United States Department of Labor
Employees' Compensation Appeals Board

O.R., Appellant	)	
and	)	**Docket No. 24-0184**
	)	**Issued: February 27, 2024**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Miami, FL, 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 December 16, 2023 appellant filed a timely appeal from a December 14, 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 to consider the merits of this case.[2]

ISSUE

The issue is whether appellant has met his burden of proof to establish a lumbar condition causally related to the accepted December 9, 2014 employment incident.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the December 14, 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

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

On October 2, 2018 appellant, then a 35-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that on December 9, 2014 he aggravated his lumbar spine as a result of repetitively lifting, dragging and pushing oversized and heavy bags while in the performance of duty.[4] He explained that his workload was increased in the baggage area during the holiday season. Appellant did not stop work. OWCP assigned the claim OWCP File No. xxxxxx125.

In notes dated November 2, 2017 through August 24, 2018, Dr. Scott S. Katzman, an orthopedic surgeon, examined appellant and diagnosed facetogenic low back pain, L5-S1 facet disease, and lumbar disc displacement at L5-S1 with left-sided back and hip pain. On May 10, 2018 he noted that appellant developed left-sided sciatica on October 26, 2017 and that his left-sided symptoms were due to a degenerative process that was worsening the L5-S1 segment and causing bilateral foraminal narrowing with left lumbar radicular complaints. Dr. Katzman explained that due to hypomobility and loss of movement at the desiccated disc, there was an increased stress at the adjacent segment. He provided work restrictions.

By decision dated December 12, 2018, OWCP denied appellant's traumatic injury claim, finding that it had not been filed within the applicable time limits of 5 U.S.C. § 8122. It noted that his claimed injury occurred on December 9, 2014 and he did not file his claim until October 2, 2018, which was more than three years later.

On December 17, 2018 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

A telephonic hearing was held on March 18, 2019.

By decision dated April 25, 2019, OWCP's hearing representative affirmed the December 12, 2018 decision. On May 14, 2019 appellant appealed this decision to the Board.

In a motion to reverse dated December 4, 2019, the Director of OWCP requested that the Board reverse OWCP's April 25, 2019 decision and find that appellant's claim was timely filed.

[3] Docket No. 20-1518 (issued November 17, 2022), *petition for recon. denied*, Docket No. 20-1518 (issued July 19, 2023); *Order Granting Motion to Reverse*, Docket No. 19-1234 (issued June 23, 2020).

[4] On April 23, 2013 appellant filed a Form CA-1 alleging that on April 22, 2013 he injured his right gluteus and lower back lifting bags while in the performance of duty. OWCP accepted this claim for lumbar sprain and herniated disc at L5-S1 under OWCP File No. xxxxxx033. Appellant also previously filed an occupational disease claim (Form CA-2) for an emotional condition under OWCP File No. xxxxxx667, which was formally denied on July 20, 2015. On May 12, 2017 appellant filed a traumatic injury claim alleging that he injured his low back and right knee on August 6, 2014 under OWCP File No. xxxxxx404. OWCP formally denied this claim on July 9, 2018. On February 8, 2018 it accepted a subsequent traumatic injury claim for aggravation of the L5-S1 herniated lumbar disc under OWCP File No. xxxxxx403.

He reasoned that appellant submitted sufficient evidence demonstrating that his supervisors had reasonable notice that he had an on-the-job injury and, thus, satisfying the test for actual knowledge.

By order dated June 23, 2020,[5] the Board granted the Director of OWCP's motion to reverse OWCP's April 25, 2019 decision, finding that appellant's claim was timely filed.[6]

By decision dated August 3, 2020, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish that his diagnosed lumbar condition was causally related to the accepted December 9, 2014 employment incident.

Appellant appealed this decision to the Board. In its November 17, 2022 decision,[7] the Board found that appellant had provided insufficient medical evidence to meet his burden of proof to establish a lumbar condition causally related to the accepted December 9, 2014 employment incident.

In notes dated September 11, 2020 through June 19, 2023, Dr. Katzman recounted appellant's increasing back pain and symptoms in his left leg. He diagnosed low back pain, bilateral lumbar radiculitis, and left T12-L1 disc herniation.

On August 18, 2023 appellant requested reconsideration. He contended that his claim should be reviewed by a second opinion physician and provided additional medical evidence.

In a July 3, 2023 report, Dr. Clinton Bush, a Board-certified orthopedic surgeon, described the accepted April 22, 2013 employment incident and reviewed the medical records. He performed a physical examination and diagnosed disc herniation at L5-S1 with associated chronic pain and radicular symptomatology. Dr. Bush attributed all of appellant's low back and lower extremity symptoms to his previous April 22, 2013 work injury. He further opined that the reported work injury of December 9, 2014 was a continuation and aggravation of the April 22, 2013 employment injury. Appellant also resubmitted Dr. Katzman's May 10 and August 24, 2018 notes.

On August 9, 2023 Dr. James Brien, a Board-certified anesthesiologist, provided an impairment rating of appellant's lower extremities due to the April 22, 2013 employment injury.

In a November 25, 2023 statement, appellant requested approval of medical treatment for continued left-sided lumbar complications. He also provided a November 13, 2023 report from Dr. Katzman which recounted appellant's symptoms of left-sided back pain and a sciatic list. Dr. Katzman found weakness and reduced strength to the lumbar extension muscles.

[5] *Order Granting Motion to Reverse*, Docket No. 19-1234 (issued June 23, 2020).

[6] The Board also ordered that the present case file be administratively combined with appellant's previous claims in OWCP File Nos. xxxxxx033, xxxxxx403, and xxxxxx404. OWCP administratively combined the claims with OWCP File No. xxxxxx033 serving as the master file.

[7] Docket No. 20-1518 (issued November 17, 2022), *petition for recon. denied*, Docket No. 20-1518 (issued July 19, 2023).

OWCP also provided physical therapy notes commencing November 13, 2023.

By decision dated December 14, 2023, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA[8] 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,[9] 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.[10] 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.[11]

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. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused an injury.[12]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[13] 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 employment incident identified by the employee.[14]

[8] *Supra* note 1.

[9] *R.C.*, Docket No. 23-0768 (issued December 22, 2023); *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).

[10] *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).

[11] *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).

[12] *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).

[13] *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).

[14] *S.C.*, Docket No. 21-0929 (issued April 28, 2023); *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).

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.[15]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a lumbar condition causally related to the accepted December 9, 2014 employment incident.

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of OWCP's August 3, 2020 decision because the Board considered that evidence in its November 17, 2022 decision.[16] Findings made in prior Board decisions are *res judicata* absent further review by OWCP under section 8128 of FECA.[17]

Dr. Bush, in his July 3, 2023 report, attributed appellant's low back and lower extremity symptoms to his previous April 22, 2013 employment injury. He further opined that the reported work injury of December 9, 2014 was a continuation and aggravation of the April 22, 2013 employment injury. However, Dr. Bush offered no rationalized medical opinion, which explained the basis of appellant's condition and its relationship to the accepted December 9, 2014 employment incident. Medical opinion evidence must offer a rationalized explanation of how the specific employment incident or work factors, physiologically caused the diagnosed condition. As Dr. Bush did not explain, with sufficient rationalization, how the accepted December 9, 2014 employment incident caused or contributed to a lumbar condition, his report is therefore, insufficient to establish causal relationship.[18]

On April 28, 2020 and November 13, 2023 Dr. Katzman recounted appellant's symptoms of left-sided back pain, a sciatic list, weakness, and reduced strength to the lumbar extension muscles, but did not provide an opinion as to the cause of these conditions. In medical notes dated September 11, 2020 through June 19, 2023, Dr. Katzman diagnosed low back pain, bilateral lumbar radiculitis, and left T12-L1 disc herniation. On August 9, 2023 Dr. Brien provided an impairment rating of appellant's lower extremities due to the April 22, 2013 employment injury, but did not mention the accepted December 9, 2014 employment incident. 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.[19] Therefore, the reports of Drs. Katzman and Brien are of no probative value and, thus, are insufficient to meet appellant's burden of proof.

[15] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *See J.T.*, Docket No. 22-1308 (issued May 25, 2023); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

[16] *Supra* note 3.

[17] *A.A.*, Docket No. 20-1399 (issued March 10, 2021); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

[18] *Supra* note 13.

[19] *J.H.*, Docket No. 23-0250 (issued December 19, 2023); *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

The remaining evidence consists of medical evidence signed by a physical therapist. However, the Board has held that certain healthcare providers, such as physician therapists, are not considered physician[s] as defined under FECA.[20] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[21]

As the medical evidence of record is insufficient to establish a lumbar condition causally related to the accepted December 9, 2014 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 lumbar condition causally related to the accepted December 9, 2014 employment incident.

[20] 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); *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 J.M.*, Docket No. 23-1090 (issued December 20, 2023) (physical therapists are not considered qualified physicians as defined under FECA); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (a physical therapist is not considered a physician as defined under FECA).

[21] *Id*.

ORDER

IT IS HEREBY ORDERED THAT the December 14, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 27, 2024
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