

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

C.H., Appellant)	
)	
and)	Docket No. 23-0168
)	Issued: June 16, 2023
DEPARTMENT OF THE TREASURY, U.S.)	
MINT, Philadelphia, PA, Employer)	
)	

Appearances:
Thomas Uliase, Esq., for the appellant¹
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 November 15, 2022 appellant filed a timely appeal from a July 11, 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 over the merits of this case.³

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.*

³ The Board notes that, following the July 11, 2022 decision, appellant submitted additional evidence to OWCP. 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 medical condition causally related to the accepted January 13, 2021 employment incident.

FACTUAL HISTORY

On February 11, 2021 appellant, then a 61-year-old coin press operator, filed a traumatic injury claim (Form CA-1) alleging that on January 13, 2021 he sustained a lumbar disc strain and fracture when carrying boxes while in the performance of duty. He stopped work on January 13, 2021.

On January 13, 2021 Dr. Jason T. Kan, Board-certified in emergency medicine, treated appellant providing discharge instructions for low back strain, acute low back pain, and degenerative disc disease. A January 13, 2021 computerized tomography (CT) scan of the lumbar spine revealed mild degenerative changes and age-indeterminate compression deformities.

In a return-to-work certificate dated February 4, 2021, Dr. Ramprasad Patnaik, a Board-certified family practitioner, noted that appellant was under his care from January 14 through March 3, 2021 and could return to work with restrictions. In a certificate to return to work dated March 25, 2021, he indicated that appellant was under his care from March 25 through April 25, 2021.

In a development letter dated April 1, 2021, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of additional evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence. No additional evidence was received.

By decision dated May 4, 2021, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that his medical condition was causally related to the accepted January 13, 2021 employment incident.

On April 15, 2021 Dr. Ryan Pfeifer, a Board-certified orthopedist, treated appellant for low back pain. Appellant reported experiencing low back pain when he lifted boxes of office chairs at work on January 13, 2021. His history was significant for intermittent low back pain for 15 years. Dr. Pfeifer noted x-rays of the lumbar spine revealed superior endplate compression fracture of L2 and L1 with what appeared to be a transverse fracture going across the vertebral body at L2. He diagnosed low back pain, unspecified back pain laterally, unspecified chronicity, with sciatica and wedge compression fracture of the second lumbar vertebra. Dr. Pfeifer opined that appellant experienced back pain and a suspected L2 compression fracture following a work injury in January 2021. In a return-to-work note dated May 12, 2021, he diagnosed wedge compression fracture of second lumbar vertebra, subsequent encounter, with delayed healing. Dr. Pfeifer excused appellant from work until further notice.

On August 9, 2021 Dr. Ian Kaye, a Board-certified orthopedist, treated appellant for a work-related injury that occurred on January 13, 2021, when he was lifting heavy boxes and climbing stairs. He noted a CT scan of the lumbar spine revealed an old compression fracture at L1 and L2. Dr. Kaye noted findings on examination of mild thoracolumbar tenderness on

palpation and mild paraspinal tenderness to palpation at the lumbar and cervical spine. He diagnosed wedge compression fracture of the second lumbar vertebra with delayed healing. Dr. Kaye noted that appellant reported no significant back pain prior to this injury. He opined, within a reasonable degree of medical certainty, that there was a causal relationship. Dr. Kaye noted appellant was disabled from work. In a return-to-work note dated June 7, 2021, he noted appellant was temporarily totally disabled from work.

On April 18, 2022 appellant requested reconsideration.

By decision dated July 11, 2022, OWCP denied modification of the May 4, 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. 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.⁸

The medical evidence required to establish causal relationship 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

⁴ *Id.*

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.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).

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).

by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment incident identified by the employee.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted January 13, 2021 employment incident.

Dr. Kan treated appellant on January 13, 2021 and provided discharge instructions regarding low back strain, acute low back pain, and degenerative disc disease. In return to work certificates dated February 4 and March 25, 2021, Dr. Patnaik noted that appellant was under his care from January 14 through March 3, 2021 and March 25 through April 25, 2021 and could work with restrictions. Similarly, in a return-to-work note dated May 12, 2021, Dr. Pfeifer diagnosed wedge compression fracture of second lumbar vertebra, subsequent encounter with delayed healing and excused appellant from work until further notice. Likewise, in a return-to-work note dated June 7, 2021, Dr. Kaye noted that appellant was temporarily totally disabled from work. However, these reports failed to provide an opinion regarding the cause of appellant's low back condition.¹¹ 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.¹² These reports are thus insufficient to establish causal relationship.

Dr. Pfeifer treated appellant on April 15, 2021 for low back pain that began on January 13, 2021 when he was lifting boxes of office chairs. He diagnosed low back pain, unspecified back pain laterally, unspecified chronicity, with sciatica and wedge compression fracture of the second lumbar vertebra. Dr. Pfeifer opined that appellant experienced back pain and a suspected L2 compression fracture following an employment injury in January 2021. Similarly, on August 9, 2021, Dr. Kaye treated appellant for a work-related injury that occurred on January 13, 2021 when he was lifting heavy boxes and climbing stairs. He diagnosed wedge compression fracture of the second lumbar vertebra with delayed healing. Dr. Kaye opined within a reasonable degree of medical certainty that there was a causal relationship. While Drs. Pfeifer and Kaye indicated that appellant's low back pain and compression fracture 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. Pfeifer and Kaye's opinions on causal relationship are of limited probative value and insufficient to establish appellant's claim.¹³

Appellant also submitted a CT scan of the lumbar spine. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not

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).

¹¹ *L.D.*, Docket No. 18-1468 (issued February 11, 2019).

¹² *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹³ *G.L.*, Docket No. 18-1057 (issued April 14, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 January 13, 2021 employment incident, the Board finds that appellant has not met his burden of proof to establish his claim.

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 January 13, 2021 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the July 11, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 16, 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

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