-17) dated November 9, 2020, Dr. Javier noted work restrictions of lifting/carrying no more than 20 pounds continuously or 35 pounds intermittently.

In form reports dated December 10, 2020, and January 21 and February 10, 2021, Dr. Javier diagnosed degenerative lumbar joint/disc disease. He recommended continued work restrictions.

By decision dated March 18, 2021, the hearing representative affirmed OWCP's November 10, 2020 decision.

OWCP thereafter received a September 4, 2020 report from Dr. Ariel Rivera Marquez, a specialist in physical medicine and rehabilitation. Dr. Marquez related that appellant was seen because he hurt his back lifting heavy objects on August 28, 2020. Appellant was assessed with cervical and lumbar pain due to spasm and early degenerative disc disease, now superimposed on a lumbar strain.

On December 27, 2021 appellant, through counsel, requested reconsideration and submitted additional evidence. In a May 27, 2021 report, Dr. Javier noted that appellant had been under his care since September 14, 2020 due to aggravation of degenerative changes to the cervical, thoracic and lumbar areas. He noted that appellant had been previously treated by Dr. Rivera for cervical and lumbar pain in the presence of degenerative disc disease, since June 3, 2020. Dr. Javier further noted that appellant had been evaluated in 2010 by another physician for a similar condition. At that time, appellant had x-rays obtained that demonstrated similar changes along the thoracic and lumbar spine. Dr. Javier opined that appellant's condition was aggravated on August 28, 2020 when he lifted large containers used to transport mail while in the performance of duty. He opined that appellant's lower back condition was more likely than not aggravated by this incident.

By decision dated February 2, 2023, OWCP denied modification of its March 18, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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,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

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).

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 whether the employee actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused an injury.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 incident identified by the employee.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted August 28, 2020 employment incident.

In support of his traumatic injury claim of September 2, 2020, appellant submitted letters and reports from Dr. Javier. On May 27, 2021 Dr. Javier noted that appellant had been under his care since September 14, 2020 due to aggravation of degenerative changes to the cervical, thoracic, and lumbar areas. He noted that appellant had been previously treated for cervical and lumbar pain in the presence of degenerative disc disease, since June 3, 2020. Dr. Javier opined that appellant's condition was aggravated on August 28, 2020 when he lifted large containers used to transport mail while in the performance of duty. He further opined that appellant's lower back condition was more likely than not aggravated by this incident. The May 27, 2021 letter was substantially similar to prior letters from Dr. Javier dated October 21 and November 19, 2020. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to the accepted employment incident.¹⁰ Further, the Board has also held that a medical opinion is of limited probative value if it is conclusory in nature.¹¹ While Dr. Javier's May 27, 2021 letter concluded that appellant's diagnosed conditions were causally related to the accepted employment incident, he did not explain with rationale how the accepted employment incident physiologically

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).

¹⁰ *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition/disability).

¹¹ *C.M.*, Docket No. 19-0360 (issued February 25, 2020).

caused the injury.¹² As such, these reports are of limited probative value, and insufficient to establish appellant's claim.

In a September 4, 2020 report, Dr. Marquez related that appellant was seen because he hurt his back lifting heavy objects on August 28, 2020. Appellant also submitted form reports dated December 10, 2020, January 21 and February 10, 2021; a Form CA-17 dated November 9, 2020; and work excuse notes dated August 31 and September 16 and 25, 2020 from Dr. Javier. These reports, however, do not include a medical opinion regarding the cause of appellant's diagnosed condition(s). The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹³ This evidence is therefore insufficient to establish the claim.

Appellant also submitted a diagnostic test report dated September 1, 2020. The Board has held that diagnostic test reports, standing alone, lack probative value as they do not provide an opinion on causal relationship between the employment incident and a diagnosed condition.¹⁴

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted August 28, 2020 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 August 28, 2020 employment incident.

¹² See *T.F.*, Docket No. 20-0260 (issued June 12, 2020); *D.J.*, Docket No. 18-0694 (issued March 16, 2020); *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *K.O.*, Docket No. 18-1422 (issued March 19, 2019).

¹³ *D.C.*, Docket No. 19-1093 (issued June 25, 2020); see *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ *T.H.*, Docket No. 18-1736 (issued March 13, 2019).

ORDER

IT IS HEREBY ORDERED THAT the February 2, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 18, 2023
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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