

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

T.H., Appellant)	
)	
and)	Docket No. 20-1128
)	Issued: December 17, 2020
U.S. POSTAL SERVICE, RIVERHEAD POST OFFICE, Riverhead, NY, Employer)	
)	

Appearances:
Paul Kalker, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On May 5, 2020 appellant, through counsel, filed a timely appeal from an April 3, 2020 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 met his burden of proof to establish a lumbar condition causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On April 27, 2018 appellant, then a 35-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his hips when they gave way while walking, causing him to fall while in the performance of duty. He described feeling a “pop” and a sharp pain in his right hip, as well as sciatic pain in his left hip. Appellant stopped work the same day.

In April 27, 2018 aftercare instructions, Dr. Michael Parrott, Board-certified in emergency medicine, diagnosed a strain of the right thigh posterior muscle group fascia and tendon at thigh level and prescribed medication for his recovery. He advised that appellant remain off work for five days.

In an April 30, 2018 medical report, Dr. Alexander Finger, a Board-certified orthopedic surgeon, evaluated appellant’s lower back and right hip. He noted appellant’s history of chronic back pain, anterior right thigh numbness, as well as a previous magnetic resonance imaging (MRI) scan, which revealed an L4-5 disc herniation for which he was treated conservatively with physical therapy. Appellant explained the events of the April 27, 2018 employment incident in which he was walking and his hip gave out, but he denied a fall or trauma to his hip or lower back. Dr. Finger referred to a lumbar spine x-ray of even date, which revealed no acute fracture, dislocation, or bony abnormality and diagnosed a lumbar strain with right lower extremity radicular symptoms. He advised appellant to begin physical therapy and to remain out of work.

In an April 30, 2018 medical note, Brian Powers, a physician assistant, held appellant off work until his next evaluation on May 29, 2018.

In a May 1, 2018 letter, the employing establishment controverted appellant’s claim, arguing that he did not sustain a traumatic injury and that he had not provided medical evidence establishing causal relationship.

Dr. Finger, in a May 10, 2018 authorization for examination and/or treatment (Form CA-16), noted a history of injury that appellant was walking when his leg gave out. He diagnosed a sprain of the lower spine and checked a box marked “Yes” to indicate his opinion that appellant’s condition was caused or aggravated by his employment activity. Dr. Finger referred appellant to physical therapy to treat his pain. In a duty status reports (Form CA-17) of even date, he diagnosed a lumbar strain due to the April 27, 2018 employment incident and both provided restrictions, but advised that appellant was unable to work.

In a May 18, 2018 medical report from Anthony Nunziato, a physician assistant, it was noted that appellant alleged that he had been unable to return to work due to the numbness in his right leg getting worse. Mr. Nunziato discussed a previous April 12, 2017 work-related injury

when he slipped on a faulty step and was thereafter diagnosed with an L4-5 disc herniation.³ He opined that the April 27, 2018 incident caused an acute exacerbation that was likely related to appellant's previous lower back injury. Mr. Nunziato diagnosed other spondylosis of the lumbar spine with radiculopathy. In a medical note of even date, he noted that appellant attempted to return to work on May 15, 2018, but was unable to return due to an exacerbation of his symptoms and held him off work pending a reevaluation.

In a May 21, 2018 Form CA-17 report, Dr. Finger diagnosed a lumbar strain and advised that appellant was unable to return to work.

Appellant also submitted a position description detailing his duties as a city carrier assistant.

In a May 31, 2018 development letter, OWCP noted that, when appellant's claim was received, it appeared to be a minor injury that resulted in minimal or no lost time from work. Based on this criteria, it had administratively approved payment of a limited amount of medical expenses without formally considering the merits of his claim. However, a formal decision was now required. OWCP advised appellant of the deficiencies of his claim and instructed him as to the factual and medical evidence necessary to establish his claim. It provided a factual questionnaire inquiring about the circumstances surrounding his claimed injury for his completion and requested that he submit a narrative medical report from his physician, which contained a detailed description of findings and diagnoses, explaining how the reported incident caused or aggravated his medical condition. OWCP afforded appellant 30 days to respond.

In an April 27, 2018 medical report, Dr. Parrott observed the history of appellant's claimed April 27, 2018 employment injury in which he was walking and heard his right hip "pop," causing him to fall while carrying mail. He believed that he aggravated the sciatica on his left side which may have caused him to fall. Dr. Parrott advised that appellant remain out of work and for him to follow up with orthopedics.

In a May 30, 2018 medical report, Dr. Thomas Dowling, a Board-certified orthopedic surgeon, evaluated appellant for lower back pain and right anterior thigh numbness related to the accepted April 12, 2017 employment injury when he stumbled down a flight of stairs as well as the claimed April 27, 2018 reoccurrence where he felt a "pop" in his right upper thigh while at work.⁴ He diagnosed acute right-sided low back pain with right-sided sciatica and referred appellant to undergo right lumbar MRI scan for further evaluation. In a Form CA-17 report of even date, Dr. Dowling diagnosed right sciatica and advised that appellant was unable to work.

³ Appellant previously filed a traumatic injury claim on April 12, 2017 for a back and neck injury related to an employment incident on the same day in which a brick on a step gave way and caused him to fall under OWCP File No. xxxxxx398. On May 26, 2017 OWCP accepted his claim for a lumbar sprain, lumbar strain, cervical sprain, and cervical strain.

⁴ In a May 29, 2018 letter, appellant requested that his primary physician be changed from Dr. Finger to Dr. Dowling as his injury was related to the spine and Dr. Dowling, as a spinal specialist, would be better suited to determine the proper course of treatment.

On June 11, 2018 OWCP noted that appellant filed a May 20, 2018 notice of recurrence (Form CA-2a) for medical treatment and wage-loss compensation related to his accepted April 12, 2017 employment injury. Appellant alleged that on April 26, 2018 he performed heavy, repetitive lifting of mail and newspapers that triggered a flare up of his lower back pain. He also mentioned the April 27, 2018 employment incident in which he felt a pain in his thigh that caused him to lose feeling in his leg and fall down. OWCP determined that these incidents constituted a new injury and converted appellant's claim to a new occupational disease claim.⁵

In a development letter dated June 25, 2018, OWCP advised appellant of the factual and medical deficiencies of the occupational disease claim. It asked him to complete a questionnaire to provide further details regarding the circumstances of his claimed injury and requested a narrative medical report from his treating physician, which contained a detailed description of findings and diagnoses, explaining how his work activities caused, contributed to, or aggravated his medical conditions. OWCP afforded appellant 30 days to respond.

On July 11, 2018 OWCP received a June 5, 2018 diagnostic report by Dr. Elizabeth Maltin, a Board-certified radiologist, who noted that she had performed a lumbar spine MRI scan, finding a mild disc bulge at L4-5.

In a June 26, 2018 medical report, Dr. Dowling noted his review of appellant's updated MRI scan and diagnosed acute right-sided low back pain with right-sided sciatica and discogenic low back pain.

In response to OWCP's development questionnaire, appellant submitted a July 10, 2018 statement in which he explained that his original back injury occurred on April 12, 2017, for which he continued to perform at-home exercises and physical therapy. On April 26, 2018 he was delivering mail on a route he had no previous experience with and was responsible for loading his truck with mail, parcels, and newspapers for a full route worth of deliveries. Appellant contended that the high volume of mail, coupled with approximately nine hours of deliveries, greatly increased the pain and discomfort in his lower back. On April 27, 2018 he was walking to deliver mail when he stepped with his right foot and felt a "pop" of pain radiating to his upper thigh followed by a loss of sensation in his right leg. Appellant's right leg gave way, followed by sciatic pain in his left leg, which caused him to fall to the ground onto his left shoulder. He attempted to continue his route, but his leg gave way again. Appellant noted that he was able to catch himself on a pole before falling again. He then reported the incident to his supervisor and discontinued his activity. After two weeks of doctor-recommended rest, appellant attempted to return to work, but continued to lose sensation in his right leg to the point where he almost caused a collision with his vehicle. He then discontinued work. Appellant clarified that his injury was not a new traumatic injury and was directly related to his accepted April 12, 2017 employment injury.

⁵ The Board notes that OWCP has not yet adjudicated whether appellant has met his burden of proof to establish entitlement to further medical treatment and wage-loss compensation under his accepted employment injury claim in OWCP File No. xxxxxx398.

In a July 5, 2018 Form CA-17, Dr. Dowling diagnosed acute right-sided low back pain with right-sided sciatica and discogenic low back pain. He recommended that appellant remain off work.

In a July 11, 2018 letter, the employing establishment indicated that appellant was medically cleared to return to full-duty work as of October 13, 2017. It detailed his employment duties in which he was required to lift and carry up to 70 pounds and reasoned that his description of this work load as “heavy” should be regarded as a normal job duty. The employing establishment also explained that, upon appellant’s return to work following his April 27, 2018 injury, he was assigned to limited duty and that none of his duties assigned to him since then were outside of his limited-duty restrictions.

In a July 17, 2018 Form CA-17 report, Dr. Joseph Sanelli, Board-certified in physical medicine, diagnosed lumbar displacement and lumbar radiculitis and advised that appellant remain out of work.

By decision dated August 7, 2018, OWCP denied appellant’s occupational disease claim, finding that the evidence of record was insufficient to establish causal relationship between his diagnosed medical conditions and the accepted employment events.

OWCP continued to receive evidence. An August 7, 2018 Form CA-17 report by Dr. Dowling diagnosed lumbar disc displacement and lumbar radiculitis and advised that appellant remain out of work.

On August 30, 2018 appellant requested an oral hearing before an OWCP hearing representative.

An oral hearing was held on December 19, 2018. Appellant testified that his injuries on April 26 and April 27, 2018 were caused by a recurrence of his original April 12, 2017 injury to his lower back. He re-explained the events of April 26, 2018 and asserted that the extra weight and duration of his work that day caused him to have issues with his back. The hearing representative informed appellant of the medical evidence necessary in order to establish causal relationship. Appellant’s then-representative also requested that the case file for OWCP File No. xxxxxx398 be combined with his present claim.

In a July 6, 2018 medical report, Dr. Sanelli evaluated appellant for lumbar pain in relation to the accepted April 12, 2017 employment injury while he was delivering mail. He noted that appellant had a previous history of pain and was doing fairly well until his April 2017 injury. Dr. Sanelli diagnosed lumbar disc displacement, lumbar radiculitis, discogenic low back pain, lumbar myofascial pain syndrome and lumbar facet joint syndrome. He recommended appellant undergo physical therapy to treat his conditions.

In medical reports dated from August 3, 2018 to January 24, 2019, Dr. Dowling noted his understanding of the history of the April 12, 2017 and April 27, 2018 employment injuries and diagnosed lumbar disc displacement, lumbar radiculitis, lumbar facet joint syndrome, discogenic low back pain, acute right-sided low back pain with right-sided sciatica, and L4-5 herniated nucleus pulposus. He referred appellant to physical therapy for further treatment of his conditions and acknowledged that he underwent an epidural steroid injection (ESI) to treat his symptoms, but

experienced no benefit. Dr. Dowling explained that the mechanics of his injury with a rotational flexion/extension moment could sometimes initially appear as a back sprain until further imaging is obtained and opined that appellant's right disc herniation was consistent with the right radicular symptomatology.

By decision dated February 28, 2019, the hearing representative affirmed the August 7, 2018 decision. He also instructed OWCP to combine OWCP File No. xxxxxx398 with the current claim.

OWCP continued to receive evidence. In a November 12, 2018 diagnostic report, Dr. Michele Rubin, a Board-certified diagnostic radiologist, performed a computerized tomography (CT) scan of appellant's lumbar spine and diagnosed an annular bulge at L4-5, intraosseous discal herniation at L4-5, vertebral hemangioma of L2 and lumbar hyperlordosis.

In a March 29, 2019 diagnostic report, Dr. Brett Helfner, a Board-certified diagnostic radiologist, performed a lumbar spine MRI scan and found a stable disc bulge flattening the ventral thecal sac, as well as mild bilateral foraminal stenosis.

On February 22, 2020 appellant, through counsel, requested reconsideration of OWCP's February 28, 2019 decision. Counsel reasoned that the medical evidence from Dr. Dowling, specifically his January 24, 2019 medical report, was sufficient to establish appellant's claim. He asserted that it was OWCP's duty to assist in the development of the claim and that, had it done so, a clear and unequivocal causal relationship would be found.

Counsel attached a May 7, 2019 medical note in which Dr. Dowling noted his disagreement with the district medical adviser's (DMA) opinion that surgery was not warranted for appellant's condition because there was no significant stenosis or instability at the L4-5 level. He explained that appellant's symptoms were discogenic in nature and that the request for surgery was to treat his symptoms and not instability or stenosis.

In a January 8, 2020 narrative medical report, Dr. Dowling noted appellant's history of injury in relation to the April 12, 2017 and April 27, 2018 employment incidents as well as his subsequent medical treatment. He explained that the mechanism of injury to the lumbar spine was a rotation, flexion, and extension movement that is known as a mechanism for disc injuries that sometimes appears as a back sprain until further imaging can be obtained. Dr. Dowling diagnosed discogenic low back pain, right-sided sciatica and a disc herniation at L4-5. He opined that appellant was restricted with a physical impairment of total temporary and observed that he had requested to undergo surgery to treat his injury at L4-5. Dr. Dowling concluded that, based on the history given by appellant, the definite cause of his diagnoses were the April 12, 2017 and April 26, 2018 employment injuries.

By decision dated April 3, 2020, OWCP affirmed the February 28, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ 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,⁷ 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.⁸ 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.⁹

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.¹⁰

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹¹ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.¹² 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).¹³

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,

⁶ *Supra* note 2.

⁷ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁸ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁹ *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).

¹⁰ *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).

¹¹ *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

¹² *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

¹³ *Id.*; *Victor J. Woodhams*, *supra* note 10.

the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹⁴

ANALYSIS

The Board finds that this case is not in posture for decision.

In support of his claim, appellant submitted numerous medical reports relating to lumbar conditions which developed following employment injury in April 2017 and an incident in April 2018. Those medical reports provide consistent diagnoses relating to the lumbar spine and indicate that appellant described employment duties requiring him to carry heavy amounts of mail as well as employment incidents in which he stumbled on steps in April 2017 and experienced a “pop” in his right hip while delivering mail in April 2018. Dr. Dowling reasoned that the mechanism of appellant’s lumbar injury was a rotation, flexion, and extension movement and further explained that a disc injury, such as this one, can sometimes appear as a back sprain until further imaging can be obtained. He opined that there was a definite causal relationship between appellant’s diagnoses and the above-mentioned employment incidents.

Accordingly, the Board finds that Dr. Dowling provided an affirmative and rationalized opinion on causal relationship. Dr. Dowling identified employment factors, which appellant consistently claimed had precipitated his lumbar conditions, identified physical findings upon examination and treatment, and provided a rationalized opinion citing to the facts of the case. His medical evidence therefore raises an uncontroverted inference of causal relationship between his claimed lumbar conditions and the accepted factors of his federal employment. Further development of appellant’s claim is therefore required.¹⁵

It is well established that, proceedings under FECA are not adversarial in nature, and that while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹⁶ OWCP has an obligation to see that justice is done.¹⁷

On remand OWCP shall refer appellant, a statement of accepted facts (SOAF), and the medical evidence of record to a physician in the appropriate field of medicine. The chosen physician shall provide a rationalized opinion addressing whether the diagnosed lumbar conditions are causally related to the accepted factors of appellant’s federal employment. If the physician opines that the diagnosed conditions are not causally related, he or she must provide rationale explaining the opinion. The physician shall also provide a rationalized opinion as to whether appellant sustained a recurrence of disability and need for medical treatment in OWCP File No.

¹⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

¹⁵ See *A.T.*, Docket No. 19-1972 (issued June 25, 2020); *K.T.*, Docket No 19-1436 (issued February 21, 2020); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

¹⁶ *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

¹⁷ *R.B.*, Docket No. 18-0162 (issued July 24, 2019); *K.P.*, Docket No. 18-0041 (issued May 24, 2019).

xxxxxx398. Following this and any other further development as deemed necessary, OWCP shall issue a *de novo* decision addressing appellant's occupational disease claim and claimed recurrence of disability and need for further medical treatment.¹⁸

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the April 3, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 17, 2020
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

¹⁸ The Board notes that the employing establishment issued a Form CA-16, dated May 10, 2018. 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); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).