

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

_____)	
M.O., Appellant)	
)	
and)	Docket No. 22-1035
)	Issued: March 22, 2023
U.S. POSTAL SERVICE, FORT POINT POST OFFICE, Boston, MA, Employer)	
_____)	

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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On June 28, 2022 appellant filed a timely appeal from a June 9, 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 factors of his federal employment.

FACTUAL HISTORY

On April 20, 2022 appellant, then a 54-year-old express mail service clerk, filed an occupational disease claim (Form CA-2) alleging that he sustained a left-sided sciatic nerve or piriformis strain due to factors of his federal employment. He stated that on March 15, 2022 he

¹ 5 U.S.C. § 8101 *et seq.*

injured his lower back and left hip, but thought it was a minor injury at the time, but it worsened while at work on April 1, 2022. Appellant called in sick on April 2, 2022 and attempted to work on April 3, 2022, but experienced extreme pain while walking and sought treatment at a hospital emergency department. On the reverse side of the claim form, the employing establishment noted that he stopped work on April 1, 2022 and returned to work on April 15, 2022.

In an April 3, 2022 report, Dr. Brian P. Lyngaas, Board-certified in emergency medicine, held appellant off work through April 6, 2022. OWCP also received an April 6, 2022 work status form report by Dr. Jeffrey Vogel, Board-certified in occupational medicine, who returned appellant to modified-duty work effective that day, with no squatting, no climbing stairs or ladders, lifting limited to 25 pounds, and standing, walking, and bending limited to five hours.

In an April 6, 2022 work slip Phyllis Cicchetti, a registered nurse, noted that appellant had been seen at an occupational health clinic that day for a March 15, 2022 work-related injury.

In an April 13, 2022 work status form report, Dr. Elizabeth Kwo, Board-certified in occupational medicine, renewed Dr. Vogel's restrictions through April 26, 2022.

In a development letter dated May 5, 2022, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In response, appellant submitted a May 25, 2022 statement asserting that his work duties required him to lift and carry heavy packages and sort them at a fast pace, which required frequent bending and stretching. He indicated that his work unit had been short staffed at times, leading to more work for the employees present. Appellant recounted that, on March 15, 2022 at approximately the midpoint of his shift, he experienced left-sided lumbar pain that increased over the following two days, which were scheduled days off. His symptoms subsided by approximately April 20, 2022 and he felt "pretty much back to normal."

In an April 3, 2022 report, received by OWCP on May 31, 2022 Dr. Sophie M. Monnier-Serov, Board-certified in emergency medicine, recounted that appellant experienced the onset of left-sided hip and buttock pain while lifting boxes at work two weeks prior. Appellant had a history of prior episodes of more medially-located back pain, usually improved after applying ice. On examination, Dr. Monnier-Serov observed tenderness to palpation of the left paralumbar region, left lateral hip and left buttock, and an antalgic gait. She noted that x-rays of the pelvis and left hip demonstrated no obvious fracture and ordered computerized tomography (CT) scans. Dr. Monnier-Serov referred appellant to Dr. Lyngaas.

In an April 3, 2022 report received by OWCP on May 31, 2022, Dr. Lyngaas noted that appellant complained of left buttock pain and had an antalgic gait. He noted that appellant would undergo imaging studies to check for occult lumbar spine or pelvic fracture. Dr. Lyngaas prescribed stretching exercises.

In an April 6, 2022 report received by OWCP on May 31, 2022, Dr. Vogel recounted appellant's history of the onset of pain in the left buttock region, with sharp pain along the posterior aspect of the left leg above the knee, after lifting a heavy box two weeks previously. He noted that x-rays and a CT scan demonstrated degenerative changes, but were negative for other pathologies.

On examination, Dr. Vogel observed tenderness to palpation with pinpoint pain in the gluteal region and gluteus medius on the left, and a negative straight leg raising test. He diagnosed a gluteal strain. Dr. Vogel recommended conservative medical care and modified-duty work.

In an April 13, 2022 report, Dr. Kwo recounted that appellant had lifted a heavy box at work three weeks previously and experienced the onset of left buttock pain, with sharp pain that migrated from the lateral aspect of the left buttock to the posterior left leg above the posterior aspect of the knee. Imaging studies demonstrated degenerative changes. On examination, Dr. Kwo observed tenderness to palpation of the gluteal region/gluteus medius on the left, pinpoint pain with palpation, a negative straight leg raising test, full motion of the left hip, and full strength in all extremities. She diagnosed a gluteal strain. Dr. Kwo recommended conservative medical treatment and returned appellant to restricted duty.

By decision dated June 9, 2022, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish a medical condition causally related to the accepted employment factors. It concluded, therefore, that the requirements had not been met to establish an injury or condition due to the accepted employment factors.

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 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 establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or

² *Id.*

³ See *J.K.*, Docket No. 20-0527 (issued May 24, 2022); *J.C.*, Docket No. 20-0882 (issued June 23, 2021); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *J.K.*, *id.*; *J.C.*, *id.*; *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁶

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve.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 the specific employment factor(s) identified by the employee.⁸ The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted factors of his federal employment.

Dr. Lyngaas, in reports dated April 3, 2022, described appellant's symptoms and prescribed stretching exercises. Dr. Monnier-Serov, in an April 3, 2022 report, described an occupational lifting incident that occurred two weeks previously, reviewed imaging studies, and noted findings on examination. However, neither physician provided an opinion on causal relationship. Therefore, their reports are of no probative value and are insufficient to establish appellant's claim.¹⁰

Dr. Vogel, in reports dated April 6, 2022, described appellant's pain symptoms, noted findings on examination, and diagnosed a gluteal strain. Dr. Kwo, in April 13, 2022 reports, indicated an awareness of the accepted employment factors, recounted appellant's pain symptoms, and diagnosed a gluteal strain. Although Dr. Vogel and Dr. Kwo provided a medical diagnosis, neither physician offered an opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no

⁶ *T.M.*, Docket No. 20-1460 (issued December 20, 2022); *R.G.*, Docket No. 19-0233 (issued July 16, 2019). See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ See *J.K.*, *supra* note 3; *S.A.*, Docket No. 18-0399 (issued October 16, 2018); see also *Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *S.B.*, Docket No. 21-0646 (issued July 22, 2022); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 6.

⁹ *J.K.*, *supra* note 3; *J.C.*, *supra* note 3; *James Mack*, 43 ECAB 321 (1991).

¹⁰ *S.B.*, *supra* note 8; *J.D.*, Docket No. 21-1422 (issued May 24, 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).

probative value on the issue of causal relationship.¹¹ For this reason, this medical evidence is insufficient to meet appellant's burden of proof.

OWCP also received an April 6, 2022 work slip by Ms. Cicchetti, a registered nurse. This report, however, does not constitute competent medical evidence. The Board has held that nurses are not considered physicians as defined under FECA and are, therefore, not competent to offer medical opinions.¹²

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted March 15, 2022 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 factors of his federal employment.

¹¹ *Id.*

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).

ORDER

IT IS HEREBY ORDERED THAT the June 9, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 22, 2023
Washington, DC

Patricia H. Fitzgerald, Deputy 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