

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

_____)
B.S., Appellant)

and)

U.S. POSTAL SERVICE, WESTCHESTER)
VEHICLE MAINTENANCE FACILITY,)
White Plains, NY, Employer)
_____)

Docket No. 23-0465
Issued: September 19, 2023

Appearances:

Thomas S. Harkins, Esq., for the appellant¹
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, 2023 appellant, through counsel, filed a timely appeal from a September 1, 2022 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 established a medical condition causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On November 12, 2020 appellant, then a 53-year-old automotive mechanic, filed an occupational disease claim (Form CA-2) alleging that he developed lumbar radiculitis with spinal stenosis due to factors of his federal employment, including constantly twisting and bending his body into awkward positions, and twisting to reach an ignition switch while on his back under the dashboard of a vehicle. He noted that he first became aware of his claimed injury on April 4, 2020, and first realized its relation to his federal employment on April 7, 2020. Appellant stopped work on July 23, 2020.

In support of his claim, appellant submitted an August 4, 2020 work excuse note signed by Dr. Robert L. Cristofaro, a Board-certified orthopedist, indicating that he treated appellant for lumbar radiculitis and herniated nucleus pulposus (HNP) with spinal stenosis and held appellant off work pending further evaluation.

In a November 12, 2020 statement, appellant explained that on April 5, 2020 he was repairing an ignition switch on a postal truck and twisted his body to get underneath the dashboard when he experienced immense back pain. The pain improved with rest and pain medication, and he returned to work on April 13, 2020. On July 27, 2020 appellant was moving into position to work on a truck and felt “an explosion” in his back, which necessitated two visits to the emergency room. He described factors of his federal employment, including standing for long hours on hard concrete floors, lifting and holding heavy objects, bending, stretching, pulling, and twisting, and exposure to the elements. Appellant stated that the injury affected his lumbar spine, including five damaged discs, lumbar radiculitis, and spinal stenosis. He reported that he had no previous back pain or injuries prior to April 5, 2020.

In a development letter dated November 30, 2020, OWCP informed appellant of the deficiencies of his claim and advised him of the type of evidence needed. In a separate development letter of even date, it requested additional information from the employing establishment, including comments from a knowledgeable supervisor. OWCP afforded both parties 30 days to submit the necessary evidence.

The employing establishment responded to OWCP’s development letter on December 7, 2020, concurring with appellant’s description of his work factors.

By decision dated January 11, 2021, OWCP denied appellant’s occupational disease claim, finding that he had not submitted medical evidence containing a medical diagnosis in connection with his accepted employment factors. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

Appellant subsequently submitted a November 9, 2020 report from Dr. Marc Dyrszka, a Board-certified orthopedic surgeon, relating that appellant’s computerized tomography (CT)

myelogram revealed some scoliosis, as well as facet arthrosis at L4-5 and L5-S1. Dr. Dyrszka noted that appellant may have a disc injury, but it was difficult to see on the CT scan. He indicated that he would refer appellant for pain management and physical therapy and noted that appellant's pathology was ill-defined at that point.

Appellant requested reconsideration on May 28, 2021.

By decision dated June 15, 2021, OWCP modified the January 11, 2021 decision, finding that the evidence of record contained a medical diagnosis. However, the claim remained denied as the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted factors of his federal employment.

On June 4, 2022 appellant, through counsel, requested reconsideration. In support of his request, appellant submitted an August 24, 2020 report from Dr. Marc Samolsky, a Board-certified pain medicine specialist, relating that appellant had lower back pain travelling to both thighs, which first began without an antecedent accident or injury in February after leaning over a vehicle he was repairing at work. That episode resolved spontaneously after two weeks, and the present episode began about a month before his visit and was persistent. Dr. Samolsky's examination demonstrated markedly slow and antalgic gait with the use of a cane and tight edema three-quarters of the way up to his knees. He also related that appellant reported that his pain could be worse when he chewed or extended his cervical spine. Dr. Samolsky diagnosed severe lumbar radicular pain and noted a normal CT scan of the lumbar spine. He opined that appellant's symptoms were not at all explained by the CT scan and referred him to his primary care physician regarding his lower extremity edema and to Dr. Stephen Klass, a neurologist, for a neurological evaluation, noting that appellant might be myelopathic.

By decision dated September 1, 2022, OWCP denied modification of the June 15, 2021 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, that the claim was timely filed within the applicable time limitation period 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

³ *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 *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).

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 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 the issue.⁷ A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.⁸ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).⁹

In any case where 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.¹⁰

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.

In his August 24, 2020 report, Dr. Samolsky related that appellant's symptoms first began without an antecedent accident or injury in February after leaning over a vehicle he was repairing at work. He diagnosed severe lumbar radicular pain with a normal CT scan of the lumbar spine, noting that appellant's symptoms were not at all explained by the CT scan. While he provided an opinion on causal relationship, Dr. Samolsky did not offer medical rationale sufficient to explain how appellant's employment duties caused or contributed to his diagnosed condition. The Board

⁶ *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 *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

⁹ *Id.*; *Victor J. Woodhams*, *supra* note 6.

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *G.T.*, Docket No. 21-0170 (issued September 29, 2021); *D.W.*, Docket No. 20-0674 (issued September 29, 2020); *V.W.*, Docket No. 19-1537 (issued May 13, 2020); *N.C.*, Docket No. 19-1191 (issued December 19, 2019); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

has held that a medical opinion that lacks a rationalized explanation is of limited probative value.¹¹ Thus, this report is insufficient to establish the claim.

In an August 4, 2020 work excuse note, Dr. Cristofaro, indicated that appellant was seen for lumbar radiculitis and HNP with spinal stenosis. In a November 9, 2020 report, Dr. Dyrszka noted that appellant may have a disc injury, but it was difficult to see on his CT scan. However, neither Dr. Cristofaro nor Dr. Dyrszka 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 probative value on the issue of causal relationship.¹² Therefore, this evidence is insufficient to establish the claim.

As the medical evidence of record is insufficient to establish causal relationship between a medical condition and the accepted factors of federal employment, 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 See *A.P.*, Docket No. 19-0224 (issued July 11, 2019).

¹² *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).

ORDER

IT IS HEREBY ORDERED THAT the September 1, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 19, 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