

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

_____)	
J.A., Appellant)	
)	
and)	Docket No. 22-0869
)	Issued: July 3, 2023
DEPARTMENT OF VETERANS AFFAIRS,)	
ORLANDO VA MEDICAL CENTER,)	
Orlando, FL, Employer)	
_____)	

Appearances: *Case Submitted on the Record*
*Alan J. Shapiro, Esq., for the appellant*¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 17, 2022 appellant, through counsel, filed a timely appeal from an April 21, 2022 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 to consider the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a medical condition causally related to the accepted November 20, 2020 employment incident.

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.*

FACTUAL HISTORY

On November 26, 2020 appellant, then a 48-year-old medical supply aide and technician, filed a traumatic injury claim (Form CA-1) alleging that on November 20, 2020 he sustained a back injury when a coworker struck the chair he was sitting in with a moving cart, causing his chair to spin in a jolting action, while in the performance of duty. He stopped work on the date of injury.

In support of his claim, appellant submitted medical evidence. In a November 20, 2020 disability certificate, Dr. William F. Rodriguez, an employing establishment physician Board-certified in emergency and sports medicine, advised that appellant was unable to work through November 27, 2020.

In a November 25, 2020 letter, Dr. David M. Durkin, an attending chiropractor, excused appellant from work from November 30 through December 2, 2020 and advised that he could return to work with no restrictions on December 4, 2020.

OWCP, by development letter dated January 8, 2021, informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary and afforded appellant 30 days to respond.

OWCP subsequently received additional medical evidence. A cervical spine x-ray report dated November 20, 2020, from Dr. Hugh McSwain, a Board-certified diagnostic radiologist and neuroradiologist, provided an impression of no acute fracture or subluxation. A lumbar spine x-ray of even date also provided an impression of no acute fracture or subluxation.

In a November 20, 2020 employing establishment emergency department note, Dr. Rodriguez noted appellant's history that on that day he was jolted and twisted while seated. He also noted his complaints of low back pain and numbness of the hands. Dr. Rodriguez listed appellant's diagnoses as back pain/sciatica, cervical strain/cervical radiculopathy, and carpal tunnel syndrome (CTS). An employing establishment discharge report dated November 20, 2020 provided diagnoses of lumbar radiculopathy (sciatica) and CTS.

Dr. Durkin, in reports dated November 24 and 25, 2020, noted that appellant presented with a chief complaint of cervical, upper thoracic, right and left cervical dorsal, lumbar, left buttock, left posterior leg, left calf, left foot, right buttock, right posterior leg, right calf, and right foot discomfort. He provided his examination findings and assessed appellant's condition as lumbosacral and sacroiliac joint irritation. In a December 4, 2020 letter, Dr. Durkin excused appellant from work through December 8, 2020 and advised that he could return to work with no restrictions on December 9, 2020.

On December 16, 2020 Craig A. Brown, a registered nurse, indicated that appellant presented for a follow-up evaluation of his low back pain.

On December 16, 2020 appellant reiterated his history of injury on November 20, 2020 and diagnosis of CTS.

In a December 18, 2020 progress note, Dr. Daniel E. Banks, a Board-certified internist and pulmonologist, indicated appellant's complaints of neck and lower back pain. He discussed his findings on physical examination and reviewed a March 2, 2018 nerve conduction velocity (NCV)

study which revealed right CTS and sensorimotor neuropathy of the lower extremities. Dr. Banks provided assessments of diabetic neuropathy, right CTS, and uncontrolled diabetes mellitus. In a December 22, 2020 progress note, he planned to order an electromyogram (EMG)/NCV study and x-ray to get an update on appellant's left wrist CTS.

Dr. Banks' December 30, 2020 x-ray reports provided impressions of unremarkable right and left wrists.

In reports dated December 22, 2020, Dr. Chichuan Y. Kaminski, a Board-certified diagnostic radiologist, indicated that x-rays of the right and left wrists were unremarkable.

On January 14, 2021 Dr. Namik Erdag, a Board-certified diagnostic radiologist, performed a computerized tomography (CT) scan of the lumbar spine and provided impressions of bilateral sacroiliitis, mild posterior disc bulge at L5-S1, and no spinal stenosis.

A mostly illegible EMG/NCV study received by OWCP on February 1, 2021 was abnormal with borderline evidence suggestive of right CTS.

By decision dated February 11, 2021, OWCP accepted that the November 20, 2020 incident occurred as alleged, but denied the claim, finding that the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted employment incident.

On February 16, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on May 11, 2021.

By decision dated July 1, 2021, OWCP's hearing representative affirmed the February 11, 2021 decision. However, she directed that OWCP administratively combine OWCP File Nos. xxxxxx568, xxxxxx137, xxxxxx010, and xxxxxx661 upon return of the case record.³

Upon return of the case record, OWCP administratively combined OWCP File Nos. xxxxxx568, xxxxxx137, xxxxxx010, and xxxxxx661, with OWCP File No. xxxxxx137 serving as the master file.

OWCP thereafter received a January 26, 2022 medical report from Dr. John W. Ellis, a Board-certified family practitioner. Dr. Ellis provided a history of injury that on November 20, 2020 appellant felt immediate pain in his lower back that radiated down into appellant's hands and feet with associated numbness and tingling sensations when an office chair he was sitting in at work was hit from behind by a large cart that was pushed by a coworker. When appellant's chair

³ In OWCP File No. xxxxxx137, OWCP, by decision dated May 19, 2021, denied his occupational disease claim (Form CA-2) for right-hand carpal tunnel syndrome. By decision dated October 21, 2021, an OWCP hearing representative affirmed the May 19, 2021 decision. In OWCP File No. xxxxxx010, OWCP, by decision dated May 19, 2021, denied appellant's occupational disease claim for a right shoulder injury. An OWCP hearing representative, in an October 22, 2021 decision, affirmed as modified the May 19, 2021 decision, finding that appellant's occupational disease claim should be treated as a traumatic injury claim (Form CA-1) and the evidence of record established that a February 3, 2021 employment incident occurred as alleged. However, the claim remained denied as the medical evidence of record was insufficient to establish causal relationship between the diagnosed medical conditions and the accepted February 3, 2021 employment incident. In OWCP File No. xxxxxx661, OWCP accepted appellant's August 21, 2018 traumatic injury claim for right elbow strain, initial encounter.

was hit, it spun abruptly in a jolting and twisting motion. Dr. Ellis also provided a history of appellant's medical treatment and recounted appellant's current complaints of pain in his cervical and lumbar spines and cervical spine that radiated to his upper and lower extremities and shoulders. He reviewed medical records in the instant claim under OWCP File No. xxxxxx568, appellant's prior claims under OWCP File Nos. xxxxxx661, xxxxxx568, and xxxxxx662, and the disability claim that he filed with the employing establishment. Dr. Ellis reported his examination findings. He diagnosed spondylosis and radiculopathy, cervical region; other intervertebral disc degeneration and radiculopathy, lumbosacral region, and traumatic arthritis of the right and left hip. Dr. Ellis cited Board precedent and opined that appellant's diagnosed conditions arose out of and in the course of his employment and were contributed to, aggravated and/or caused by his employment factors and work duties. He described the cause and symptoms of lumbosacral radiculopathy, noting, in part, that radiculopathy is caused by compression or irritation of the nerve as it exits the spine. Dr. Ellis noted that, in appellant's case, the sudden jerk of the chair he was sitting in on November 20, 2020 resulted in a jolting and twisting-like motion that was very similar to a slip without a fall. He referenced prior imaging studies and indicated that many of the degenerative changes noted in these studies were consistent with the natural degenerative changes occurring to the vertebra. However, Dr. Ellis indicated that radicular symptoms were not associated with these types of degenerative changes. Therefore, he opined that appellant had sustained injuries to his lumbar and cervical spine with associated radiculopathies and bilateral hips, "causally connected to the above-described accident or within a reasonable degree of medical certainty." Dr. Ellis related that appellant had continuing symptoms that were supported by clinical examination findings. He concluded that, if appellant could not be placed in a suitable light-duty position within appellant's restrictions, then he was disabled from work as a direct result of his work-related injury.

Appellant also submitted the March 2, 2018 EMG/NCV study of his right upper and lower extremities from Dr. Michael Hoffmann, a neurologist.

OWCP also received November 20, 2020 x-ray reports. Appellant's lumbosacral x-ray findings revealed no acute fracture or subluxation, mild degenerative changes of the bilateral hips. Cervical x-rays of even date revealed no acute fracture or subluxation, cervical spondylosis most evident at C5-6.

On March 10, 2021 Dr. Adam S. Fenichal, a Board-certified orthopedic surgeon, ordered electrodiagnostic testing to determine whether appellant had a presumptive diagnosis of ulnar neuropathy at the elbow (cubital).

In a March 22, 2021 electrodiagnostic consultation report, Dr. Colleen M. Zittel, a Board-certified physiatrist, provided impressions of electrodiagnostic evidence for moderate right CTS, which was neurapraxic in nature, without chronic changes; no clear evidence for acute or chronic cervical radiculopathy, ulnar neuropathy, other focal neuropathy, or for peripheral polyneuropathy involving the right upper extremity; and chronic reinnervation confined to the right abductor digiti inimi is of unclear significance that could be seen in chronic right ulnar neuropathy which was unable to be localized, versus a chronic right C8 or T1 radiculopathy or a normal variant, in isolation, this finding was insufficient for a definitive diagnosis or localization. A detailed comparison was made to appellant's prior EMG/NCV test performed on the right upper extremity on January 19, 2021 and revealed a significant increase in the right median motor and sensory latencies consistent with significant progression in severity of the right CTS. This was previously borderline and is now moderate.

Appellant resubmitted Dr. Rodriguez' November 20, 2020 employing establishment emergency department note and Dr. Durkin's November 24, 2020 report.

OWCP, by decision dated April 21, 2022, denied modification of the July 1, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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,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 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.⁸

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁹ 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.¹⁰

⁴ *Supra* note 2.

⁵ *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).

⁶ *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).

⁷ *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).

⁸ *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).

⁹ *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).

¹⁰ *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).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted November 20, 2020 employment incident.

In a January 26, 2022 report, Dr. Ellis opined that appellant's spondylosis and radiculopathy, cervical region; other intervertebral disc degeneration and radiculopathy, lumbosacral region; and traumatic arthritis of the right and left hip were caused, or contributed to, or aggravated by the accepted November 20, 2020 employment incident. He indicated that the sudden jerk of the chair appellant was sitting in on November 20, 2020 resulted in a jolting and twisting-like motion that was very similar to a slip without a fall. While he provided an affirmative opinion on causal relationship, Dr. Ellis did not offer any medical rationale sufficient to explain how and why he believed the November 20, 2020 employment incident could have resulted in or contributed to appellant's diagnosed conditions. The Board has held that a medical opinion must reflect a medically-sound and rationalized explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions.¹¹ Without explaining how being struck by a moving cart while sitting in a chair physiologically caused or contributed to appellant's diagnosed conditions, Dr. Ellis' January 26, 2022 medical report is of limited probative value.¹² As such, the Board finds that this evidence is insufficient to establish appellant's claim.

Dr. Rodriguez' November 20, 2020 employing establishment emergency department note and disability certificate diagnosed back pain/sciatica, cervical strain/cervical radiculopathy, and carpal tunnel syndrome, and found that appellant was unable to work from November 20 through 27, 2020. Dr. Banks' December 18 and 22, 2020 progress notes, provided his examination findings and provided assessments of diabetic neuropathy, right CTS, and uncontrolled diabetes mellitus. In his December 30, 2020 reports, Dr. Banks advised that x-rays of appellant's bilateral wrists were unremarkable. Neither physician, however, offered an opinion relative to the causal relationship between the diagnosed conditions and the accepted employment incident. 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 For this reason, the medical evidence from Dr. Rodriguez and Dr. Banks is insufficient to establish appellant's claim.

Appellant also submitted diagnostic reports dated March 2, 2018 through March 22, 2021. 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

¹¹ *T.G.*, Docket No. 21-0175 (issued June 23, 2021); *J.D.*, Docket No. 19-1953 (issued January 11, 2021); *see K.W.*, Docket No. 19-1906 (issued April 1, 2020).

¹² *See M.M.*, Docket No. 20-1538 (issued December 27, 2022); *J.K.*, Docket No. 22-0945 (issued December 16, 2022); *A.P.*, Docket No. 19-0224 (issued July 11, 2019).

¹³ *See J.K. (nee R.)*, Docket No. 22-0945 (issued December 16, 2022); *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ *See L.M.*, Docket No. 22-0667 (issued November 1, 2022); *T.H.*, Docket No. 18-1736 (issued March 13, 2019).

In reports and letters dated November 24 and 25 and December 4, 2020, Dr. Durkin, a chiropractor, provided assessments of lumbosacral and sacroiliac joint irritation and placed appellant off work for intermittent disability from work from November 30 through December 8, 2020. The Board notes that section 8101(2) of FECA¹⁵ provides that the term physician, as used therein, includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary.¹⁶ OWCP's implementing federal regulation at 20 C.F.R. § 10.5(bb) defines subluxation as an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae, which must be demonstrated on x-ray. As Dr. Durkin did not diagnose a subluxation as demonstrated by x-ray, he is not considered a physician under FECA and his reports and letters do not constitute probative medical evidence.¹⁷ Thus, this evidence is insufficient to establish appellant's claim.

The remaining medical evidence consists of a December 16, 2020 progress note from Mr. Brown, a registered nurse. The Board has consistently held that certain healthcare providers such as registered nurses are not considered physicians as defined under FECA.¹⁸ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹⁹

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted November 20, 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 November 20, 2020 employment incident

¹⁵ 5 U.S.C. § 8101(2).

¹⁶ *Id.*; 20 C.F.R. § 10.311.

¹⁷ See *L.M.*, *supra* note 14; *T.H.*, Docket No. 17-0833 (issued September 7, 2017); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

¹⁸ 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

¹⁹ *Id.* at § 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. *Id.* at § 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 *G.F.*, Docket No. 23-0114 (issued May 12, 2023) (registered nurses are not considered qualified physicians as defined under FECA); *M.M.*, Docket No. 20-1649 (issued January 4, 2023) (registered nurses are not considered physicians under FECA).

ORDER

IT IS HEREBY ORDERED THAT the April 21, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 3, 2023
Washington, DC

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

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

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