United States Department of Labor
Employees' Compensation Appeals Board

L.C., Appellant	)	
and	)	
DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, FEDERAL CORRECTIONS COMPLEX BEAUMONT, Beaumont, TX, Employer	)	**Docket No. 21-0811** **Issued: January 31, 2023**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On May 3, 2021 appellant filed a timely appeal from a February 25, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees'

[1] The Board notes that, during the pendency of this appeal, OWCP issued a May 25, 2021 nonmerit decision which denied appellant's request for a hearing regarding OWCP's February 25, 2021 decision. The Board and OWCP may not simultaneously exercise jurisdiction over the same issue(s). Consequently, OWCP's May 25, 2021 decision is set aside as null and void. 20 C.F.R. § § 501.2(c)(3), 10.626; *see J.W.*, Docket No. 19-1688, n.1 (issued March 18, 2020); *J.A.*, Docket No. 19-0981, n.2 (issued December 30, 2019); *Arlonia B. Taylor*, 44 ECAB 591 (1993) (Groom, Alternate Member, concurring in part and dissenting in part); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).

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.[3]

ISSUE

The issue is whether appellant has met his burden of proof to establish a diagnosed medical condition in connection with the accepted June 4, 2020 employment incident.

FACTUAL HISTORY

On June 5, 2020 appellant, then a 50-year-old correctional officer, filed a traumatic injury claim (Form CA-1) alleging that on June 4, 2020 he injured his right shoulder and lower back and became dehydrated and fatigued while in the performance of duty. He explained that this occurred after he carried heavy items, including crates of milk and food, up five flights of stairs because the elevators were not working. Appellant further explained that he began to feel dizzy and experienced back pain before notifying his supervisor. He did not stop work.

In a June 8, 2020 medical note, Dr. Darrella Cooper, Board-certified in emergency medicine, diagnosed muscle spasms of the back and low back pain. She noted that appellant could return to work on June 12, 2020.

In a June 15, 2020 medical report, Tara Deville, a nurse practitioner, noted that appellant experienced back pain on June 4, 2020 after carrying crates up the stairs at work. She diagnosed lumbar back pain and advised that he remain out of work to begin his physical therapy treatment. In a form report of even date, Ms. Deville diagnosed a lumbar strain and advised that appellant remain out of work for two weeks.

In an attending physician's report, Part B of an authorization for examination and/or treatment (Form CA-16) dated June 15, 2020, Ms. Deville diagnosed a lumbar strain due to a work-related injury of walking upstairs while carrying crates. She checked a box marked "Yes" indicating that appellant's condition was caused by employment activity.

In a June 29, 2020 medical report, Chad Lapray, a nurse practitioner, treated appellant on follow-up regarding the June 4, 2020 employment incident and his subsequent back pain. He diagnosed lumbar back pain and prescribed medication. In a form report of even date, Mr. Lapray diagnosed a lumbar strain and held appellant off work until July 8, 2020.

In a July 8, 2020 medical report, Joe Dodd, a nurse practitioner, evaluated appellant for continued low back pain and diagnosed lumbar back pain.

[2] 5 U.S.C. § 8101 *et seq*.

[3] The Board notes that, following the February 25, 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*.

Appellant also submitted physical therapy reports dated August 18 to November 5, 2020 in which Melissa Meagher and Allen Edano, physical therapists, who noted diagnoses of a strain of muscle, fascia, and tendon of the lower back.

In a December 8, 2020 development letter, OWCP advised 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 afforded appellant 30 days to respond.

Appellant subsequently submitted copies of the June 29 and July 8, 2020 medical reports from Mr. Lapay and Dodd, respectively.

By decision dated February 25, 2021, OWCP denied appellant's traumatic injury claim, finding that the evidence of record did not establish a diagnosed medical condition from a qualifying physician in connection with the accepted June 4, 2020 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] has the burden of proof to establish the essential elements of his or her claim, including the fact 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,[5] 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.[6] 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.[7]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, 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. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[8]

[4] *Supra* note 2.

[5] *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

[7] *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[8] *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q).

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[9] A physician's opinion on whether there is causal relationship between the diagnosed condition and the accepted employment incident must be based on a complete factual and medical background.[10] 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 the specific employment incident.[11]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition in connection with the accepted June 4, 2020 employment incident.

In a June 8, 2020 medical note, Dr. Cooper diagnosed muscle spasms of the back and low back pain. The Board has found that pain and spasm are symptoms and not a specific medical diagnosis.[12] The Board has held that a medical report lacking a firm diagnosis and a rationalized medical opinion regarding causal relationship is of no probative value.[13] For these reasons, Dr. Cooper's June 8, 2020 medical report is insufficient to establish appellant's burden of proof.

The remaining evidence consists of medical evidence signed by nurse practitioners and physical therapists. However, the Board has held that certain healthcare providers such as physician assistants, nurse practitioner, physical therapists, and social workers are not considered physician[s] as defined under FECA.[14] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[15]

The Board finds that appellant has not submitted rationalized, probative medical evidence sufficient to establish a diagnosed medical condition in connection with the accepted June 4, 2020 employment incident. Appellant, therefore, has not met his burden of proof.

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[9] *T.H.*, 59 ECAB 388, 393-94 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

[10] *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

[11] *Id.*; *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[12] *M.H.*, Docket No. 18-0873 (issued December 18, 2019); *J.S.*, Docket No. 19-0863 (issued November 4, 2019); *V.B.*, Docket No. 19-0643 (issued September 6, 2019).

[13] *P.C.*, Docket No. 18-0167 (issued May 7, 2019).

[14] 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 J.D.*, Docket No. 21-0164 (issued June 15, 2021) (nurse practitioners are not physicians as defined under FECA); *A.M.*, Docket No. 20-1575 (issued May 24, 2021) (physical therapists are not physicians as defined by FECA).

[15] *Id.*

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 diagnosed medical condition in connection with the accepted June 4, 2020 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the February 25, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 31, 2023
Washington, DC

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

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