United States Department of Labor
Employees' Compensation Appeals Board

C.F., Appellant	)	
and	)	**Docket No. 22-0860**
U.S. POSTAL SERVICE, POST OFFICE, Sioux Falls, SD, Employer	)	**Issued: January 4, 2023**

Appearances:
Appellant, pro se
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 May 10, 2022 appellant filed a timely appeal from a December 1, 2021 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 lumbar condition causally related to the accepted March 4, 2021 employment incident.

FACTUAL HISTORY

On March 15, 2021 appellant, then a 49-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 4, 2021 he sustained a lower back strain when his back stiffened while in the performance of duty. He stopped work on March 5, 2021.

[1] 5 U.S.C. § 8101 *et seq*.

Appellant submitted work restrictions dated March 6, 2021 from Dr. Trevor Penning, a chiropractor, who recommended a weight limit of no more than 20 pounds and limited bending, twisting, squatting, and climbing.

On March 6, 2021 Dr. Penning diagnosed lumbar sacroiliac sprain/strain with a lumbosacral subluxation complex and a strong myofascial component from an injury on March 4, 2021. In a report dated March 8, 2021, he diagnosed strain of the muscle, fascia, and tendons of the lower back; dorsopathies of the lumbar and lumbosacral region; segmental and somatic dysfunction of the lumbar region; and overexertion from repetitive movements.

Dr. Matt Bien, an internal medicine specialist, completed a form report on March 8, 2021 in which he noted that appellant had low back pain with radiculopathy following March 4, 2021. He indicated that appellant should be treated with physical therapy and remain off work as of March 8, 2021.

X-rays of the lumbar spine obtained on March 8, 2021, at the request of Dr. Bien, indicated intervertebral fusion at L3-4 and L4-5 levels with intervertebral graft and posterior hardware, as well as a posterior lateral bone graft. They revealed no fracture or subluxation, but there was disc degeneration with degenerative disc space narrowing at the L5-S1 level, unchanged from a previous examination on November 2, 2009, and no evidence of an acute process. X-rays of the lumbar spine obtained on March 25, 2021 indicated previous L3, L4, and probably L5 laminectomy and partial laminectomy at L2, with posterior lumbar interbody fusion at L3-4 and L4-5. They revealed bilateral L3, L4, and L5 pedicle screws with interconnecting rods, intervertebral spacers at L3-4 and L4-5 disc spaces, moderate disc space narrowing with small anterior osteophytes at L2-3, moderate-to-severe disc space narrowing at L5-S1, and no evidence for motion at L3-4 and L4-5 with flexion or extension. There was no evidence of lumbar subluxation or instability with flexion or extension.

Appellant submitted work restrictions dated March 25, 2021 from Dr. Joshua Schwind, an orthopedic surgeon, who recommended that appellant remain off work until after April 22, 2021.

In a report dated March 26, 2021, Dr. Schwind diagnosed myofascial low back pain, bilateral radiculopathy, a history of lumbar fusion, and disc space narrowing and collapse. He noted that appellant had undergone a history of three previous discectomies and, in 2015, underwent L3-4 and L4-5 laminectomy with interbody grafts and posterior spinal instrumented fusion.

Appellant also submitted notes from a physical therapist dated March 19 through April 2, 2021.

In a development letter dated April 27, 2021, OWCP advised appellant of the type of factual and medical evidence required to establish his claim and provided a questionnaire for his completion. It afforded him 30 days to submit the necessary evidence.

In work restrictions dated April 22, 2021, Dr. Schwind noted appellant's inability to work for six weeks, and stated that his restrictions could be addressed at a follow-up appointment. In another report dated April 22, 2021, he diagnosed lumbar radiculopathy, myoclonic jerking, and status post spinal arthrosis. On May 10, 2021 Dr. Schwind relayed the results of diagnostic testing

to appellant. He diagnosed myoclonic jerking, status post lumbar spinal arthrodesis, lumbar radiculopathy, lumbar-adjacent segment disease with spondylolisthesis, and lumbar stenosis.

Magnetic resonance imaging (MRI) scans of the lumbar spine obtained on May 4, 2021 indicated postoperative changes of L3-5 laminectomies with interbody fusion at L3-4 and posterior fusion with bilateral transpedicular screw from L3-5, maintained alignment with no central canal narrowing or foraminal narrowing, nerve roots extending dorsally; and degenerative spondylosis at L2-3 with broad-based protrusion and facet arthropathy with moderate central canal narrowing and moderate bilateral foraminal narrowing. There was no definitive nerve root impingement. A computerized tomography (CT) scan of the same date indicated solid anterior and posterior interbody fusion at the L3-4 and L4-5 levels with intervertebral cages and pedicle screws, laminectomies at L3-5 levels without residual stenosis, mild degenerative disc space narrowing at L2-3, and broad-based disc bulge and bilateral facet hypertrophy producing mild canal stenosis.

On May 11, 2021 Dr. Schwind recommended that appellant remain off work until his next appointment in four to six weeks.

By decision dated June 10, 2021, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed medical conditions and the accepted March 4, 2021 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury and/or medical condition causally related to the accepted employment incident.

OWCP received additional physical therapy notes dated through April 28, 2021.

In another report dated March 8, 2021, Dr. Bien diagnosed low back pain with radiculopathy. He noted that appellant had a longstanding history of back issues, including a 2009 microdiscectomy, repeated in 2013; and full spinal fusion in 2015. On March 15, 2021 Dr. Bien diagnosed back pain with radiculopathy.

On July 6, 2021 appellant requested reconsideration.

By decision dated July 14, 2021, OWCP reviewed the merits of appellant's claim and denied modification of its June 10, 2021 decision.

An MRI scan obtained on July 29, 2021 indicated a large and elongated left L2-3 posterior and caudal disc extrusion with possible disc sequestration, causing severe stenosis of the left lateral recesses and displacement of the left L3 nerve root.

Appellant submitted a note dated September 7, 2021, signed by a certified nurse practitioner.

On September 16, 2021 appellant again requested reconsideration.

By decision dated December 1, 2021, OWCP denied modification of its July 14, 2021 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,[3] 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.[4] 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.[5]

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 a personal injury and can be established only by medical evidence.[6]

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[7] 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.[8]

In a 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.[9]

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[2] *Id*.

[3] *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).

[4] *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).

[5] *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).

[6] *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).

[7] *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).

[8] *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).

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a lumbar condition causally related to the accepted March 4, 2021 employment incident.

In work restrictions dated March 25, 2021, Dr. Schwind recommended that appellant be off work until after April 22, 2021. On March 26, 2021 he diagnosed myofascial low back pain, bilateral radiculopathy, a history of lumbar fusion, and disc space narrowing and collapse. Dr. Schwind noted that appellant had undergone a history of three previous discectomies and, in 2015, underwent L3-4 and L4-5 laminectomy with interbody grafts and posterior spinal instrumented fusion. On April 22, 2021 he noted inability to work for six weeks, and stated that his restrictions could be addressed at a follow-up appointment. On April 22, 2021 Dr. Schwind followed up with appellant and diagnosed lumbar radiculopathy, myoclonic jerking, and status post-spinal arthrosis. On May 10, 2021 he relayed the results of diagnostic testing to appellant. Dr. Schwind diagnosed myoclonic jerking, status post lumbar spinal arthrodesis, lumbar radiculopathy, lumbar-adjacent segment disease with spondylolisthesis, and lumbar stenosis. On May 11, 2021 he recommended that appellant remain off work until the next appointment in four to six weeks. On March 8, 2021 Dr. Bien diagnosed low back pain with radiculopathy. He noted that appellant had a longstanding history of back issues, including a 2009 microdiscectomy, repeated in 2013; and full spinal fusion in 2015. On March 15, 2021 Dr. Bien diagnosed back pain with radiculopathy. However, while these reports reviewed appellant's history of injury and contained medical diagnoses, they did not provide a medical opinion regarding the cause of appellant's diagnosed conditions. 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.[10]

Appellant submitted reports from Dr. Penning, a chiropractor. A chiropractor, however, is only considered a physician for purposes of FECA if he or she diagnoses subluxation based upon x-ray evidence.[11] As Dr. Penning has not diagnosed subluxation based upon x-ray evidence, he is not considered a physician as defined under FECA and his medical report does not constitute competent medical evidence.[12]

Appellant submitted a note dated September 7, 2021, signed by a certified nurse practitioner, as well as reports signed by a physical therapist. The Board has held that medical reports signed solely by a nurse practitioner or solely by a physical therapist are of no probative

[10] *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).

[11] Section 8101(2) of FECA provides that the term physician includes chiropractors only if the treatment consists of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. 5 U.S.C. § 8101(2). *See also S.L.*, Docket No. 21-0760 (issued January 6, 2022); *T.T.*, Docket No. 18-0838 (issued September 19, 2019); *Thomas W. Stevens*, 50 ECAB 288 (1999); *George E. Williams*, 44 ECAB 530 (1993).

[12] *S.L.*, *id.*; *J.D.*, Docket No. 19-1953 (issued January 11, 2021); *C.S.*, Docket No. 19-1279 (issued December 30, 2019); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

value, because these medical providers are not considered physicians as defined under FECA.[13] As such, these reports are of no probative value.

The diagnostic reports of record, including x-rays, MRI scans, and CT scans, also do not constitute probative medical evidence. The Board has held that diagnostic tests, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion on causal relationship.[14]

As appellant has not submitted rationalized medical evidence establishing a lumbar condition causally related to the accepted March 4, 2021 employment incident, the Board finds that he 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 March 4, 2021 employment incident.

[13] 5 U.S.C. § 8101(2) provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *See id*. at § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *P.H.*, Docket No. 19-0119 (issued July 5, 2019); *T.K.*, Docket No. 19-0055 (issued May 2, 2019); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants, and physical therapists are not competent to render a medical opinion under FECA).

[14] *See C.F.*, Docket No. 18-1156 (issued January 22, 2019); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

ORDER

IT IS HEREBY ORDERED THAT the December 1, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 4, 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