United States Department of Labor
Employees' Compensation Appeals Board

E.S., Appellant	)	
and	)	**Docket No. 21-0341**
	)	**Issued: August 10, 2021**
U.S. POSTAL SERVICE, ALEDO POST OFFICE, Aledo,TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 4, 2021 appellant filed a timely appeal from an August 13, 2020 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]

ISSUE

The issue is whether appellant has met his burden of proof to establish a medical condition causally related to the accepted November 28, 2017 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the August 13, 2020 decision, appellant submitted additional evidence. However, 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

On November 1, 2018 appellant, then a 57-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 28, 2017 he strained the left side of his groin when he tripped on a floor mat while in the performance of duty. He did not immediately stop work.

In a November 14, 2018 development letter, OWCP informed appellant that the evidence submitted was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the requested information. No response was received.

By decision dated December 20, 2018, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the injury and/or events occurred as he described. It noted that he had not responded to the development letter of November 14, 2018. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

In a November 29, 2017 authorization for examination and/or treatment (Form CA-16), the employing establishing authorized appellant to seek medical care. In Part B of the Form CA-16, attending physician's report, dated August 14, 2019, an unidentified healthcare provider reported that appellant retrieved a mail tub and injured his back and left hip. Appellant was diagnosed with lumbar sprain, lumbar radiculopathy, and left hip sprain. The healthcare provider checked a box marked "Yes" indicating that the diagnosed conditions were caused or aggravated by the described employment activity.

In a November 29, 2017 accident report, the postmaster indicated that appellant was moving to the back of his long life vehicle (LLV) when he tripped over a loose/torn floor mat.

An August 2, 2018 magnetic resonance imaging (MRI) scan of the lumbar spine revealed unilateral right spondylolysis at L5-S1, mild grade one anterior spondylolisthesis, disc desiccation noted at L5-S1, mild grade one retrolisthesis at L1-2 and L2-3, mild right neural foraminal narrowing at L1-2, and disc desiccation at L1-2 and L2-3. An x-ray of the left hip performed on December 19, 2018 revealed no acute fracture, dislocation, or advanced arthritic changes.

On April 2, 2019 Dr. Theodore W. Crofford, a Board-certified orthopedist, treated appellant for left hip discomfort/pain with a gradual onset of symptoms beginning one year ago. Appellant reported that the pain was not related to any particular event or injury. Findings on examination revealed mild antalgic gait and mildly positive impingement sign. Dr. Crofford reviewed the findings of the February 7, 2019 MRI scan of the left hip. He diagnosed left hip labral tear confirmed by MRI scan, left hip greater trochanteric bursitis, possible left sacroiliac disease, and possible lumbar spine arthritis. Dr. Crofford performed a left greater trochanter bursa injection. He saw appellant in follow up on May 7, 2019 who reported complete relief of his hip symptoms for approximately three weeks after the injection. The diagnosis remained the same and Dr. Crofford recommended physical therapy.

Dr. Rory Allen, an osteopath, treated appellant on August 14, September 4 and 25, and October 16, 30, 2019 for injuries to appellant's lumbar spine, left hip, and left leg. Appellant

reported working as a rural mail carrier and on November 28, 2017, while retrieving a tub of mail from the back of his LLV weighing approximately 40 to 50 pounds his foot got caught on a floor mat causing him to twist and pull his lumbar spine, left hip, and left leg. Findings on examination of the lumbar spine revealed paraspinal tenderness, muscle spasms, decreased range of motion, positive straight leg test, antalgic gait, sensory decreased at left L3, L4, diffuse tenderness, and decreased range of motion of the left hip. An MRI scan of the left hip revealed full thickness chondral delamination of the antero-superior acetabulum, chondromalacia, mild-to-moderate tendinopathy, mild-to-moderate degenerative change at the sacroiliac joints bilaterally, mild degenerative change of the pubic synthesis, and increased T2 signal intensity of the right pubic bone suspicious for partial-thickness tear of the right rectus abdominis-adductor longus aponeuroses. Dr. Allen diagnosed lumbar sprain, lumbar radiculopathy, and left hip sprain.

In a letter of causation dated August 14, 2019, Dr. Allen opined that in his professional medical opinion appellant sustained a traumatic work-related injury while employed as a mail handler on November 28, 2017 when appellant retrieved a tub of mail from the back of his LLV and his left foot caught the floor mat causing him to twist and pull the lumbar spine, left hip, and left leg. He described a compression and rotational force to both the lumbar spine and the left hip and left leg directly causing the diagnosed conditions. In duty status reports (Form CA-17) dated August 14, September 25, and October 16, 2019, Dr. Allen noted clinical findings of decreased range of motion, weakness, and neuropathy and noted the diagnoses due to injury was sprain of the ligaments of the lumbar spine, radiculopathy, and sprain of the left hip.

On October 31, 2019 appellant requested reconsideration. He explained that he was attempting to retrieve mail from the back of his LLV when he tripped on the floor mat and hit his leg. Appellant promptly reported the injury to his supervisor and asserts that he delayed filing his claim because he was informed that appellant would be disciplined and would lose his job. In an undated routing slip, appellant indicated that on November 28, 2017 he was attempting to get a tub of mail from the back of the LLV when his left "foot got tangled up in the mat" causing him to twist his left leg. In an additional undated statement, appellant reported that on November 28, 2017 while at work he was attempting to move a tub of mail from the back of his LLV to the front and his left foot became tangled in the torn floor mat causing him to injury his left leg.

On November 12 and December 13, 2019 Dr. Allen treated appellant, noting a history of injury and diagnosed lumbar sprain, lumbar radiculopathy, and left hip sprain. He continued in a limited-duty work status. In duty status reports (Form CA-17) dated November 12 and December 13, 2019, Dr. Allen noted the diagnoses due to injury was sprain of the ligaments of the lumbar spine, radiculopathy, and sprain of the left hip and returned appellant to work for four hours a day with restrictions.

By decision dated January 16, 2020, OWCP denied modification of the decision dated December 20, 2018.

Appellant was evaluated by Dr. Mike Martinez, a Board-certified anesthesiologist, for left-sided lower extremity pain and left-sided hip pain. Dr. Martinez performed a left-sided SI joint injection on August 9, 2018, a medial branch nerve block at left L4-5 and L5-S1 on September 14, 2018, and a transforaminal epidural steroid injection at left L2-3 on December 31, 2018. On January 10, 2019 he treated appellant post procedure and appellant reported no pain relief.

Appellant reported an onset of symptoms in May 2018, which felt like a pulled back muscle which progressed to his left hip. Dr. Martinez diagnosed lumbar radiculopathy, lumbar spondylosis, sacroiliitis, chronic pain, left hip pain, long term drug therapy, and trochanteric bursitis of the left hip.

Rachel Holland, a physician assistant, treated appellant on August 23 and December 18, 2018, noting that his symptoms began in May 2018 and felt like he pulled a back muscle and later noticed pain in his hip. She diagnosed lumbar spondylosis, sacroiliitis, chronic pain, left hip pain and long-term drug therapy.

On February 18, 2019 Jeff Martz, a physician assistant, treated appellant for recurring left lumbar and left hip pain beginning May 2018. He diagnosed lumbar radiculopathy, lumbar spondylosis, sacroiliitis, chronic pain, left hip pain, and trochanteric bursitis of the left hip.

On February 28, 2019 Dr. Jon-Paul Harmer, a Board-certified anesthesiologist, evaluated appellant for left-sided lower extremity pain. He performed radiofrequency of medial branch nerves bilateral at L4-5 and L5-S1. Dr. Harmer diagnosed lumbar facet syndrome at L3, L4, and L5, lumbar spondylosis without myelopathy at L4-5 and L5-S1.

Dr. Allen treated appellant in follow up on January 13 and 22, March 2, April 6, May 6, and June 8, 2020 for lumbar, left leg, and left hip work injuries. He noted a history of injury and diagnosed lumbar sprain, lumbar radiculopathy, and left hip sprain. An electromyogram (EMG) and nerve conduction velocity (NCV) study revealed left-sided peroneal motor neuropathy across the knee, bilateral tibial motor neuropathy, left-sided sural sensory neuropathy, and left-sided saphenous sensory neuropathy. Dr. Allen noted that appellant could work limited duty four hours per day. On January 22, 2020[3] he opined that, due to the sustained work injuries and delays with the insurance carrier, appellant will not likely return to work full duty and will likely remain limited duty with a 15-pound lifting restriction. In reports dated June 8 and July 8 and 29, 2020, Dr. Allen opined that, in his professional medical opinion, appellant sustained a work-related injury while employed as a rural mail handler on November 28, 2017. He diagnosed lumbar sprain, lumbar radiculopathy, and left hip sprain.

In duty status reports (Form CA-17) dated January 13, February 3, March 2, April 6, May 6, June 8, and July 8, 2020, Dr. Allen noted clinical findings of decreased range of motion, weakness, and neuropathy and noted the diagnoses due to injury was sprain of the ligaments of the lumbar spine, radiculopathy, and sprain of the left hip.

A computerized tomography (CT) scan of the lumbar spine dated January 15, 2020 revealed many metallic foreign bodies from a gunshot injury at L2 and L3, L1-2 and L2-3 retrolisthesis, broad disc protrusion/herniation at L2-3 with mild thecal sac stenosis, L3-4 broad disc protrusion/herniation and mild foraminal narrowing, L4-5 broad disc protrusion/herniation with mild thecal sac stenosis and mild bilateral neural foraminal narrowing, L5-S1grade one

[3] Dr. Allen submitted an amended January 22, 2020 progress note and disability narrative dated February 3, 2020, which appears to be the same report.

anterolisthesis with right L5 pars interarticularis deft, disc protrusion/herniation, mild thecal sac stenosis, and mild bilateral neural foraminal narrowing.

In a January 22, 2020 statement, appellant provided a history of injury to his left leg, back, and hip that occurred on November 28, 2017. He noted that he immediately reported his injury to his supervisor, D.K., who informed him that a disciplinary hearing would be scheduled. Appellant feared that his 17-year career with the employing establishment might be in jeopardy if he pursued a claim. He indicated that his symptoms continued and, after a month, he sought treatment through his private insurance. After several months with no significant improvement, appellant was referred to a pain management clinic and then for physical therapy. He continued to work restricted duty.

On May 15, 2020 appellant requested reconsideration.

By decision dated August 13, 2020, OWCP modified the January 16, 2020 decision, finding that appellant had established that the employment incident occurred as alleged, but affirmed the denial of the claim, further finding that the medical evidence of record was insufficient to establish a causal relationship between his diagnosed conditions and the accepted November 28, 2017 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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 filed within the applicable time limitation of FECA,[5] 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.[6] 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.[7]

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.[8] Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment

[4] *Supra* note 1.

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

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

[7] *K.M.*, Docket No. 15-1660 (issued September 16, 2016).

[8] *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

incident that allegedly occurred.[9] The second component is whether the employment incident caused a personal injury.[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 a causal relationship between the diagnosed condition and the accepted employment incident 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 the specific employment incident.[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, 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 appellant has not met his burden of proof to establish a medical condition causally related to the accepted November 28, 2017 employment incident.

Dr. Allen treated appellant August 14, September 4 and 25, October 16 and 30, November 12, and December 13, 2019, and January 13 and 22, March 2, April 6, May 6, and June 8, 2020 and diagnosed lumbar sprain, lumbar radiculopathy, and left hip sprain. Appellant reported working as a rural mail carrier and on November 28, 2017, while retrieving a tub of mail weighing approximately 40 to 50 pounds, his foot got caught on a floor mat causing him to twist and pull his lumbar spine, left hip, and left leg. However, these generalized statements do not establish causal relationship because they merely repeat his allegations and are unsupported by adequate medical rationale explaining how the accepted November 28, 2017 employment incident actually caused a diagnosed medical condition.[15] The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.[16] Thus, these

[9] *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[10] *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

[11] *T.H.*, *supra* note 8; *Robert G. Morris*, 48 ECAB 238 (1996).

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

[13] *Id.*; *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[14] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *See R.D.*, Docket No. 18-1551 (issued March 1, 2019).

[15] *See J.B.*, Docket No. 18-1006 (issued May 3, 2019).

[16] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

reports are of limited probative value and insufficient to establish that appellant sustained an employment-related injury.

In a letter of causation dated August 14, 2019, Dr. Allen opined that appellant sustained a traumatic work-related injury while employed as a mail handler on November 28, 2017 when appellant retrieved a tub of mail from the back of his LLV and his left foot caught the floor mat causing him to twist and pull the lumbar spine, left hip, and left leg. He described a compression and rotational force to both the lumbar spine and the left hip and left leg directly causing the diagnosed conditions. Similarly, on January 22, June 8, and July 8 and 29, 2020, Dr. Allen opined that appellant sustained a work-related injury while employed as a rural mail handler on November 28, 2017. He diagnosed lumbar sprain, lumbar radiculopathy, and left hip sprain. Dr. Allen, however, did not provide medical rationale supporting his conclusory opinion. A medical opinion must explain how the implicated employment factors physiologically caused, contributed to, or aggravated the specific diagnosed conditions.[17] Without this explanation, Dr. Allen's reports are insufficient to meet appellant's burden of proof to establish his claim.[18]

Appellant also submitted Form CA-17 reports from Dr. Allen dated August 14, September 25, October 16, November 12, and December 13, 2019, and January 13, February 3, March 2, April 6, May 6, June 8, and July 8, 2020. In these reports, Dr. Allen noted the diagnoses due to injury was sprain of the ligaments of the lumbar spine, radiculopathy, and sprain of the left hip. He, however, did not offer an opinion as to whether appellant's diagnosed conditions were causally related to the employment incident on November 28, 2017 in any of these Form CA-17 reports. 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] Accordingly, these reports are insufficient to establish appellant's claim.

Appellant was evaluated by Dr. Martinez who performed a left-sided SI joint injection on August 9, 2018, a medial branch nerve block at left L4-5 and L5-S1 on September 14, 2018, and a transforaminal epidural steroid injection at left L2-3 on December 31, 2018. In a January 10, 2019 note, Dr. Martinez reported an onset of symptoms in May 2018, which felt like a pulled back muscle that progressed to his left hip. He diagnosed lumbar radiculopathy, lumbar spondylosis, sacroiliitis, chronic pain, left hip pain, long-term drug therapy, and trochanteric bursitis of the left hip. In these notes, Dr. Martinez did not offer an opinion as to whether a diagnosed condition was causally related to the accepted employment incident on November 28, 2017. The Board has held that medical evidence that does not include an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[20] These notes from Dr. Martinez are, therefore, insufficient to establish appellant's claim.

On April 2 and May 7, 2019 Dr. Crofford treated appellant for left hip discomfort/pain with a gradual onset of symptoms beginning one year ago. Appellant indicated that the pain was not

[17] *K.G.*, Docket No. 18-1598 (issued January 7, 2020).

[18] *Id.*

[19] *L.B.*, Docket No. 19-1907 (issued August 14, 2020); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[20] *Id.*

related to any particular event or injury. Dr. Crofford diagnosed left hip labral tear confirmed by MRI scans, left hip greater trochanteric bursitis, possible left sacroiliac disease, and possible lumbar spine arthritis. However, these reports do not support causal relationship as neither appellant nor his physician attribute the injury to the November 28, 2017 work incident.

In a February 28, 2019 report, Dr. Harmer diagnosed lumbar facet syndrome at L3, L4, and L5, lumbar spondylosis without myelopathy at L4-5 and L5-S1 and performed radiofrequency of medial branch nerves bilateral at L4-5 and L5-S1. However, he did not render an opinion on causation. 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.[21]

Appellant submitted treatment notes from physician assistants, Ms. Holland and Mr. Martz, dated August 23 and December 18, 2018 and February 18 and April 3, 2019, respectively. Certain healthcare providers such as physician assistants, however, are not considered physicians as defined under FECA.[22] Consequently, these reports will not suffice for purposes of establishing entitlement to FECA benefits.[23]

In a November 29, 2017 authorization for examination and/or treatment (Form CA-16), the employing establishing authorized appellant to seek medical care. Appellant submitted Part B of the Form CA-16, attending physician's report, dated August 14, 2019, which was not signed. The Board has held that a medical note containing an illegible signature or which is unsigned has no probative value, as it is not established that the author is a physician.[24]

The record also contains a lumbar spine MRI scan, a CT scan of the lumbar spine, and x-rays of the lumbar spine and left hip, as interpreted by diagnostic radiologists and an EMG/NCV. The Board has held that diagnostic tests, standing alone, lack probative value on the issue of causal relationship as they do not address whether the employment incident caused a diagnosed condition.[25]

As appellant has not submitted rationalized medical evidence establishing that his injury is causally related to the accepted November 28, 2017 work accident, the Board finds that he has not met his burden of proof to establish his claim.

[21] *Id.*

[22] *See S.K.*, Docket No. 20-1049 (issued June 28, 2021); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[23] 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 14 at 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 V.W.*, Docket No. 20-0693 (issued June 2, 2021).

[24] *See Z.G.*, 19-0967 (issued October 21, 2019); *see R.M.*, 59 ECAB 690 (2008); *Bradford L. Sullivan*, 33 ECAB 1568(1982) (where the Board held that a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a "physician" as defined in FECA).

[25] *V.Y.*, Docket No. 18-0610 (issued March 6, 2020).

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 November 28, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the August 13, 2020 decision of the Office of Workers' Compensation Programs is affirmed.[26]

Issued: August 10, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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

[26] The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 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).