United States Department of Labor
Employees' Compensation Appeals Board

M.F., Appellant	)	
and	)	**Docket No. 22-0513**
	)	**Issued: September 15, 2023**
TENNESSEE VALLEY AUTHORITY, TUPELO OFFICE, Tupelo, MS, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 17, 2022 appellant filed a timely appeal from a November 26, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 low back condition causally related to the accepted April 22, 2021 employment incident.

FACTUAL HISTORY

On April 28, 2021 appellant, then a 49-year-old high voltage electrician, filed a traumatic injury claim (Form CA-1) alleging that on April 22, 2021 he injured his lower back while in the performance of duty. He indicated that he experienced low back pain, right leg pain, and right

[1] 5 U.S.C. § 8101 *et seq.*

foot numbness working on a switchboard panel due to his body positioning. Appellant stopped work on April 26, 2021.

On April 26, 2021 the employing establishment executed an authorization for examination and/or treatment (Form CA-16) for appellant to seek medical care for back and right leg pain and right foot numbness. On April 27, 2021 Dr. Kelly S. Segars, Jr., a family medicine specialist, completed Part B of the Form CA-16, attending physician's report. He noted that appellant complained of low back pain radiating down the right leg followed by right foot numbness, which appellant attributed to leaning over to change relays in a panel for three days. Dr. Segars advised that appellant had an extensive history of back issues, sciatica, ruptured disc, and impingement in the upper and lower spine. He diagnosed right-sided back pain and sciatica and checked a box marked "Yes" indicating that the conditions were caused or aggravated by the described employment activity. Dr. Segars released appellant to return to full-duty work as of April 30, 2021.

On April 27, 2021 a nurse practitioner discussed appellant's complaints of low back and leg pain with right foot numbness after changing relays for several days. He opined that appellant's recent work duties exacerbated appellant's symptoms, diagnosed acute right-sided low back pain with right-sided sciatica and recommended that he remain out of work until April 30, 2021. The nurse practitioner provided follow-up reports on May 3 and 13, 2021.

April 27, 2021 x-rays of the lumbar spine revealed possible levoscoliosis with mild multilevel arthritic findings.

A magnetic resonance imagining (MRI) scan of the lumbar spine dated May 11, 2021 demonstrated a possible destructive lesion or generative change along the right L5 lamina, multilevel degenerative changes due to disc bulge and facet joint arthropathy, and neural foraminal narrowing.

In a June 1, 2021 development letter, 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.

OWCP thereafter received an undated statement by appellant, who indicated that he had replaced relays for several days beginning on April 20, 2021. Appellant noted that, due to the configuration of the panels and relays, he had to lean forward, twist, and crouch while working. He indicated that he began experiencing back pain on April 21, 2021 and right foot numbness on April 22, 2021.

In a statement dated April 29, 2021, R.D., appellant's supervisor, indicated that on April 22, 2021 appellant reported that he had hurt his back. The next day, appellant sent him a message that he had seen his chiropractor and physical therapist, but was still in severe pain and his foot was numb. R.D. noted that appellant was required to extend out and duck down for extended periods of time in order to work on the panels.

In a report dated June 3, 2021, Dr. David H. McCord, a Board-certified orthopedic surgeon, noted that on April 22, 2021 appellant complained of low back pain extending down his

right leg with right foot numbness, which appellant attributed to working in a bent over position continuously for three days. Appellant initially felt back pain, which progressed to right buttock, thigh, and ankle pain and right foot numbness. Dr. McCord indicated that appellant related a history of a prior herniated disc at L4-5 in 1998, which had resolved. He performed a physical examination, which revealed an antalgic and stiff gait and stance, muscular tenderness at L5-S1, pain with forward flexion and extension, reduced strength in the right leg, and right foot numbness. Dr. McCord noted that x-rays revealed disc settling and L5-S1 lumbar spondylosis. He found that appellant had "injured his back at work towards the end of April." Dr. McCord recommended a transforaminal epidural steroid injection on the right at L5-S1.

X-rays of the lumbar spine obtained on June 3, 2021 revealed mild scoliosis and degenerative changes.

In a statement dated June 8, 2021, appellant described his work duties of replacing relays over the course of three days. He related that he had no subsequent injuries and did not have a history of any injury or disability at L5-S1.

In a July 1, 2021 addendum to the June 3, 2021 report, Dr. McCord noted that, by way of history, the claimed April 22, 2021 employment incident was the cause of appellant's complaints.

By decision dated July 9, 2021, OWCP accepted that the April 22, 2021 employment incident occurred as alleged. However, it denied the claim, finding that the medical evidence of record was insufficient to establish that the diagnosed lumbar conditions were causally related to the accepted employment incident.

OWCP continued to receive medical evidence, including a summary of appellant's visits from a nurse at an employing establishment clinic, dated May 4 through July 13, 2021.

In an addendum and report, both dated July 22, 2021, Dr. McCord related that he had reviewed OWCP's July 9, 2021 decision. He explained that appellant related a history of awkward and unnatural body positioning while working for three days. Dr. McCord opined that leaning and reaching out caused cantilever stress and unnatural tensions on appellant's back and that those mechanisms caused a back injury.

On August 10, 2021 appellant requested reconsideration of the July 9, 2021 decision.

By decision dated November 26, 2021, OWCP denied modification of the July 9, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the

[2] *Id*.

United States within the meaning of FECA,[3] that the claim was timely filed within the applicable time limitation period of FECA, 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 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. There are two components involved in establishing fact of injury. The first component is whether the employee actually experienced the employment incident at the time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury.[6]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident 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 in which 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 low back condition causally related to the accepted April 22, 2021 employment incident.

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[3] *K.R.*, Docket No. 20-0995 (issued January 29, 2021); *A.W.*, Docket No. 19-0327 (issued July 19, 2019); *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.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *J.B.*, Docket No. 20-1566 (issued August 31, 2021); *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).

[6] *T.H.*, Docket No. 19-0599 (issued January 28, 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] *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *J.L.*, Docket No. 20-0717 (issued October 15, 2020).

In his July 22, 2021 addendum and report, Dr. McCord opined that leaning and reaching out caused cantilever stress and unnatural tensions on appellant's back, which resulted in an injury. However, he did not explain with rationale how, physiologically, cantilever stress or unnatural tensions would have caused or aggravated the diagnosed lumbar conditions.[10] The Board has held that a medical opinion that does not offer a medically sound and rationalized explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions is of limited probative value.[11] Further, the Board has held that, medical rationale is particularly necessary where, as here, there are preexisting conditions involving some of the same body parts.[12] In such cases, the Board has required medical rationale differentiating between the effects of the work-related injury and the preexisting condition.[13] Although Dr. McCord related a history of a prior lumbar herniated disc in 1998 that, had resolved, he failed to provide medical rationale differentiating between the effects of the work-related injury and the preexisting conditions.[14] Consequently, this evidence is insufficient to establish the claim.

In his June 3, 2021 report, Dr. McCord found lumbar disc settling and spondylosis by x-ray. He noted that appellant had sustained a back injury near the end of April 2021. However, Dr. McCord did not specifically address the cause of the low back findings or their relationship to the accepted April 22, 2021 employment incident. Similarly, in his July 1, 2021 addendum, he indicated that, by way of history, the April 22, 2021 employment incident was the cause of appellant's complaints. However, the report does not contain an opinion on how the accepted employment incident caused or contributed to his low back condition. The Board has held that a medical report that does not offer an opinion on causal relationship is of no probative value and, thus, is insufficient to establish the claim.[15] Thus, this evidence is also insufficient to establish the claim.

Dr. Segars, in an April 27, 2021 attending physician's report, diagnosed right-sided back pain and sciatica and checked a box marked "Yes" that the conditions were caused or aggravated by the described employment activity. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "Yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.[16] Consequently, his report is insufficient to establish the claim.

[10] *J.D.*, Docket No. 19-1953 (issued January 11, 2021); *J.C.*, Docket No. 18-1474 (issued March 20, 2019); *M.M.*, Docket No. 15-0607 (issued May 15, 2015); *M.W.*, Docket No. 14-1664 (issued December 5, 2014).

[11] *J.B.*, Docket No. 21-0011 (issued April 20, 2021); *A.M.*, Docket No. 19-1394 (issued February 23, 2021).

[12] *R.W.*, Docket No. 19-0844 (issued May 29, 2020); *A.M.*, Docket No. 19-1138 (issued February 18, 2020); *A.J.*, Docket No. 18-1116 (issued January 23, 2019).

[13] *Id*.

[14] *Id*.

[15] *S.P.*, Docket No. 22-0711 (issued March 13, 2023); *T.D.*, Docket No. 19-1779 (issued March 9, 2021); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[16] *See A.R.*, Docket No. 18-1339 (issued May 19, 2020); *R.G.*, Docket No. 18-0236 (issued December 17, 2019); *Sedi L. Graham*, 57 ECAB 494 (2006); *D.D.*, 57 ECAB 734 (2006); *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

In support of his claim, appellant also submitted various notes from a nurse and nurse practitioner. The Board has long held that certain healthcare providers such as nurses and nurse practitioners are not considered physicians as defined under FECA.[17] Their medical findings, reports and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[18] Consequently, these reports are insufficient to establish the claim.

The remaining evidence of record consists of reports of diagnostic studies. The Board has held that diagnostic studies, standing alone, lack probative value, and are insufficient to establish the claim.[19] Therefore, these reports are also insufficient to establish the claim.

As the medical evidence of record is insufficient to establish a low back condition causally related to the accepted April 22, 2021 employment incident, the Board finds that appellant has not met his burden of proof.[20]

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 April 22, 2021 employment incident.

[17] 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* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *M.M.*, Docket No. 23-0475 (issued July 27, 2023) (nurses are not considered physicians as defined under FECA); *C.G.*, Docket No. 22-0536 (issued January 11, 2023) (nurse practitioners are not considered physicians as defined 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).

[18] *Id*.

[19] *J.K.*, Docket No. 20-0591 (issued August 12, 2020); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

[20] 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.S.*, Docket No. 22-1072 (issued April 25, 2023); *V.S.*, Docket No. 20-1034 (issued November 25, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the November 26, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 15, 2023
Washington, DC

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

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

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