

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

_____)	
J.J., Appellant)	
)	
and)	Docket No. 22-1371
)	Issued: June 8, 2023
DEPARTMENT OF THE AIR FORCE, ROBINS)	
AIR FORCE BASE, GA, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On September 29, 2022 appellant filed a timely appeal from a September 16, 2022 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish a medical condition causally related to the accepted May 14, 2022 employment incident.

FACTUAL HISTORY

On May 27, 2022 appellant, then a 46-year-old engineering mechanic, filed a traumatic injury claim (Form CA-1) alleging that on May 14, 2022 he aggravated his preexisting back

¹ 5 U.S.C. § 8101 *et seq.*

condition when identifying and cleaning up after a water leak while in the performance of duty. He did not immediately stop work.

OWCP received a position description for an engineering technician.

In a development letter dated June 13, 2022, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In support of his claim, appellant submitted a report from Dr. Nathan M. Jones, a Board-certified physiatrist, dated May 16, 2022, who treated him for a work injury that occurred on May 14, 2022 when he was cleaning up a leak of 10 to 15 gallons of water with a mop, bucket, and shop vacuum. He reported dull pain radiating from his back down the right posterior thigh and lateral leg. Appellant's history was significant for nonoccupational chronic back pain for the past four to five years. Findings on physical examination revealed tenderness to palpation of the thoracolumbar spine at L5-S2, limited range of motion in all planes, decreased response to tactile stimulation of the upper L2 aspect of the right thigh, and decreased sensory responses to the right lateral leg and dorsum of the foot at L5. Dr. Jones diagnosed radiculopathy of the lumbosacral region and opined that the mechanism of injury was mopping and vacuuming water from a roof leak. He released appellant to sedentary work with no driving government vehicles.

Dr. Marvin E. Taylor, a Board-certified physiatrist, treated appellant on May 16, 2022 for a work-related back injury that occurred on May 14, 2022. Appellant reported mopping, lifting a water bucket, and vacuuming water after a leak at work and experiencing a dull pain radiating from his posterior thigh down his lateral right leg. His history was significant for chronic back pain for four to five years. Dr. Taylor diagnosed low back pain and obesity. He released appellant to modified-duty work. In reports dated June 6 and 15, 2022, Dr. Taylor treated appellant in follow up for radiating low back and right buttock pain that began on May 14, 2022 while he was mopping, lifting a water bucket, and vacuuming water after a leak.

On June 14, 2022 Dr. George S. Stefanis, a Board-certified neurosurgeon, treated appellant for low back pain radiating to the buttocks, which began suddenly at work on May 14, 2022. Appellant reported lifting a container of water, which caused pain down the right leg that became worse over time. He noted findings on examination of tenderness to palpation of the lumbar spine, muscle spasms, straight-leg raising test positive bilaterally, and tenderness to palpation of the buttocks. Dr. Stefanis returned appellant to light-duty work with no lifting over 10 pounds. In a disability certificate of even date, he returned appellant to a desk job with no lifting over 10 pounds.

On July 20, 2022 Emily Birdsong, a nurse practitioner, treated appellant for low back pain and tingling in the legs. Appellant related that on May 14, 2022 he was mopping and vacuuming a leak at work and lifted a container of water and felt pain radiating down his right leg. He noted that after the May 14, 2022 employment incident he experienced progressive pain in the right lower extremity and lower back with bilateral muscle spasms and radiating buttock pain. Ms. Birdsong released appellant to a desk job with no lifting over 10 pounds.

By decision dated August 2, 2022, OWCP accepted that the employment incident occurred as alleged, but denied appellant's traumatic injury claim, finding that the medical evidence submitted was insufficient to establish causal relationship between his diagnosed conditions and the accepted May 14, 2022 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

A July 14, 2022 magnetic resonance imaging (MRI) scan of the lumbar spine revealed multifactorial multilevel mild-to marked-spondylosis with findings worse at L5-S1 with central canal stenosis, possible bilateral lateral recess stenosis from a large diffuse symmetric bulge with concurrent mild central protrusion, epidural lipomatosis causing mild central canal stenosis of the thecal sac, ligamentum flavum thickening, moderate degenerative disc disease, marked bilateral neural foraminal narrowing with pinching the exiting L5 nerve roots, and mild-to-moderate bulge/protrusion at T12-L1 slightly contacting the cord.

On August 8, 2022 Dr. Stefanis noted treating appellant since 2008 for low back pain radiating down his left leg that was treated conservatively and did not interfere with his work duties. On May 14, 2022 appellant reported low back pain radiating down both legs when he picked up a container full of water at work. He opined that the most recent incident aggravated appellant's preexisting condition and possibly made his condition worse. Dr. Stefanis indicated that an MRI scan of the lumbar spine was performed in July 2022, which revealed a worsening condition at levels L5-S1 with marked foraminal and compression of both exiting nerve roots. He opined that based on appellant's history the new injury was the "most likely" source of symptoms that he was currently experiencing.

On August 18, 2022 appellant requested reconsideration.

By decision dated September 16, 2022, OWCP denied modification of the August 2, 2022 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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

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).

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. 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 sufficient evidence to establish that the employment incident caused a personal injury.⁶

The medical evidence required to establish causal relationship 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 incident 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

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted May 14, 2022 employment incident.

On May 16, 2022 Dr. Jones treated appellant for back pain radiating down the right posterior thigh and lateral leg that began on May 14, 2022 when he was cleaning up after a leak at work. He diagnosed radiculopathy of the lumbosacral region and noted the mechanism of injury was mopping and vacuuming water. Dr. Taylor treated appellant on May 16, 2022 for a work-related back injury that occurred on May 14, 2022 and diagnosed low back pain and obesity. Similarly, in reports dated June 6 and 15, 2022, he treated appellant for low back and right buttock pain radiating down the right leg that began on May 14, 2022 when he was mopping, lifting a water bucket, and vacuuming water from a leak. Likewise, on June 14, 2022, Dr. Stefanis treated

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.J.*, Docket No. 19-0461 (issued August 11, 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).

appellant for low back pain radiating to the buttocks, which started on May 14, 2022 when he picked up a container of water at work. While Drs. Jones, Taylor, and Stefanis indicated that appellant's low back condition was work related, they failed to provide medical rationale explaining the basis of their opinion. Without explaining, physiologically, how the specific employment incident or employment factors caused or aggravated the diagnosed condition, Drs. Jones, Taylor, and Stefanis' opinions on causal relationship are of limited probative value and insufficient to establish appellant's claim.¹⁰

On August 8, 2022 Dr. Stefanis noted treating appellant since 2008 for low back pain radiating down his left leg. Appellant reported low back pain radiating down both legs when he picked up a container full of water at work on May 14, 2022. He noted that this incident aggravated his preexisting condition and "possibly" made his condition worse. Dr. Stefanis opined that the new injury was the "most likely" source of symptoms that he was currently experiencing. The Board has held that medical opinions that are speculative or equivocal are of diminished probative value.¹¹ Therefore, this medical report is insufficient to establish appellant's claim.

Appellant submitted a report from a nurse practitioner. However, certain healthcare providers such as nurse practitioners are not considered "physician[s]" as defined under FECA.¹² Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹³

Appellant also submitted an MRI scan. The Board, however, has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the employment incident caused any of the diagnosed conditions.¹⁴ This evidence is, therefore, insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted May 14, 2022 employment incident, the Board finds that appellant has not met his burden of proof.

¹⁰ *G.L.*, Docket No. 18-1057 (issued April 14, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

¹¹ *H.A.*, Docket No. 18-1455 (issued August 23, 2019).

¹² Section 8102(2) of FECA provides as follows: (2) 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. § 8102(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 B.D.*, Docket No. 22-0503 (issued September 27, 2022 (nurse practitioners are not considered physicians as defined under FECA and their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits); *L.S.*, Docket No. 19-1231 (issued March 30, 2021) (a nurse practitioner is not considered a physician as defined under FECA).

¹³ *Id.*

¹⁴ *C.B.*, Docket No. 20-0464 (issued July 21, 2020).

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 May 14, 2022 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the September 16, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 8, 2023
Washington, DC

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

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

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