

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

T.H., Appellant

and

**DEPARTMENT OF THE INTERIOR,
BUREAU OF LAND MANAGEMENT,
Lander, WY, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 23-1142
Issued: March 28, 2024**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On September 5, 2023 appellant filed a timely appeal from a July 26, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a medical condition causally related to the accepted May 31, 2022 employment incident.

FACTUAL HISTORY

On August 15, 2022 appellant, then a 47-year-old criminal investigator, filed a traumatic injury claim (Form CA-1) alleging that on May 31, 2022 he sustained a lower back and right

¹ 5 U.S.C. § 8101 *et seq.*

buttocks injury with pain radiating into his right leg and foot when working out with kettlebells while in the performance of duty. On the reverse side of the claim form, appellant's supervisor confirmed that he was injured in the performance of duty.

In an October 31, 2022 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence required and provided a questionnaire for his completion. In a separate development letter of even date, OWCP requested additional information from the employing establishment, including comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations. It afforded both parties 30 days to respond.

In a July 26, 2022 report, Dr. Kacie Gallo, Board-certified in family medicine, reported that appellant complained of low back pain from working out, which irritated the lower right side of his back, right buttock, and right back thigh radiating into the toes. On examination she observed diminished sensation in the right lower extremity and a positive right sit leg raise test. Dr. Gallo diagnosed low back pain and gout from a preexisting condition.

On July 27, 2022 appellant underwent an x-ray of the lumbar spine, which revealed no acute findings, no significant degenerative changes, and grade 1 spondylolisthesis at L2-3 of unknown etiology. On August 3, 2022 he underwent a magnetic resonance imaging (MRI) scan of the lumbar spine, which demonstrated degenerative changes, disc bulging and protrusions, and neural foraminal narrowing. Progress notes dated August 5 and 12, 2022 documented treatment with physician assistants.

In an August 24, 2022 report, Dr. Christopher C. Hills, a Board-certified orthopedic surgeon, reported that appellant was a law enforcement officer who presented for initial evaluation of radiating right posterior leg pain that began following a workout routine on May 31, 2022 when he was performing deadlifts with light weights. He reviewed the lumbar spine MRI scan noting a small right paracentral disc herniation at L5-S1 effacing the traversing S1 nerve root. Dr. Hills diagnosed lumbar region intervertebral disc disorder with radiculopathy.

On November 4, 2022 appellant responded to the OWCP questionnaire explaining that he was injured during the performance of duty as he was part of the employing establishment's physical fitness program (PFP), which was a requirement for his law enforcement position. He explained that he was working out at the time of his injury during work hours at his official duty station as it was a mandatory employment activity. Appellant provided an official position description for his law enforcement position and a fitness-for-duty order as a requirement of the position.

By decision dated December 14, 2022, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that his diagnosed medical conditions were causally related to the accepted May 31, 2022 employment incident. Therefore, it concluded that the requirements had not been met to establish an injury as defined by FECA.

In a January 25, 2023 report, Dr. Hills diagnosed right L5-S1 paracentral disc herniation and continued S1 radiculopathy following a May 31, 2022 lifting exercise at work. He reported that at the time of his initial August 2022 evaluation, appellant described a work-related lifting

injury involving deadlifts in May 2022. Dr. Hills explained that appellant was asymptomatic prior to that event and, as such, it was plausible that the incident resulted in disc herniation and onset of right lumbar radiculopathy given the timing of the event and his symptoms.

On January 27, 2023 appellant requested reconsideration of OWCP's decision.

By decision dated April 24, 2023, OWCP denied modification of the December 14, 2022 decision.

On June 15, 2023 appellant requested reconsideration of the April 24, 2023 decision and submitted additional medical evidence.

In a May 26, 2023 report, Dr. Hills documented appellant's treatment for persistent right S1 radicular symptoms with known remote L5-S1 right paracentral disc herniation following a weightlifting injury. He noted that appellant's deadlift activity could be the etiology for his disc herniation in that certain Olympic style lifts have been shown to increase intradiscal pressure and constitute known mechanisms for herniated nuclei pulposi, among other lumbar spine injuries.

By decision dated July 26, 2023, OWCP denied modification of the April 24, 2023 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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,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

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. First, the employee must submit sufficient evidence to establish that he or she actually experienced the

² *Id.*

³ *E.K.*, Docket No. 22-1130 (issued December 30, 2022); *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).

⁴ *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *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).

⁵ *E.H.*, Docket No. 22-0401 (issued June 29, 2022); *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).

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 a personal injury.⁶

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁷ 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.⁸

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted May 31, 2022 employment incident.

In his January 25, 2023 report, Dr. Hills explained that appellant was asymptomatic prior to that event and, as such, it was plausible that the incident resulted in disc herniation and onset of right lumbar radiculopathy given the timing of the event and his symptoms. In this instance, he referenced appellant's symptomology as support for a work-related traumatic injury. The Board has held that an opinion that a condition is causally related because the employee was asymptomatic before the injury is insufficient, without adequate rationale, to establish causal relationship.⁹ Therefore, this evidence is insufficient to establish the claim.

In a subsequent May 26, 2023 report, Dr. Hills further indicated that appellant's deadlift activity could be the etiology for his disc herniation in that certain Olympic style lifts have been shown to increase intradiscal pressure and constitute known mechanisms for herniated nuclei pulposi, among other lumbar spine injuries. He provided only a speculative/equivocal opinion regarding causal relationship.¹⁰ As such, Dr. Hills' report is insufficient to establish appellant's claim.¹¹

In a July 26, 2022 report, Dr. Gallo failed to provide a diagnosed medical condition, only noting low back pain. In an August 24, 2022 report, Dr. Hills diagnosed lumbar region intervertebral disc disorder with radiculopathy. However, these reports did not offer an opinion on causal relationship. The Board has held that medical reports lacking an opinion regarding

⁶ *H.M.*, Docket No. 22-0343 (issued June 28, 2022); *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *S.M.*, Docket No. 22-0075 (issued May 6, 2022); *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).

⁸ *J.D.*, Docket No. 22-0935 (issued December 16, 2022); *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).

⁹ *J.C.*, Docket No. 22-0215 (issued February 14, 2023); *M.R.*, Docket No. 14-0011 (issued August 27, 2014).

¹⁰ *B.B.*, Docket No. 21-0284 (issued October 5, 2022); *E.W.*, Docket No. 19-1393 (issued January 29, 2020); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹¹ *M.M.*, Docket No. 20-1649 (issued January 4, 2023).

causal relationship are insufficient to establish a claim.¹² Thus, the Board finds that these reports are insufficient to establish appellant's claim.

OWCP also received July 27 and August 4, 2022 diagnostic studies of the lumbar spine. 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 regarding whether the accepted employment incident caused a diagnosed condition.¹³

The remaining evidence consists of medical evidence signed by a physician assistant. The Board has long held that certain healthcare providers such as physician assistants are not considered qualified "physician[s]" as defined under FECA and thus their findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.¹⁴ Accordingly, these reports are insufficient to satisfy appellant's burden of proof.¹⁵

As the evidence of record is insufficient to establish causal relationship between the diagnosed medical conditions and the accepted May 31, 2022 employment incident, the Board finds that he has not met his burden of proof.¹⁶

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 May 31, 2022 employment incident.

¹² *L.K.*, Docket No. 21-1155 (issued March 23, 2022); *T.S.*, Docket No. 20-1229 (issued August 6, 2021); *J.M.*, Docket No. 19-1169 (issued February 7, 2020); *A.L.*, Docket No. 19-0285 (issued September 24, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ *A.W.*, Docket No. 22-1196 (issued November 23, 2022); *S.W.*, Docket No. 21-1105 (issued December 17, 2021); *W.L.*, Docket No. 20-1589 (issued August 26, 2021).

¹⁴ 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. § 8102(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 *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); *George H. Clark*, 56 ECAB 162 (2004) (physician assistants are not considered physicians under FECA).

¹⁵ *N.B.*, Docket No. 19-0221 (issued July 15, 2019).

¹⁶ *R.N.*, Docket No. 21-0884 (issued March 31, 2023); *S.K.*, Docket No. 20-0102 (issued June 12, 2020); *M.M.*, Docket No. 20-0019 (issued May 6, 2020).

ORDER

IT IS HEREBY ORDERED THAT the July 26, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 28, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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