United States Department of Labor
Employees' Compensation Appeals Board

B.A., Appellant	)	
and	)	**Docket No. 23-0422**
	)	**Issued: November 29, 2023**
U.S. POSTAL SERVICE, DETROIT NETWORK DISTRIBUTION CENTER, Allen Park, MI, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On February 2, 2023 appellant, through counsel, filed a timely appeal from a January 25, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

[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*.

ISSUE

The issue is whether appellant has met his burden of proof to establish that the acceptance of his claim should be expanded to include the additional condition of left inguinal hernia as causally related to his March 29, 2016 employment injury.

FACTUAL HISTORY

On April 3, 2016 appellant, then a 54-year-old mail handler assistant, filed a traumatic injury claim (Form CA-1) alleging that on March 29, 2016 as he was dumping sacks of mail onto a belt he felt a sharp pain in the lower right side of his stomach while in the performance of duty. He stopped work on March 30, 2016. OWCP accepted the claim for unilateral inguinal hernia without obstruction or gangrene. It paid wage-loss compensation on the supplemental rolls beginning June 23, 2016. Appellant returned to light-duty work on July 11, 2016.

In an authorization for examination and/or treatment (Form CA-16) and notes dated April 3, 2016, Dr. Tyra McKinney, a family practitioner, recounted appellant's history of pain in the right lower stomach and diagnosed unilateral inguinal hernia. On April 11, 2016 he sought treatment from William Rogers, a physician assistant.

In an April 13, 2016 report, Dr. Patrick A. Herek, an emergency medicine specialist, recounted appellant's assertion that heavy lifting at work caused his diagnosed unilateral right-sided inguinal hernia. He further noted reports of worsening pain and diagnosed bilateral hernias in the inguinal area without obstruction or gangrene.

On April 28, 2016 Dr. Robert M. Elkus, a general surgeon, examined appellant due to bilateral inguinal hernias, and recounted that appellant's right groin pain first occurred at work on March 27, 2016. He related that appellant was experiencing pain on the right inguinal area, but not on the left. Dr. Elkus diagnosed reducible bilateral inguinal hernias, and determined to proceed with repair of only the right inguinal hernia. On June 20, 2016 he performed a right inguinal hernia repair with mesh.

Dr. Marianne Franco, a general surgeon, completed an attending physician's report (Form CA-20) on July 8, 2016 diagnosing bilateral inguinal hernias without obstruction. She provided appellant's history of lifting heavy bags while at work and experiencing sharp pain in his right groin. Dr. Franco did not indicate the cause of his diagnosed conditions. On November 7, 2016 she reported that appellant had an inguinal hernia that he needed to have repaired. In a February 6, 2017 note, Dr. Franco recounted the diagnosis of bilateral inguinal hernias and his surgical history of right hernia repair. She noted that appellant was not interested in surgical repair of his left inguinal hernia. Dr. Franco denied knowledge of the March 29, 2016 employment injury.

On September 5, 2017 appellant filed a notice of recurrence (Form CA-2a) alleging that he stopped work on April 2, 2016 due to disability resulting from his March 29, 2016 employment injury. He further noted that his second hernia had never been repaired, and that he still experienced symptoms from the original incident.

In a September 19, 2017 report, Dr. Elkus diagnosed symptomatic left inguinal hernia. He noted that appellant wanted an additional hernia repair. On September 27, 2017 Dr. Elkus again reported that appellant wanted an additional inguinal hernia repair as he experienced pain with prolonged periods of standing.

On October 17, 2017 appellant filed an additional Form CA-2a alleging a recurrence of disability on August 25, 2017 due to a symptomatic left inguinal hernia.

By decision dated December 4, 2017, OWCP denied appellant's recurrence claim. It noted that Dr. Franco failed to indicate that the left inguinal hernia was related to his accepted employment injury, and it determined that the left inguinal hernia was a secondary incidental diagnosis with no evidence that it was related to the events of March 29, 2016.

On December 13, 2017 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. The oral hearing took place on May 31, 2018. By decision dated July 5, 2018, OWCP's hearing representative affirmed OWCP's December 4, 2017 decision.

In a July 26, 2018 note, Dr. Elkus related appellant's history of bilateral inguinal hernias, with the right initially symptomatic and resulting in repair on June 20, 2016. He reported that the left hernia had increased in size, and was currently symptomatic.

On August 3, 2018 Dr. Elkus performed a left inguinal hernia repair. In August 16, 2018 notes and narrative report, he reviewed Dr. Herek's April 13, 2018 note, and repeated the history of injury provided. Dr. Elkus related that there were bilateral hernias present at the time of his initial evaluation, but only the right side was symptomatic. He determined that appellant later developed left-sided hernia pain and underwent repair.

On September 10, 2020 appellant, through counsel, requested to expand the acceptance of his claim to include left inguinal hernia. He resubmitted reports from Dr. Elkus dated September 27, 2017 through August 16, 2018.

By decision dated March 17, 2022, OWCP denied expansion of the acceptance of appellant's claim to include left inguinal hernia.

On March 30, 2022 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. The oral hearing took place on July 8, 2022.

Appellant provided a duplicate of the reports from Mr. Rogers.

By decision dated September 22. 2022, OWCP's hearing representative affirmed the March 17, 2022 decision.

On January 6, 2023 appellant, through counsel requested reconsideration. He resubmitted the notes from Mr. Rogers and Dr. McKinney.

By decision dated January 25, 2023, OWCP denied modification.

LEGAL PRECEDENT

Where an employee claims that, a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[3]

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[4] The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 factors identified by the claimant.[5] The weight of 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.[6]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that the acceptance of his claim should be expanded to include the additional condition of left inguinal hernia as causally related to his March 29, 2016 employment injury.

In reports dated April 3, 2016, Dr. McKinney recounted appellant's history of pain in the right lower stomach after lifting at work and diagnosed unilateral inguinal hernia. She did not diagnose bilateral inguinal hernias, or offer an opinion on the cause of the additionally alleged condition. On April 13, 2016 Dr. Herek confirmed bilateral hernias in the inguinal area without obstruction or gangrene. He reported that appellant believed that lifting on March 29, 2016 resulted in his initially diagnosed right inguinal hernia. In reports dated April 28, 2016 through August 16, 2018, Dr. Elkus related appellant's history of lifting on March 29, 2016 and diagnosed bilateral inguinal hernias, with the right initially symptomatic and resulting in repair on June 20, 2016. He recounted the history of injury provided by Dr. Herek. Dr. Franco completed reports dated July 8, 2016 through February 6, 2017, diagnosing bilateral inguinal hernias without obstruction. She provided appellant's history of lifting heavy bags while at work and experiencing sharp pain in his right groin, but denied knowledge of the accepted March 29, 2016 employment injury. None of these reports provided an opinion on the causal relationship between appellant's accepted employment injury, and the additional diagnosed condition of left inguinal hernia. The Board has held that a report is of no probative value regarding causal relationship if it does not

[3] *See C.L.*, Docket No. 21-0729 (issued December 1, 2022); *L.C.*, Docket No. 20-0866 (issued February 26, 2021); *T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

[4] *See S.L.*, Docket No. 19-0603 (issued January 28, 2020); *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *Kenneth R. Love*, 50 ECAB 276 (1999).

[5] *See J.T.*, Docket No. 19-1723 (issued August 24, 2020); *P.M.*, Docket No. 18-0287 (issued October 11, 2018); *John W. Montoya*, 54 ECAB 306 (2003).

[6] *See H.T.*, Docket No. 20-1238 (issued July 12, 2021); *see also H.H.*, Docket No. 16-0897 (issued September 21, 2016); *James Mack*, 43 ECAB 321 (1991).

provide an opinion on causal relationship.[7] As such, the reports from Drs. McKinney, Herek, Elkus, and Franco are insufficient to meet appellant's burden of proof.

Appellant also submitted notes dated April 11, 2016 from Mr. Rogers, a physician assistant. The Board has held that medical reports signed solely by a physician assistant, nurse practitioner, or medical assistant are of no probative value as such healthcare providers are not considered physicians as defined under FECA and are, therefore, not competent to provide medical opinions.[8] Consequently, their medical findings and/or opinions will not suffice for the purpose of establishing entitlement to FECA benefits.

As the medical evidence of record is insufficient to establish causal relationship, the Board finds that he has not met his burden of proof to establish the additional condition of left inguinal hernia as causally related to his March 29, 2016 employment injury.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that the acceptance of his claim should be expanded to include the additional condition of left inguinal hernia as causally related to his March 29, 2016 employment injury.[9]

[7] *G.D.*, Docket No. 20-0966 (issued July 21, 2022); *A.H.*, Docket No. 18-1632 (issued June 1, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[8] Section 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." 5 U.S.C. § 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); *see X.M.*, Docket No. 22-0271 (issued February 28, 2023) (physician assistants are not considered physicians as defined under FECA); *S.S.*, Docket No. 21-1140 (issued June 29, 2022) (physician assistants are not considered physicians under FECA and are not competent to provide medical opinions); *George H. Clark*, 56 ECAB 162 (2004) (physician assistants are not considered physicians under FECA); *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).

[9] The Board notes that the employing establishment executed a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *S.G.*, Docket No. 23-0552 (issued August 28, 2023); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the January 25, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 29, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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