United States Department of Labor
Employees' Compensation Appeals Board

J.B., Appellant	)	
and	)	**Docket No. 23-0634**
	)	**Issued: September 25, 2023**
U.S. POSTAL SERVICE, BOGGS ROAD POST OFFICE, Duluth, GA, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On March 24, 2023 appellant filed a timely appeal from a January 19, 2023 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.[2]

ISSUE

The issue is whether appellant has met his burden of proof to establish a back condition causally related to the accepted November 18, 2022 employment incident.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the January 19, 2023 decision, OWCP received additional evidence. The Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id*.

FACTUAL HISTORY

On November 30, 2022 appellant, then a 31-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on November 18, 2022 he injured his back when he turned to pick up a package located in the back of his truck while in the performance of duty. He stopped work on November 29, 2022.

In an undated statement, appellant related that on November 18, 2022, at approximately 2:48 p.m., his supervisor dispatched him to assist another mail carrier. He explained that he arrived, received packages from the other carrier for delivery, and as he was inspecting packages in the back of the truck, he turned and experienced a sensation "like his spine had detached and reattached." When appellant stepped out of the truck his legs became weak, his back felt strained, and he could barely walk to deliver a package. He struggled to finish his route, had difficulty walking to and from the truck to complete deliveries, and received a call from his supervisor during which he informed her that he injured his back. Appellant returned to the office where two coworkers, observed him walking abnormally and asked what was wrong, after which a coworker assisted with carrying mail tubs into the building. He subsequently went home, treated with medication and used a heating pad. Appellant returned to work the next day wearing a back brace and reported the incident to a supervisor. He continued to experience pain in the following days and struggled to complete his routes, and on November 25, 2022 he reported the incident to another supervisor who directed him on how to file a Form CA-1.

In a December 7, 2022 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the factual and medical evidence needed to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

Thereafter, OWCP received a November 29, 2022 x-ray report noting a normal impression of the cervical, thoracic, and lumbar spine.

On November 29, 2022 the employing establishment executed an authorization for examination and/or treatment (Form CA-16). In Part B of the Form CA-16, attending physician's report, Dr. Brandon Dawkins, Board-certified in occupational medicine, related that appellant twisted his spine while picking up packages, was unable to walk without pain, and experienced pain while flexing, twisting, and bending. He diagnosed a sprain/strain and checked a box marked "Yes" to indicate his belief that the condition was caused or aggravated by the employment activity described. Dr. Dawkins returned appellant to work on that date and provided work restrictions of light duty, sitting work only.

In a November 29, 2022 visit note, Christina Siewe, a nurse practitioner, noted that appellant reported that he was delivering mail on November 18, 2022 when he turned and twisted to pick up a package and felt a pop in his back. Pain radiated from appellant's lower back to his neck and spine, and he subsequently wore a back brace but continued to experience pain. Ms. Siewe diagnosed a strain of muscle, fascia and tendon of the lower back, a sprain of unspecified parts of the thorax, and sprain of the ligaments of the cervical spine.

In duty status reports (Form CA-17) dated November 29 and December 1 and 7, 2022, Dr. Dawkins noted that on November 18, 2022 appellant was seated in a postal vehicle when he

turned to check packages and felt pain in his back and spine. He diagnosed a sprain/strain and returned appellant to work on November 29, 2022 with work restrictions of "sit down work."

In a December 1, 2022 visit note, Dr. Dawkins reiterated appellant's diagnoses as set forth in the November 29, 2022 visit note and recounted the history of injury as reported by appellant. He noted that appellant reported extreme stiffness and tightness in his neck and lower back, tiredness, difficulty sleeping, worsening pain, and an inability to bend, twist, or stoop without pain.

In a December 1, 2022 prescription note, Ms. Siewe prescribed medication and referred appellant for physical therapy.

In a December 7, 2022 visit note, Krishna Tah, a physician assistant, treated appellant and noted that he reported pain, neck stiffness, and intermittent numbness and cramps. She reiterated the diagnoses indicated in the November 29, 2022 visit note. In a prescription of even date, Ms. Tah prescribed medication.

A December 14, 2022 magnetic resonance imaging (MRI) scan report of appellant's lumbar spine noted an impression of no visible neural compression or significant stenosis. An MRI scan report of even date of his cervical spine noted an impression of reversal of cervical lordosis and no significant stenosis or visible neural compression.

In visit notes dated December 15 and 21, 2022, Ms. Siewe noted that appellant reported that he experienced tingling and neck pain that continued to worsen. She diagnosed a strain of muscle, fascia and tendon of the lower back, a sprain of unspecified parts of the thorax, and sprain of the ligaments of the cervical spine.

In a December 28, 2022 visit note, Ms. Tah noted appellant's prior diagnoses and indicated that he reported experiencing increased pain with prolonged sitting or standing.

In a January 3, 2023 visit note, Ms. Siewe reiterated her prior diagnoses and noted that appellant reported being unable to bend forward without excruciating pain to his lumbar spine and that he experienced pain while walking when he got out of bed last night.

On January 12, 2023 appellant accepted a light-duty assignment as a modified carrier assistant with physical requirements of 50 minutes of standing per day, 10 minutes of sitting every hour, bending as tolerated, and no lifting over 20 pounds.

In a January 13, 2023 report of work status (Form CA-3), the employing establishment related that appellant stopped work on November 19, 2022 and returned full time with work restrictions on January 12, 2023.

By decision dated January 19, 2023, OWCP accepted that the November 18, 2022 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish causal relationship between his diagnosed medical conditions and the accepted November 18, 2022 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 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. There are two components involved in establishing fact of injury. The first component is whether he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[7]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident 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 the specific employment incident identified by the claimant.[9]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a back condition causally related to the accepted November 18, 2022 employment incident.

Appellant submitted a November 29, 2022 Form CA-16 including Part B, attending physician's report, in which Dr. Dawkins diagnosed a sprain/strain and checked a box marked

[3] *Supra* note 1.

[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).

[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.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).

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

"Yes" to indicate his belief that the condition was caused or aggravated by the employment activity described. The Board has held that when a physician's opinion as to the cause of a condition consists only of a checkmark on a form, without further explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.[10] Therefore, this evidence is insufficient to establish appellant's claim.

Appellant also submitted CA-17 form reports dated November 29 and December 1 and 7, 2022, in which Dr. Dawkins diagnosed a sprain/strain and returned appellant to work with restrictions. Similarly, in a December 1, 2022 visit note, Dr. Dawkins recounted the history of injury as reported by appellant, reiterated his diagnoses, and noted that appellant reported extreme stiffness and tightness in his neck and back as well as tiredness, difficulty sleeping, pain, and an inability to bend, twist, or stoop without pain. However, he did not provide an opinion on causal relationship in these notes. The Board has held that 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. As such, these reports from Dr. Dawkins are also insufficient to establish appellant's claim.[11]

Appellant also submitted visit notes and prescriptions from Ms. Siewe, a nurse practitioner and Ms. Tah, a physician assistant. However, the Board has long held that certain healthcare providers such as nurse practitioners and physician assistants are not considered qualified "physician[s]" as defined under FECA and their findings, reports and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[12] Accordingly, these reports are insufficient to satisfy appellant's burden of proof.[13]

The remaining evidence of record includes a November 29, 2022 x-ray report and December 14, 2022 MRI scan reports. The Board has held that diagnostic reports, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the accepted employment incident caused a diagnosed condition.[14] For this reason, this evidence is also insufficient to establish appellant's claim.

[10] *See A.C.*, Docket No. 21-0087 (issued November 9, 2021); *O.M.*, Docket No. 18-1055 (issued April 15, 2020); *Gary J. Watling*, 52 ECAB 278 (2001); *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

[11] *See D.Y.*, Docket No. 20-0112 (issued June 25, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[12] 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. § 8101(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (September 2020); *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); *J.D.*, Docket No. 21-0164 (issued June 15, 2021) (nurse practitioners are not physicians as defined under FECA).

[13] *R.H.*, Docket No. 21-1382 (issued March 7, 2022); *S.E.*, Docket No. 21-0666 (issued December 28, 2021).

[14] *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

As appellant has not submitted rationalized medical opinion evidence establishing a medical condition causally related to the accepted November 18, 2022 employment incident, the Board finds that he has not met his burden of proof to establish his claim.

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.[15]

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a back condition causally related to the accepted November 18, 2022 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the January 19, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 25, 2023
Washington, DC

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

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

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

[15] The Board notes that the employing establishment issued a Form CA-16, dated November 29, 2022. 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); *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).