

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

_____)	
G.H., Appellant)	
)	
and)	Docket No. 21-1225
)	Issued: January 30, 2023
U.S. POSTAL SERVICE, NASHUA LOGISTICS)	
& DISTRIBUTION CENTER, Nashua, NH)	
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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On August 9, 2021 appellant filed a timely appeal from a July 19, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the July 19, 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.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a back condition causally related to the accepted May 25, 2021 employment incident.

FACTUAL HISTORY

On May 26, 2021 appellant, then a 53-year-old clerk, filed a traumatic claim injury (Form CA-1) alleging that on May 25, 2021 he sustained a back injury when bagging mail and parcels while in the performance of duty. On the reverse side of the claim form, his supervisor stated that appellant's injury did not occur in the performance of duty as appellant had related to several coworkers that this was a prior condition. Appellant stopped work on May 25, 2021.

In support of his claim, appellant submitted a report dated May 26, 2021 from Dr. Yong H. Lee, an emergency medicine specialist. Dr. Lee stated that appellant's computerized tomography scan showed lower lumbar arthritic changes. He diagnosed appellant with lumbar back pain with radiculopathy affecting appellant's lower right extremity.

Appellant submitted an email statement dated May 27, 2021 wherein he explained that on May 25, 2021 he was bending to unhook a mailbag when he felt a strain on his back. He later doubled over in pain as he took a step. Appellant told his supervisor about the incident, and he called a family member who transported him to the emergency room. He stated that he was diagnosed with a herniated disc and pinched nerve.

OWCP received a duty status report (Form CA-17) from Dr. Jonathon W. Sixon, a Board-certified family practitioner, dated June 8, 2021 which noted a history of sacking mail on May 25, 2021 and listed appellant's diagnosis as lumbar back pain.

In a development letter dated June 15, 2021, OWCP advised appellant that additional factual and medical evidence was necessary to establish his claim. It advised of the type of factual and medical evidence needed and provided him with a questionnaire. OWCP afforded appellant 30 days to submit the necessary evidence.

In response, appellant submitted a report dated May 24, 2021 from Jenny Smith, a family nurse practitioner. Ms. Smith related that his bilateral leg pain had been exacerbated and occurred several times during a shift at work. She diagnosed bilateral leg edema and bilateral leg pain.

In a report dated May 26, 2021, Dr. Lee related that appellant was seen in the emergency room for right lower back pain radiating to the outside of the right thigh area, which began a few hours ago. He related that appellant had a history herniated disc with chronic low back pain, with morbid obesity, which was probably suggestive of a serious neurologic condition. Dr. Lee concluded that appellant had nontraumatic acute exacerbation of low back pain with radiculopathy.

OWCP received a medical report and work capacity evaluation (Form OWCP-5c) dated June 24, 2021 from Dr. Uri Ahn, a Board-certified orthopedist. Dr. Ahn related that on May 25, 2021 appellant's legs gave out at work. He also noted that three weeks after appellant began employment at the employing establishment, he bent down to pick up a package and experienced bilateral thigh pain. Dr. Ahn explained that appellant had a history of prior back pain and a

herniated disc which occurred approximately 24 years ago. He related that x-ray examination of appellant's lumbar spine revealed severe degeneration and loss of disc space height at the L5-S1 level, large anterior osteophyte, moderate stenosis, and a disc bulge at L4-5. Dr. Ahn concluded that appellant had two-level lumbar degeneration with morbid obesity and pain after bending at work.

OWCP received narratives both dated July 1, 2021 from Dr. Sixon. Dr. Sixon related that appellant was under his care and diagnosed lumbar radiculopathy, explaining that it was a condition in which nerves were compressed into the spinal disk. He opined that he believed that appellant's condition was a direct result of lifting sacks of parcels at work. In the second narrative of even date, Dr. Sixon also diagnosed spinal stenosis which he opined that was caused by appellant's injury at work on May 25, 2021.

In an attending physician's report (Form CA-20) dated July 1, 2021, Dr. Sixon also indicated by an affirmative checkmark that he believed appellant's condition was work related.

By decision dated July 19, 2021, OWCP accepted that the May 25, 2021 employment incident occurred, as alleged, but denied appellant's claim as causal relationship was not established between a diagnosed medical condition and the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

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 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 to be established 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

³ *Supra* note 1.

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).

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

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a back condition causally related to the accepted May 25, 2021 employment incident.

Appellant submitted a Form CA-17 dated June 8, 2021 from Dr. Sixon which listed appellant's diagnosis as lumbar back pain and muscle spasm. Under FECA, the assessment of pain is not considered a diagnosis, as pain merely refers to a symptom of an underlying condition.¹¹ Similarly, spasm is a symptom and not a diagnosis.¹² Therefore, this report lacks a firm diagnosis and is insufficient to establish appellant's claim.

OWCP received narratives both dated July 1, 2021 from Dr. Sixon wherein he related appellant's diagnoses as lumbar radiculopathy and spinal stenosis. Dr. Sixon opined that the conditions were a direct result of appellant lifting sacks of parcels at his job. While he provided an opinion on the causal relationship, he did not offer any rationale to explain how the accepted employment incident, bending to unhook a mailbag and later taking a step, would have caused

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).

¹¹ The Board has consistently held that pain is a symptom, not a compensable medical diagnosis. *See T.W.*, Docket No. 20-0767 (issued January 13, 2021).

¹² *See K.C.*, Docket No. 20-0683 (issued September 23, 2020); *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).

appellant's diagnosed conditions.¹³ Dr. Sixon related that lumbar radiculopathy was a condition in which nerves were compressed into the spinal disk. However, he did not explain how physiologically appellant's specific work activity caused his nerves to compress into the spinal disk. The Board has held that a medical opinion should offer a medically-sound explanation of how the specific employment incident physiologically caused the diagnosed condition. The need for a rationalized medical opinion was particularly important because appellant had a history of prior back injury. Dr. Sixon failed to provide a rationalized medical opinion which differentiated between the effects of the preexisting condition and the accepted incident in causing appellant's back condition.¹⁴ These reports are, therefore, insufficient to establish causal relationship.

Appellant submitted a Form CA-20 dated July 1, 2021 from Dr. Sixon who indicated by an affirmative checkmark that he believed that appellant's condition to be work related. The Board has held that an opinion on causal relationship with an affirmative checkmark, without more by the way of medical rationale, is insufficient to establish the claim.¹⁵ As such, this report is insufficient to establish appellant's claim.

OWCP received a medical report dated May 26, 2021 from Dr. Lee which diagnosed lumbar back pain with radiculopathy affecting appellant's lower right extremity. Similarly, it received a medical report a Form OWCP-5c dated June 24, 2021 from Dr. Ahn which listed appellant's diagnoses. However, neither physician provided his own medical opinion explaining the cause of appellant's diagnosed conditions. The Board has held that medical evidence that does not offer a rationalized opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁶ As such, these reports are insufficient to establish appellant's claim.

OWCP received a medical record dated May 24, 2021 from Ms. Smith, a family nurse practitioner. Certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered physicians as defined under FECA.¹⁷ Consequently,

¹³ *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).

¹⁴ *Supra* note 10 at Chapter 2.805.3e (January 2013). *J.G.*, Docket No. 20-0009 (issued September 28, 2020): *See also R.D.*, Docket No. 18-1551 (issued March 1, 2019).

¹⁵ *See C.S.*, Docket No. 18-1633 (issued December 30, 2019); *D.S.*, Docket No. 17-1566 (issued December 31, 2018).

¹⁶ *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).

¹⁷ Section 8101(2) 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 also supra* note 10 at Chapter 2.805.3a(1) (January 2013); *see also M.F.*, Docket No. 19-1573 (issued March 16, 2020) (nurse practitioners are not considered physicians as defined by FECA); *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).

Ms. Smith's report is of no probative value and will not suffice for purposes of establishing entitlement to FECA benefits.¹⁸

The Board finds that appellant has not submitted rationalized, probative medical evidence sufficient to establish that his back condition was causally related to the accepted May 25, 2021 employment incident. Appellant, therefore, 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 back condition causally related to the accepted May 25, 2021 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the July 19, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 30, 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

¹⁸ See *M.C.*, Docket No. 19-1074 (issued June 12, 2020) (nurse practitioners are not considered physicians under FECA).