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

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| **D.L., Appellant** | ) | |
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| **and** | ) | **Docket No. 23-0850** |
| | ) | **Issued: March 8, 2024** |
| **DEPARTMENT OF VETERANS AFFAIRS, SAN FRANCISCO VA MEDICAL CENTER, San Francisco, CA, 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 June 6, 2023 appellant filed a timely appeal from a March 29, 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]

[1] 5 U.S.C. § 8101 *et seq.*

[2] 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 contended that he was injured at work and, that he has difficulty functioning from day-to-day, and that he should be compensated. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

## ***ISSUE***

The issue is whether appellant has met his burden of proof to establish a medical condition causally related to the accepted March 10, 2021 employment incident.

## ***FACTUAL HISTORY***

On March 16, 2021 appellant, then a 61-year-old gardener, filed a traumatic injury claim (Form CA-1) alleging that on March 10, 2021 he injured his left shoulder, lower back, stomach, left knee, and right knee when his "unsafe work cart" crashed into a curb while in the performance of duty. He explained that he was hauling trash and tools in a work cart when the left front wheel snapped, causing him to lose control of the vehicle and forcefully strike the curb. Appellant stopped work on March 11, 2021 and returned to work on March 12, 2021.

In a March 26, 2021 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Accident reports dated March 12 and April 14 and 23, 2021 indicated that on March 10, 2021 appellant attempted to turn his work cart and the left front wheel came off, which caused him to run into a curb.

In a March 12, 2021 intake sheet, appellant related that he had pain in his left shoulder, stomach, and lower back, which he attributed to the March 10, 2021 accident. He noted that he bumped his stomach, jammed his left shoulder, and his back started to bother him at a later point.

In a March 12, 2021 report, an unidentified nurse practitioner noted that appellant presented with complaints of bilateral shoulder pain and stomach pain, which appellant attributed to an accident on March 10, 2021. Appellant further related that he had recently undergone an abdominal surgery on February 15, 2021. On examination, the nurse practitioner documented well-healed abdominal surgical scars, no tenderness or bleeding, and intact range of motion of the shoulders. The nurse practitioner diagnosed a mild shoulder ache and recommended that appellant remain out of work until March 15, 2021.

In a March 16, 2021 letter, Chelsea Gelbart, a nurse practitioner student, held appellant off work for the next 7 to 10 days.

In notes dated March 26 and April 9, 2021, Dr. Nha-Ai Nguyen-Duc, a Board-certified internist, held appellant off work until April 26, 2021.

In an April 1, 2021 witness statement, J.B., an employing establishment supervisor, related that he heard a loud bang and observed that appellant's front axle had split in half and his cart was sideways on the road.

In an April 12, 2021 medical report, Dr. Alex Y. Lu, who specializes in neuro surgery, indicated that appellant had a history of a congenitally narrow lumbar canal with chronic lumbar back pain and bilateral radicular numbness and pain. He compared magnetic resonance imaging

(MRI) scans of the lumbar spine dated 2018 and March 2021, and noted unchanged epidural lipomatosis and worsened facet arthropathy and degenerative changes at L4-5 with a Grade 1 spondylolisthesis. Dr. Lu discussed surgical and nonsurgical options with appellant.

In an April 15, 2021 witness statement, L.E., appellant's coworker, noted that he observed appellant run his cart into a curb, which caused him to be thrown into the steering wheel and bounce back. He further indicated that appellant complained that his stomach and chest were hurting.

In an April 23, 2021 note, Dr. Nguyen-Duc held appellant off work from April 16 through May 10, 2021.

By decision dated April 29, 2021, OWCP accepted that the March 10, 2021 employment incident occurred, as alleged. However, it denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted March 10, 2021 employment incident. Consequently, OWCP found that the requirements had not been met to establish an injury as defined by FECA.

On May 12, 2021 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

OWCP thereafter received a report of a March 25, 2021 MRI scan of the lumbar spine, which demonstrated severe epidural lipomatosis resulting in severe canal stenosis from L4 through the termination of the thecal sac with complete effacement of the subarachnoid cerebrospinal fluid space, not substantially changed when compared to a 2018 study. The report further revealed severe degenerative spondylosis at L4-5 resulting in severe bilateral neural foraminal stenosis with compression of the bilateral L4 nerve roots and advanced facet arthropathy with osteophytosis at L3-4, L4-5, and L5-S1 with inflammatory synovial fluid.

In an April 29, 2021 narrative report, Dr. Nguyen-Duc noted the history of appellant's March 10, 2021 employment incident, his treatment, and the results of the March 25, 2021 lumbar MRI scan. She diagnosed worsening low back pain with bilateral lower extremity radiculopathy, left greater than right, and subjective leg weakness. Dr. Nguyen-Duc opined that the conditions were "more likely than not due to his work cart injury" that occurred on March 10, 2021. She explained that appellant previously required 15 to 20-minute breaks two or three times daily for his preexisting low back pain, and that, since the accident, he was unable to stand for longer than five minutes before he needed to sit and rest.

In a May 7, 2021 note, Dr. Nguyen-Duc released appellant to return to light-duty work effective May 12, 2021 with restrictions of no lifting more than 10 pounds and no prolonged standing, crouching, bending, stooping, or climbing ladders.

By decision dated July 28, 2021, OWCP's hearing representative set aside the April 29, 2021 decision and remanded the case to OWCP for further development. The hearing representative determined that appellant had established the medical component of fact of injury and directed OWCP to refer appellant for a second opinion examination to address causal relationship.

On remand, OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. J. Hearst Welborn, a Board-certified orthopedic surgeon, for a second opinion examination.

In a December 6, 2021 report, Dr. Welborn reviewed the medical record and SOAF and noted appellant's history of knee pain since 2019 and low back pain and radicular numbness since 2017 due to a preexisting congenitally narrow lumbar spinal canal. He documented physical examination findings and diagnosed lumbosacral spondylosis with radiculopathy, left knee joint pain, and left shoulder joint pain. Dr. Welborn opined that the March 10, 2021 incident did not cause, aggravate, or accelerate appellant's low back pain, that the "work-related condition had resolved," and that his chronic low back pain was not work related. He explained that a March 12, 2021 medical record did not document low back pain. In an accompanying work capacity evaluation (Form OWCP-5c) of even date, Dr. Welborn noted a diagnosis of shoulder pain and released appellant to return to sedentary-duty work.

By *de novo* decision dated January 7, 2022, OWCP 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 March 10, 2021 employment incident.

On February 7, 2022 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated March 24, 2022, OWCP's hearing representative set aside the January 7, 2022 decision and remanded the case to OWCP for further development. The hearing representative instructed OWCP to provide appellant an additional 30 days to submit medical evidence regarding his preexisting back, shoulder, and knee conditions; verify appellant's work status with the employing establishment; prepare an updated SOAF; and request a supplemental report from Dr. Welborn regarding the nature and extent of any medical conditions causally related to the accepted March 10, 2021 employment incident, including clarifying what condition had resolved.

In a June 21, 2022 report of work status (Form CA-3), the employing establishment indicated that appellant stopped work on March 11, 2021 and returned to modified-duty work effective April 12, 2021.

Appellant thereafter submitted a statement regarding Dr. Welborn's evaluation. He did not submit further medical information regarding his preexisting conditions.

On February 14, 2023 OWCP requested a supplemental opinion from Dr. Welborn.

In a March 21, 2023 supplemental report, Dr. Welborn reviewed the SOAF, the medical record, and the history of injury as reported by appellant. He again noted his history of low back pain and sciatica since 2017 and left knee pain since 2019. Dr. Welborn documented his physical examination findings and diagnosed lumbosacral spinal stenosis, left shoulder joint pain, left knee joint pain, and lumbosacral spondylosis with radiculopathy. He opined that appellant's diagnosed conditions were not causally related to the March 10, 2021 employment incident and that appellant had preexisting lumbar congenital spinal stenosis and degradation. Dr. Welborn noted that he no longer experienced left knee or shoulder pain and that a March 12, 2021 medical note did not

document any complaints of back pain. He further explained that, when he was previously asked whether the March 10, 2021 work injury had resolved, he responded "yes" because he felt that no injury was sustained on March 10, 2021.

By *de novo* decision dated March 29, 2023, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish causal relationship between the diagnosed medical conditions and the accepted March 10, 2021 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 the fact that the individual is an employee of the United States within the meaning of FECA,[4] 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.[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 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 an injury.[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 specific employment incident identified by the employee.[9]

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[3] *Supra* note 1.

[4] *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).

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

[6] *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).

[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).

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.[10]

## ***ANALYSIS***

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted March 10, 2021 employment incident.

In support of his claim, appellant submitted an April 29, 2021 narrative report by Dr. Nguyen-Duc, who diagnosed aggravated/worsening chronic low back pain, knee pain, and bilateral lower extremity radiculopathy, left greater than right, with subjective leg weakness. She opined that these conditions were more likely than not caused by the March 10, 2021 work incident and explained that his baseline low back pain and standing tolerance had worsened after the accident. Dr. Nguyen-Duc, however, did not explain with rationale how, physiologically, the accepted March 10, 2021 employment incident caused or aggravated the diagnosed lumbar conditions.[11] 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.[12] Medical rationale is particularly necessary where, as here, there are preexisting conditions involving some of the same body parts.[13] In such cases, the Board has required medical rationale differentiating between the effects of the work-related injury and the preexisting condition.[14] Although Dr. Nguyen-Duc noted a subjective worsening from appellant's preexisting low back pain, the Board has held that neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that a disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[15] Consequently, Dr. Nguyen-Duc's April 29, 2021 report is insufficient to establish the claim.

Appellant also submitted notes dated March 26 through May 7, 2021 wherein Dr. Nguyen-Duc held him off work. However, the notes do not offer an opinion on causal relationship. The

[10] 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).

[11] *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).

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

[13] *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).

[14] *Id*.

[15] *D.H.*, Docket No. 18-1410 (issued March 21, 2019).

Board has held that a medical report that does not offer an opinion on causal relationship is of no probative value.[16] Therefore, this evidence is also insufficient to establish the claim.

Appellant also submitted notes by a nurse practitioner student and a 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.

OWCP also received a report of MRI scan of the right shoulder dated March 25, 2021. The Board has held, however, that diagnostic studies, standing alone, lack probative value as they do not provide an opinion on causal relationship between an employment injury, and a diagnosed condition.[19]

In a March 21, 2023 second opinion evaluation, Dr. Welborn opined that appellant's shoulder, left knee, and low back conditions were not causally related to the accepted March 10, 2021 employment incident. He discussed his factual and medical history, reviewed the SOAF, and reported the findings of his physical examination. Dr. Welborn noted that appellant related that he was no longer experiencing left shoulder or knee pain. He also noted that the March 12, 2021 nurse practitioner note did not document any complaints of back pain. The Board finds Dr. Wellborn's report was well reasoned and based on a complete and accurate history and therefore constitutes the weight of the medical evidence.[20]

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted March 10, 2021 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.

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[16] *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); *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

[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 supra* note 10 Chapter 2.805.3a(1) (January 2013); *A.B.*, Docket No. 23-0827 (issued December 27, 2023) (nurse practitioners 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 a s physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA).

[18] *Id.*

[19] *M.E.*, Docket No. 18-0940 (issued June 11, 2019); *V.J.*, Docket No. 17-0358 (issued July 24, 2018); *John W. Montoya*, 54 ECAB 306 (2003).

[20] *See P.N.*, Docket No. 22-0794 (issued October 20, 2023).

## ***CONCLUSION***

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted March 10, 2021 employment incident.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the March 29, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 8, 2024
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