

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a lumbar condition causally related to the accepted August 13, 2020 employment incident.

FACTUAL HISTORY

On March 29, 2021 appellant, then a 53-year-old supply clerical and technician employee, filed a traumatic injury claim (Form CA-1) alleging that on August 13, 2020 he injured his lower back when he tried to push a pallet out of the way of a water leak, while in the performance of duty. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty. Appellant stopped work on August 23, 2020 and returned to work on September 11, 2020.

In support of his claim, appellant submitted a medical report dated August 26, 2020 from Dr. Patricia Scanlan, a Board-certified emergency and internal medicine specialist. Dr. Scanlan related that appellant experienced cramping and weakness in his right leg. She stated that appellant's diagnosis was likely lumbar radiculopathy. Discharge instructions noted appellant's diagnosis as lumbar radiculopathy.

OWCP received a radiology report dated August 26, 2020 from Dr. Josh Moosikasuwana, a Board-certified diagnostic radiologist, which related an impression of moderate degenerative disc disease at L5-S1.

In a radiology report dated August 26, 2020, Dr. Serge Somrov, a Board-certified diagnostic radiologist, noted that appellant was seen for right leg pain, but that his right lower extremity venous sonogram did not visualize any abnormality.

Appellant submitted a computerized tomography scan dated September 2, 2020 from Dr. Mimi S. Lee, a Board-certified diagnostic radiologist. Dr. Lee related appellant's findings as grade 1 retrolisthesis of L5 on S1 and multilevel degenerative change, particularly at L5-S1.

OWCP received a radiology report dated September 2, 2020 from Dr. Papia Sen, a Board-certified diagnostic and nuclear radiologist. Dr. Sen noted stable degenerative changes in appellant's spine.

In a magnetic resonance imaging scan report dated September 3, 2020, Dr. Harjit Kaur, a Board-certified diagnostic and neuroradiology specialist, related that appellant was seen for severe lumbosacral and right lower extremity pain. Dr. Kaur noted degenerative changes in appellant's spine, which were most prevalent at L5-S1.

OWCP received a September 11, 2020 report, wherein Dr. Lorena M. Layrisse Landaeta, Board-certified in geriatric and internal medicine, related that appellant had injured his back on August 13, 2020 while moving a pallet at work. Dr. Layrisse Landaeta indicated that this injury further worsened appellant's back condition which he had developed while in the military. Appellant's diagnosis was listed as grade 1 retrolisthesis of L5 on S1 and multilevel degenerative changes, most pronounced at the L5-S1 level.

In a report dated October 9, 2020, Dr. Mehrdad Hedayatnia, Board-certified in anesthesiology and a pain medicine specialist, related that appellant was seen for lower back pain radiating down to his right leg, which onset over 20 years prior. Dr. Hedayatnia related appellant's diagnoses as degenerative lumbar spine disease and mild anterolisthesis of L4 on L5.

Appellant submitted an operative report dated January 29, 2021 from Dr. Russel Huang, a Board-certified orthopedic surgeon. Appellant's diagnoses were listed as L5-S1 stenosis and degenerative disc disease. Dr. Huang related that appellant underwent minimally invasive posterior lateral fusion at L5-S1 and decompression via partial laminectomy at L5-S1.

In a letter dated March 17, 2021, Dr. Huang noted that appellant had been in his care and had undergone spinal surgery on January 29, 2019. He also noted appellant's current work restrictions.

OWCP received a statement dated March 24, 2021 from appellant's colleague, D.P., who attested that on August 13, 2020 he saw appellant push a pallet and injure his back.

In a development letter dated April 1, 2021, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of additional factual and medical evidence needed to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In response, appellant submitted numerous progress reports dated February 2014 through April 2019, which pertained to appellant's lumbar conditions, preceding the August 13, 2020 employment incident.

In a report dated October 13, 2020, Dr. Jenny Lee, a Board-certified physical medicine and rehabilitation specialist, related that appellant had lower back pain which was exacerbated on August 13, 2020 after he pushed a heavy pallet. She noted that appellant's diagnosis was grade 1 retrolisthesis of L5 on S1 and she provided a work excuse.

OWCP received progress reports dated September 1, 3, and 16, and November 9 and 18, 2020, from Dr. Joshua Warach, a Board-certified neurologist, wherein he noted discussing with appellant regarding his chronic right lumbosacral radiculopathy and proposed surgery.

OWCP received progress reports dated September 24 and December 9, 2020 and January 8, 2021 from Dr. James L. Stone, a Board-certified neurologist, wherein he related that appellant had multi-level degenerative changes at the L5-S1 level with collapse of disc space and bilateral foraminal stenoses.

OWCP received a medical report dated March 16, 2021 from Dr. Hasmatul Islam, an emergency medicine specialist, which related that appellant was seen in the emergency room for lower back pain.

In progress notes dated March 15, 17 and 29, 2021, Dr. Warach related that he spoke with appellant regarding exacerbation of his lumbosacral pain following his surgery.

OWCP received a medical report dated April 8, 2021 from Dr. Layrisse Landaeta, wherein she noted that appellant was seen for a follow-up appointment and was experiencing chronic low back pain.

In a letter dated April 13, 2021, Dr. Layrisse Landaeta related that appellant injured his back at work while pushing a pallet out of the way on August 13, 2020. She stated that this worsened a back condition that appellant suffered from while he was in the military. Dr. Layrisse Landaeta stated that the August 13, 2020 incident caused appellant to experience symptoms of lumbosacral radiculopathy, for which he underwent surgery.

By decision dated May 14, 2021, OWCP accepted that the August 13, 2020 employment incident occurred, as alleged, but denied appellant's claim as causal relationship had not been established between his diagnosed medical condition(s) and the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP subsequently received additional evidence. In a report dated April 8, 2021, Dr. Landaeta advised that appellant was seen for a follow-up appointment following his surgery. He also noted that appellant had returned to work.

In a radiology report of appellant's lumbar spine dated April 28, 2021, Dr. Robert Schneider, a Board-certified radiologist, noted bilateral spinal fusion at L5-S1, as well as mild multilevel degenerative disease of the thoracic spine, and at C5-6 and C6-7.

On August 4, 2021 appellant, through counsel, requested reconsideration of OWCP's May 14, 2021 decision.

In support of his request, appellant submitted a letter dated July 2, 2021 from Dr. Huang, which related that appellant had a history of intermittent axial low back pain dating back to the late 1990s when he was engaged in heavy lifting while serving in the military. Dr. Huang further stated that appellant had an additional on-the-job injury in August 2020 while moving a heavy load. He diagnosed L5-S1 degenerative disc disease with stenosis and radiculopathy. Dr. Huang noted that appellant underwent surgery on January 29, 2021 and returned to work soon after, but began suffering from additional back pain. He affirmed with a reasonable degree of medical certainty that appellant's work-related injury of 2020 was the cause of his debilitating right radicular pain, which necessitated his lumbar surgery. Dr. Huang recommended permanent work restrictions.

By decision dated November 2, 2021, OWCP denied modification of its May 14, 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

³ *Id.*

States within the meaning FECA, that the claim was timely filed within the applicable time limitation period 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

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a 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 a personal injury and can be established only by medical evidence.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 factors identified by the employee.⁹

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹⁰

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).

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 Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); see *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a lumbar condition causally related to the accepted August 13, 2020 employment incident.

Appellant submitted reports dated September 11, 2020 and April 13, 2021 from Dr. Layrisse Landaeta, and July 2, 2021 from Dr. Huang, which noted diagnoses including grade 1 retrolisthesis of L5 on S1, multilevel degenerative changes which were most pronounced at L5-S1 level, and lumbar radiculopathy. Both physicians also opined with reasonable medical certainty that appellant's injury at work was the cause of the diagnosed conditions. While Dr. Layrisse Landaeta and Dr. Huang provided opinions on the causal relationship, they did not offer any rationale to explain how the accepted employment incident would have caused appellant's diagnosed conditions.¹¹ 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 employment factors.¹² A rationalized medical explanation of causal relationship is especially necessary if a preexisting condition is present.¹³ As Drs. Layrisse Landaeta and Huang did not explain how the August 13, 2020 employment condition physiologically caused or aggravated the diagnosed conditions, their reports are insufficient to establish the claim.

OWCP also received multiple progress reports from Drs. Scanlan, Hedayatnia, Huang, Lee, Warach, Stone, and Landaeta which listed appellant's lumbar diagnoses. However, none of these reports provided an opinion on causal relationship. 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.¹⁴ As such, these reports are insufficient to establish appellant's claim.

OWCP further received a report dated March 16, 2021 from Dr. Islam, which related that appellant was seen in the emergency room for pain in his lower back. However, Dr. Islam did not provide an opinion on causal relationship. As noted above, medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value.¹⁵ For this reason, Dr. Islam's report is insufficient to meet appellant's burden of proof.

Appellant also submitted radiology reports. The Board has held, however, that diagnostic tests, standing alone, lack probative value on the issue of causal relationship as they do not

¹¹ *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *see H.A.*, Docket No. 18-1466 (issued August 23, 2019); *L.R.*, Docket No. 16-0736 (issued September 2, 2016).

¹² *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).

¹³ *Supra* note 10.

¹⁴ *See D.C.*, Docket No. 19-1093 (issued June 25, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁵ *Id.*

address the relationship between the accepted employment factors and a diagnosed condition.¹⁶ For this reason, these reports are insufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish causal relationship between appellant's diagnosed lumbar conditions and the accepted 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 lumbar condition causally related to the accepted August 13, 2020 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the November 2, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 14, 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

¹⁶ See *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).