United States Department of Labor
Employees' Compensation Appeals Board

D.W., Appellant	)	
and	)	**Docket No. 22-1050**
	)	**Issued: September 12, 2023**
U.S. POSTAL SERVICE, BEVERLY HILLS POST OFFICE, Dallas, TX, Employer	)	

Appearances:
Appellant, pro se
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 July 8, 2022 appellant filed a timely appeal from a June 7, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of his oral argument request, appellant asserted that oral argument should be granted because it would help to clarify the facts of the case. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can be adequately addressed in a decision based on a review of the case record. Oral argument in this appeal would not serve a useful purpose. Therefore, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

[2] 5 U.S.C. § 8101 *et seq*.

ISSUE

The issue is whether appellant has met his burden of proof to establish a medical condition causally related to the accepted February 24, 2014 employment incident.

FACTUAL HISTORY

This case has previously been before the Board on a different issue.[3] The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On December 10, 2015 appellant, then a 35-year-old city carrier assistant, filed an occupational disease claim (Form CA-2) alleging that he sustained an occupational disease of his low back due to factors of his federal employment over a period of time. He asserted that his job required him to lift mail packages weighing up to 20 pounds, constantly step in and out of his postal vehicle, walk for long distances, and engage in bending and twisting. Appellant noted that he first became aware of his claimed condition and its relation to his federal employment on February 24, 2014. On the reverse side of the Form CA-2, an employing establishment official indicated that appellant last worked for the employing establishment on April 25, 2014. He noted his understanding that appellant stopped work due to an off-duty vehicular accident and advised that the employing establishment was controverting the occupational disease claim. On May 23, 2016 appellant filed a traumatic injury claim (Form CA-1) alleging that he stepped in a hole at work on February 24, 2014 which contributed to his claimed injury. He noted that he first became aware of his claimed condition and its relation to his federal employment on February 24, 2014.

Appellant submitted several reports of Dr. Ronnie D. Shade, a Board-certified orthopedic surgeon, including a report dated December 9, 2015.

In a May 25, 2016 letter to appellant's congressional representative, a health and resource management official for the employing establishment refuted parts of appellant's claim. The employing establishment official summarized time records showing only 16 intermittent days of employment, between February 10 and April 25, 2014, that appellant worked in 2014. He noted the specific hours that appellant had worked between the commencement of his employment and his final day of performance of work duties on April 25, 2014, when he worked 6.5 hours. The employing establishment official also questioned whether appellant fell into a hole at work on February 24, 2014, as alleged.

Based on the reports of Dr. Shade, OWCP accepted on May 26, 2016 that appellant sustained the occupational injuries of intervertebral disc displacement of the lumbar region and radiculopathy of the lumbar region.

On July 25, 2016 OWCP received documents from appellant's March 8, 2014 visit to an emergency room. Appellant complained of having chronic low back pain and abdominal pain. He reported stepping into a hole and bending back awkwardly while delivering mail on February 24, 2014. Appellant was seen on March 8, 2014 by Dr. Chuong Duong, an osteopath

[3] Docket No. 17-1535 (issued February 12, 2018).

and Board-certified emergency medicine specialist, as well as by Nancy L. Miquez and Terri Franklin, registered nurses.

By decision dated August 12, 2016, OWCP rescinded the acceptance of appellant's claim for intervertebral disc displacement of the lumbar region and radiculopathy of the lumbar region. By decision dated May 19, 2017, a representative of OWCP's Branch of Hearings and Review affirmed OWCP's August 12, 2016 decision.

Appellant appealed to the Board and, by decision dated February 12, 2018,[4] the Board affirmed OWCP's May 19, 2017 rescission decision.[5]

On February 19, 2019 appellant requested reconsideration.

Appellant submitted a February 12, 2019 report of Dr. John W. Ellis, an osteopath and Board-certified family medicine specialist. In this report, Dr. Ellis noted that appellant reported that, when he was at work on February 24, 2014, his right foot went one or two feet down into a hole where a tree had been uprooted and he felt a pop in the right part of his low back. Appellant reported that he also experienced right hip pain, which shot from his back down to the dorsal and lateral parts of his right foot. Dr. Ellis reported physical examination findings and diagnosed deranged disc at L5-S1, back strain, right L5-S1 spinal nerve impingement, left S1 spinal nerve impingement, and right hip strain. He opined that appellant sustained these diagnosed conditions on February 24, 2014 due to his stepping into a hole. Dr. Ellis indicated that on February 24, 2014 appellant experienced a sudden severe jerking of the right sacroiliac and iliolumbar ligaments, and heard a pop in his back, which was consistent with the initial injury of the annular rings of the L4, L5, and S1 vertebrae and the right iliolumbar and sacroiliac ligaments. He noted that appellant had immediate shooting pain, especially down into the lateral aspect of the right foot, which was indicative that he had an acute injury of the L5-S1 disc.

By decision dated May 17, 2019, OWCP denied appellant's claim for a February 24, 2014 employment incident because he had not established that he stepped in a hole on that date, as alleged.

On July 8, 2019 appellant requested reconsideration of the May 17, 2019 decision. He submitted a statement in which he discussed the circumstances of the filing of his original claim. By decision dated September 12, 2019, OWCP denied modification of the May 17, 2019 decision.

On July 28, 2020 appellant requested reconsideration of the September 12, 2019 decision.

Appellant submitted November 30, 2016 and November 1, 2018 reports in which Dr. Shade indicated that the reported mechanism of appellant's injury was stepping into a hole

[4] *Id*.

[5] The Board notes that OWCP's rescission is not the subject of the present appeal as the Board affirmed OWCP's decision on prior appeal. Findings made in prior Board decisions are *res judicata* absent further merit review by the Director of OWCP under section 8128 of FECA. *See R.L.*, Docket No. 23-0110 (issued July 28, 2023); *D.M.*, Docket No. 21-1209 (issued March 24, 2022); *T.R.*, Docket No. 20-0588 (issued June 25, 2021); *A.G.*, Docket No. 18-0329 (issued July 26, 2018); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

with his right foot while delivering mail on February 24, 2014. Dr. Shade reported physical examination findings and diagnosed intervertebral lumbar disc displacement, lumbar radiculopathy, chronic pain syndrome, obesity, and pes planus of both feet. He noted that "the effects of the injury" were a direct and proximate cause to the diagnosed conditions. Dr. Shade indicated that there might be other causes for appellant's medical problems, but one of the causes was clearly his activity at work as described in the mechanism of injury.

Appellant also submitted a July 7, 2021 statement in which a coworker, M.J., stated that he witnessed appellant fall into a tree hole on February 24, 2014.

On December 16, 2021 OWCP received appellant's response to its December 7, 2021 request for additional evidence. Appellant further described the incident when he stepped in a tree hole on February 24, 2014.

By decision dated January 27, 2022, OWCP affirmed its September 12, 2019 decision, as modified to reflect that appellant had established the occurrence of the February 24, 2014 employment incident when he stepped in a hole, but had not established a diagnosed medical condition causally related to the accepted employment incident.

On March 18, 2022 appellant requested reconsideration of the January 27, 2022 decision.

By decision dated June 7, 2022, OWCP denied modification of the January 27, 2022 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 United States within the meaning of FECA and that the claim was 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.[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 if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first

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

[7] *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).

component is whether the employee actually experienced the employment incident that allegedly occurred.[8] The second component is whether the employment incident caused a personal injury.[9]

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 incident.[10] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[11]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted February 24, 2014 employment incident.

Appellant submitted a February 12, 2019 report from Dr. Ellis who noted that appellant reported that, when he was at work on February 24, 2014, his right foot went one or two feet down into a hole where a tree had been uprooted, and he felt a pop in the right part of his low back. He reported that he also experienced right hip pain and pain which shot from his back down to the dorsal and lateral parts of his right foot. Dr. Ellis reported physical examination findings and diagnosed deranged disc at L5-S1, back strain, right L5-S1 spinal nerve impingement, left S1 spinal nerve impingement, and right hip strain. He opined that appellant sustained these diagnosed conditions on February 24, 2014 due to his stepping into a hole. Dr. Ellis indicated that on February 24, 2014 appellant experienced a sudden severe jerking of the right sacroiliac and iliolumbar ligaments, and heard a pop in his back, which was consistent with the initial injury of the annular rings of the L4, L5, and S1 vertebrae and the right iliolumbar and sacroiliac ligaments. He noted that appellant had immediate shooting pain, especially down into the lateral aspect of the right foot, which was indicative that he had an acute injury of the L5-S1 disc. However, Dr. Ellis did not provide adequate medical rationale for his opinion on causal relationship. He did not adequately explain why the February 24, 2014 incident was competent to cause or aggravate the multiple diagnosed conditions. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.[12] Therefore, this report is insufficient to establish appellant's claim.

Appellant submitted November 30, 2016 and November 1, 2018 reports in which Dr. Shade indicated that the reported mechanism of appellant's injury was stepping into a hole

[8] *B.P.*, Docket No. 16-1549 (issued January 18, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[10] *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

[11] *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

[12] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

with his right foot while delivering mail on February 24, 2014. Dr. Shade reported physical examination findings, and diagnosed intervertebral lumbar disc displacement, lumbar radiculopathy, chronic pain syndrome, obesity, and pes planus of both feet. He noted that "the effects of the injury" were a direct and proximate cause to the diagnosed conditions. Dr. Shade indicated that there might be other causes for appellant's medical problems but one of the causes was clearly his activity at work as described in the mechanism of injury. However, he did not provide adequate medical rationale in support of his opinion on causal relationship. Dr. Shade did not adequately explain why the February 24, 2014 incident was competent to cause a work-related injury. Moreover, he did not clearly indicate which of the multiple conditions he diagnosed were affected by the February 24, 2014 incident. As noted above, the Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.[13] Thus, this evidence is insufficient to establish appellant's claim.

Appellant submitted documents from his March 8, 2014 visit to an emergency room. He complained of having chronic low back pain and abdominal pain and reported stepping into a hole and bending back awkwardly while delivering mail on February 24, 2014. Appellant was seen on March 8, 2014 by Dr. Duong. However, he did not provide an opinion on causal relationship. As the Board has held, medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[14] As such, this report is insufficient to establish appellant's claim.

The remaining emergency room reports indicated that appellant was also treated by Ms. Miquez and Ms. Franklin, registered nurses. However, certain healthcare providers such as nurses and nurse practitioners are not considered physicians as defined under FECA.[15] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[16] Therefore, this evidence is insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted February 24, 2014 employment incident, the Board finds that appellant has not met his burden of proof to establish his claim.

[13] *See supra* note 10.

[14] *See C.R.*, Docket No. 23-0330 (issued July 28, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[15] Section 8101(2) 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) (September 2020); *M.M.*, Docket No. 23-0475 (issued July 27, 2023) (nurses are not considered physicians as defined under FECA); *N.F.*, Docket No. 21-1145 (issued January 25, 2023) (nurses are not considered physicians as defined by 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).

[16] *See id*.

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 February 24, 2014 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the June 7, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 12, 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