

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

_____)
J.F., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
WEST LOS ANGELES VETERANS)
ADMINISTRATION MEDICAL CENTER,)
Los Angeles, CA, Employer)

_____)

Docket No. 18-0492
Issued: January 16, 2020

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 9, 2018 appellant filed a timely appeal from a December 22, 2017 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 lumbar condition causally related to the accepted factors of his federal employment.

_____)
¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 17, 2017 appellant, then a 38-year-old lead police officer, filed an occupational disease claim (Form CA-2) alleging that he sustained severe pain in the center of his low back due to standing/walking and when carrying 25 pounds of gear while in the performance of duty. He indicated that he first became aware of his condition and its relationship to his employment on January 1, 2012. Appellant did not stop work.

In a development letter dated August 3, 2017, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It informed him of the type of factual and medical evidence needed to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In an August 31, 2017 response, appellant described the employment duties he believed caused his injury. He noted that his duties included wearing approximately 25 pounds of police gear, as well as standing and walking while wearing this gear. Appellant explained that he had worked performing these duties for approximately 13 years, working 12-hour shifts, as well as 8- and 16-hour shifts.

OWCP received physical therapy reports dating from July 7 to August 25, 2017. In a July 7, 2017 note, Regina McWhirter, a kinesiotherapist, advised that appellant was unable to work due to his inability to lift over 20 pounds.

A July 17, 2017 x-ray read by Dr. Jamshid Tehranzadeh, a Board-certified diagnostic radiologist, revealed no evidence of sacroiliitis, no evidence of sacroiliac effusion, edema, erosion or reactive marrow change.

In an August 24, 2017 report, Dr. Farrukh Merchant, Board-certified in family practice, advised that appellant was last seen on August 17, 2017. He indicated that appellant was diagnosed with degenerative disc disease at L4-5, chronic low back pain, and hyperlipidemia. Dr. Merchant noted: that appellant was placed on light duty due to his chronic low back pain; that appellant was required to carry police gear such as a police belt with work-related paraphernalia; and that appellant added that this appeared to aggravate his low back. He opined that, based upon his functional capacity evaluation (FCE) performed on July 7, 2017, appellant was unable to return to work as a police officer. Dr. Merchant explained that appellant was unable to lift more than 20 pounds and he was unable to crouch or stoop on an occasional basis.

By decision dated November 2, 2017, OWCP denied appellant's claim as the medical evidence of record did not establish causal relationship between his diagnosed medical condition and the accepted employment factors. Thus, the requirements had not been met to establish an employment-related injury and/or a medical condition.

On December 22, 2017 appellant requested reconsideration.

In a report dated November 16, 2017, Dr. Xing Yang, Board-certified in occupational medicine, noted appellant's history, examined appellant and diagnosed chronic low back pain. He opined that appellant's condition was caused or aggravated by his employment activity and further opined that it was more likely than not, aggravated by factors of employment such as

“wearing heavy vest and gun belt.” Dr. Yang based his opinion on the mechanism of injury and appellant’s history of injury. On November 17, 2017 he completed an attending physician’s report (Form CA-20) in which he referred to his findings in the November 16, 2017 report and added that appellant could resume light work as of November 16, 2017.

By decision dated December 22, 2017, OWCP denied modification of the November 2, 2017 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 the fact 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 period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee 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 employment factors identified by the employee.⁵

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁶ 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.⁷ 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).⁸

² *Id.*

³ *K.V.*, Docket No. 18-0947 (issued March 4, 2019); *M.E.*, Docket No. 18-1135 (issued January 4, 2019); *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

⁴ *K.V. and M.E., id.*; *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *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).

⁶ *M.L.*, Docket No. 19-0813 (issued November 26, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁷ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

⁸ *Id.*; *Victor J. Woodhams*, *supra* note 5.

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a lumbar condition causally related to the accepted factors of his federal employment.

In support of his claim, appellant submitted an August 24, 2017 report from Dr. Merchant. Dr. Merchant noted that appellant was diagnosed with degenerative disc disease at L4-5, chronic low back pain, and hyperlipidemia. He related that appellant advised him that he had to carry police gear such as a police belt with work-related paraphernalia, and appellant indicated that it appeared to aggravate his low back. Dr. Merchant indicated that appellant was unable to return to work as a police officer because he was unable to lift more than 20 pounds and he was unable to crouch or stoop on an occasional basis. While he noted appellant's description of the alleged factors of employment and his belief that these factors caused appellant's lumbar condition, he did not provide his own opinion on causal relationship.⁹ Dr. Merchant did not provide medical reasoning, or rationale, explaining how appellant's accepted employment factors caused or aggravated his diagnosed condition. Medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹⁰ Dr. Merchant's report is therefore insufficient to establish appellant's claim.

In a reports dated November 16 and 17, 2017, Dr. Yang diagnosed chronic low back pain. The Board has held that pain is a symptom, not a compensable medical diagnosis.¹¹ The Board has also held that a medical report is of no probative value if it does not provide a firm diagnosis of a particular medical condition, or offer a specific opinion as to whether the accepted employment incident caused or aggravated the claimed condition.¹² While Dr. Yang responded that the condition found was caused or aggravated by appellant's employment activity of "wearing heavy vest and gun belt," he did not explain how physiologically appellant's specific alleged employment factors caused a diagnosed condition.¹³ As his reports lack a diagnosis and medical rationale establishing causal relationship, they are therefore insufficient to establish appellant's claim.¹⁴

⁹ See *L.M.*, Docket No. 18-0256 (issued May 28, 2019). See also *A.M.*, Docket No. 10-0205 (issued October 5, 2010) (a physician's opinion must be independent from a claimant's belief regarding causal relationship).

¹⁰ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹¹ *J.C.*, Docket No. 18-1503 (issued May 2, 2019); *C.M.*, Docket No. 18-0146 (issued August 16, 2018); *D.D.*, 57 ECAB 734, 738 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004).

¹² *L.E.*, Docket No. 19-0470 (issued August 12, 2019); *M.J.*, Docket No. 18-1114 (issued February 5, 2019).

¹³ *M.L.*, Docket No. 19-0813 (issued November 26, 2019); see *B.R.*, Docket No. 17-0294 (issued May 11, 2018).

¹⁴ *Supra* note 8.

OWCP received diagnostic reports. The Board has held that diagnostic studies lack probative value as they do not provide an opinion on causal relationship between the employment factors and the diagnosed conditions.¹⁵

OWCP also received physical therapy reports and a note from a kinesiotherapist. Health care providers such as physical therapists are not considered “physicians” under FECA. Thus, their opinions do not constitute rationalized medical opinions and have no probative value.¹⁶

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence.¹⁷ Appellant failed to provide reasoned medical evidence demonstrating that his lumbar condition was caused or aggravated by the accepted factors of his federal employment. Accordingly, the Board finds that he has failed to meet 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 factors of his federal employment.

¹⁵ See *I.C.*, Docket No. 19-0804 (issued August 23, 2019).

¹⁶ 5 U.S.C. § 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. See also *Roy L. Humphrey*, 57 ECAB 238 (2005). *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); 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *George H. Clark*, 56 ECAB 162 (2004) (physician assistant); *Jane A. White*, 34 ECAB 515, 518 (1983) (physical therapist).

¹⁷ *Supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the December 22, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 16, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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