

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

B.H., Appellant)	
)	
and)	Docket No. 23-0386
)	Issued: October 11, 2023
U.S. POSTAL SERVICE, PALM BAY WEST)	
POST OFFICE, Palm Bay, FL, Employer)	
)	

Appearances: *Case Submitted on the Record*
Daniel DeCiccio, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

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

JURISDICTION

On January 23, 2023 appellant, through counsel, filed a timely appeal from a January 10, 2023 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.

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 a low back condition causally related to the accepted September 26, 2020 employment incident.

FACTUAL HISTORY

On October 7, 2020 appellant, then a 29-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 26, 2020 he sustained a low back injury when he lifted a heavy parcel to place it in a parcel hamper while in the performance of duty. He stopped work on October 5, 2020.

In support of his claim, appellant submitted an October 5, 2020 report from Dr. Stanley Dziedzic, a specialist in family and emergency medicine, who treated him for neck, back, and trapezius pain. Dr. Dziedzic noted findings on physical examination-of-moderate cervical paravertebral tenderness, decreased range of motion of the upper back, and mild kyphotic changes of the spine. He performed x-rays of the cervical, lumbar, and thoracic spine, which revealed no evidence of acute fracture. Dr. Dziedzic diagnosed back pain, neck pain, and kyphosis, and opined that it was unclear whether appellant sustained a work-related injury. In an October 6, 2020 form report, he diagnosed neck, trapezius, and thoracic pain. Dr. Dziedzic noted evidence of a preexisting condition and returned appellant to work with restrictions.

In an October 6, 2020 authorization for examination and/or treatment (Form CA-16), the employing establishing authorized appellant to seek medical care at an urgent care facility. In Part B of the Form CA-16, attending physician's report Dr. Dziedzic, reported findings of neck, thoracic, and lumbar pain. The portion of the form for diagnosis contained illegible writing. He noted that it was unknown whether the condition found was caused or aggravated by the described employment activity.

On November 20, 2020 appellant accepted a part-time flexible rural carrier position with restrictions.

On December 16, 2020 Jessica Herraiz, a nurse practitioner, treated appellant for lumbar pain that began on September 26, 2020 after lifting a heavy box at work. She diagnosed thoracic back pain, lumbar radiculopathy, low back pain, thoracic pain, degenerative disc disease of the lumbar spine, and scoliosis. In reports dated January 8 and 19, 2021, Ms. Herraiz diagnosed lumbar radiculopathy, S1 joint pain, thoracic pain, degenerative disc disease of the lumbar spine, scoliosis, L4-5, T6-7, and T11-12 disc bulges, and L5-S1 disc herniation.

A January 7, 2021 magnetic resonance imaging (MRI) scan of the thoracic spine revealed chronic mild disc bulging at T6-7, chronic mild disc desiccation at T11-12, mild levoscoliosis of the upper thoracic spine due to loss of vertebral body height at T6, and mild chronic wedge deformity at T11. An MRI scan of the lumbar spine of even date revealed mild rightward convexity of the lumbar spine, multilevel mild spondyloarthropathy, and small posterior central disc protrusion at L5-S1.

In a development letter dated February 25, 2021, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence required and afforded him 30 days to submit the requested evidence.

Appellant was treated by Damian L. Velez, a physician assistant, on March 10, 2021 for sacroiliac disorder, low back pain, and thoracic spine pain. Mr. Velez diagnosed low back pain, thoracic spine pain, sacroiliac disorder, mechanical back pain at L5-S1, disc herniation, and lumbar disc degeneration at L4 through S1 and returned appellant to work without restrictions.

By decision dated April 22, 2021, OWCP accepted that the September 26, 2020 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that he had not submitted medical evidence containing a diagnosis in connection with the accepted employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

On June 21, 2021 appellant requested reconsideration and submitted additional evidence. In a December 16, 2020 report, Dr. Richard Hynes, a Board-certified orthopedist, indicated that appellant was treated for lumbar pain that began on September 26, 2020 at work after lifting a heavy box at work. With respect to the referral of appellant to him, Dr. Hynes noted, "[t]his is related to [appellant's] worker's comp[ensation] injury." He diagnosed thoracic back pain, lumbar radiculopathy, low back pain, degenerative disc disease of the lumbar spine, and scoliosis. In a March 10, 2021 report, Dr. Hynes diagnosed low back pain, thoracic spine pain, sacroiliac disorder, mechanical back pain at L5-S1, disc herniation, and lumbar disc degeneration at L4 through S1, and returned appellant to work without restrictions. In a work capacity evaluation (Form OWCP-5c) of even date, he diagnosed herniated disc at L4-5 and returned appellant to work full-time without restrictions.

By decision dated September 18, 2021, OWCP modified the April 22, 2021 decision, finding that appellant had established a medical diagnosis in connection with the accepted September 26, 2020 employment incident. However, the claim remained denied as the medical evidence of record was insufficiently rationalized to establish causal relationship between a diagnosed medical condition and the accepted September 26, 2020 employment incident.

OWCP received additional evidence. In a June 21, 2022 report, Dr. Mark A. Seldes, a Board-certified family practitioner, noted that he treated appellant for back pain. Appellant reported that, a few days before September 26, 2020, he attempted to lift a 40-pound package at work and felt a sharp pain and pop in his back. On September 26, 2020 he was casing heavy mail and could not complete his duties. At that time, appellant reported his injury to his supervisor. Dr. Seldes noted tenderness to palpation lateral to midline in the lumbar region, tenderness over the bilateral sacroiliac joints, decreased sensation to light touch in the left lateral thigh down to the foot, impaired sharp and dull discrimination along the right thigh to the foot, mild motor deficits, and mild decreased strength deficit in the right extensor hallucis longus muscle. He diagnosed lumbar degenerative disc disease and lumbar radiculopathy. Dr. Seldes indicated that at the time of injury appellant was performing his duties as a rural letter carrier and found that there was a causal relationship between lifting a package and his lumbar condition. He opined with reasonable medical certainty, after a medical examination and reviewing diagnostic studies and treatment notes, that appellant sustained work-related lumbar degenerative disc disease and lumbar

radiculopathy. In a duty status report (Form CA-17) dated June 21, 2022, Dr. Seldes noted clinical findings of lumbar radiculopathy and diagnosed lumbar degenerative disc disease. He returned appellant to full-time limited-duty work.

On July 20, 2022 appellant, through counsel, requested reconsideration.

By decision dated July 28, 2022, OWCP denied modification of the September 18, 2021 decision.

OWCP received additional evidence. On August 23, 2022 Dr. Seldes again related a history of injury occurring a few days before September 26, 2020 when appellant was attempting to lift a 40-pound package at work and felt a sharp pain and pop in his back. Appellant's condition did not resolve and on September 26, 2020 he reported his injury to his superiors. He diagnosed lumbar degenerative disc disease and lumbar radiculopathy. Dr. Seldes noted that appellant did not report a preexisting condition. On September 6, 2022 he provided a similar history of the reported work injury, treated appellant for low back pain, and diagnosed lumbar degenerative disc disease and lumbar radiculopathy. Dr. Seldes opined to a reasonable degree of medical certainty, after a medical examination and reviewing diagnostic studies and other treatment records, that appellant sustained work-related lumbar degenerative disc disease and radiculopathy while performing his duties as a carrier in September 2020. In a Form CA-17 dated September 6, 2022, he noted clinical findings of lumbar radiculopathy and diagnosed lumbar degenerative disc disease. Dr. Seldes returned appellant to full-time limited-duty work. In an addendum report dated September 16, 2022, he corrected the factual history of appellant's injury noting that, on September 26, 2020 while attempting to lift a large heavy package, he turned and twisted and felt a sharp pop and pain in his back. Dr. Seldes diagnosed work-related lumbar degenerative disc disease and lumbar radiculopathy. He further stated that there was no preexisting injury or trauma prior to this injury. Dr. Seldes opined with reasonable medical certainty that appellant sustained a traumatic injury while performing normal work-related duties as a carrier on September 26, 2020.

On October 12, 2022 appellant, through counsel, requested reconsideration.

By decision dated January 10, 2023, OWCP denied modification of the July 28, 2022 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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,⁴ 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

³ *Id.*

⁴ *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.⁵ 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.⁶

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, place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁷

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence.⁸ 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.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a low back condition causally related to the accepted September 26, 2020 employment incident.

In reports dated June 21, August 23, and September 6, 2022, Dr. Seldes diagnosed lumbar degenerative disc disease and lumbar radiculopathy. He noted appellant's injury occurred at work a few days before September 26, 2020 when appellant was attempting to lift a package. Dr. Seldes opined with reasonable medical certainty that appellant sustained work-related lumbar degenerative disc disease and lumbar radiculopathy. However, these reports do not provide an accurate history of the September 26, 2020 injury as the physician indicated that the injury occurred a few days before September 26, 2020 when appellant was attempting to lift a package at work, which is different than the history provided by appellant which indicated that he injured his back on September 26, 2020 when lifting a heavy parcel. The Board has held that an opinion not based on a complete and accurate factual and medical history is of limited probative value.¹⁰ Therefore, these reports are insufficient to meet appellant's burden of proof.

⁵ *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).

⁶ *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).

⁷ *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).

⁸ *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).

⁹ *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).

¹⁰ *J.M.*, Docket No. 20-1316 (issued March 3, 2021).

In a December 16, 2020 report, Dr. Hynes noted that appellant was treated for lumbar pain that began on September 26, 2020 at work after lifting a heavy box at work. With respect to the referral of appellant to him, he noted, “[t]his is related to [appellant’s] worker’s comp[ensation] injury.” Dr. Hynes diagnosed thoracic back pain, lumbar radiculopathy, low back pain, degenerative disc disease of the lumbar spine, and scoliosis. In an addendum report dated September 16, 2022, he corrected the factual history of appellant’s injury noting that, on September 26, 2020 while attempting to lift a large heavy package, he turned and twisted and felt a sharp pop and pain in his back. Dr. Hynes diagnosed lumbar degenerative disc disease and lumbar radiculopathy, and opined with reasonable medical certainty that appellant sustained a traumatic injury while performing his duties as a city carrier on September 26, 2020. While Drs. Hynes and Seldes indicated that appellant’s low back condition was work related, each physician 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 a diagnosed condition, Drs. Hynes and Seldes’s opinions on causal relationship are of limited probative value and insufficient to establish appellant’s claim.¹¹

In an October 6, 2020 form report, Dr. Dziejcz diagnosed neck, trapezius, and thoracic pain. In a March 10, 2021 report, Dr. Hynes diagnosed low back pain, thoracic spine pain, sacroiliac disorder, mechanical back pain at L5-S1, disc herniation, and lumbar disc degeneration at L4 through S1. In a Form OWCP-5c report of even date, he diagnosed herniated disc at L4-5. In Form CA-17 reports dated June 21 and September 6, 2022, Dr. Seldes diagnosed lumbar degenerative disc disease. Drs. Dziejcz, Hynes, and Seldes, however, did not offer an opinion as to whether appellant’s diagnosed conditions were causally related to the accepted September 26, 2020 employment incident in any of these reports. 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.¹² Therefore, these reports are insufficient to establish appellant’s claim.

In an October 5, 2020 report, Dr. Dziejcz diagnosed back pain, neck pain, and kyphosis and opined that it was unclear whether appellant sustained a work-related injury. In Part B of a Form CA-16, attending physician’s report, dated October 6, 2020, he reported findings of neck, thoracic, and lumbar strain/pain. The portion of the form for diagnosis contained illegible writing and Dr. Dziejcz opined that it was unknown whether the condition found was caused or aggravated by the described employment activity. These reports do not support causal relationship as he opined that it was unclear or unknown whether appellant sustained a work-related injury. As noted above, 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 Accordingly, these reports are insufficient to establish appellant’s claim.

¹¹ *G.L.*, Docket No. 18-1057 (issued April 14, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

¹² *S.P.*, Docket No. 22-0711 (issued March 13, 2023); *L.B.*, Docket No. 19-1907 (issued August 14, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ *Id.*

Appellant submitted reports from a nurse practitioner and a physician assistant. However, certain healthcare providers such as nurse practitioners¹⁴ and physician assistants¹⁵ are not considered “physician[s]” as defined under FECA.¹⁶ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹⁷

Appellant also submitted MRI scans. The Board 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.¹⁸ 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 September 26, 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 low back condition causally related to the accepted September 26, 2020 employment incident.¹⁹

¹⁴ *J.D.*, Docket No. 16-1752 (issued March 1, 2017) (a nurse practitioner is not considered a physician under FECA. Thus, a nurse practitioner’s opinion is of no relevance to the issue of causal relationship).

¹⁵ *See A.E.*, Docket No. 23-0470 (issued September 5, 2023) (physician assistants are not considered physicians under FECA and their opinions regarding medical necessity and causal relationship are, therefore, of no probative value); *S.E.*, Docket No. 08-2214 (issued May 6, 2009) (reports of a physician assistant have no probative value as medical evidence).

¹⁶ 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 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); *E.H.*, Docket No. 23-0373 (issued July 7, 2023) (nurse practitioners are not considered physicians as defined under FECA).

¹⁷ *Id.*

¹⁸ *C.B.*, Docket No. 20-0464 (issued July 21, 2020).

¹⁹ The Board notes that the employing establishment issued 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); *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 10, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 11, 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