United States Department of Labor
Employees' Compensation Appeals Board

E.M., Appellant	)	
	)	
and	)	**Docket No. 20-0678**
	)	**Issued: January 11, 2021**
U.S. POSTAL SERVICE, BELOIT POST OFFICE, Beloit WI, Employer	)	
	)	

Appearances:
Larrissa Ann Parde, for the appellant[1]
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 7, 2020 appellant, through counsel, filed a timely appeal from an August 19, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 February 10, 2018 employment incident.

FACTUAL HISTORY

On February 10, 2018 appellant, then a 39-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his back when he slipped and fell on ice while in the performance of duty. He did not stop work.

In a February 10, 2018 medical report, Dr. Tejesh N. Patel, Board-certified in family practice, reported that appellant injured his back when he slipped and fell on ice. He diagnosed left low back pain. In a medical note of even date, Dr. Patel released appellant to work on February 11, 2018 with restrictions for no pulling, pushing, or lifting over 10 pounds. He further noted that appellant could return to work without restrictions on February 19, 2018.

A lumbosacral spine x-ray read by Dr. George Cherian, Board-certified in diagnostic radiology, dated February 10, 2018 demonstrated suspected bilateral L5 spondylolysis.

In a February 10, 2018 duty status report (Form CA-17) Dr. Patel diagnosed left low back pain as a result of a slip and fall on ice and provided work restrictions.

In a February 13, 2018 medical note, Dr. Patel excused appellant from work beginning February 10, 2018, until further notice.

A February 16, 2018 lumbosacral spine x-ray read by Dr. Philip Budihardjo, an osteopath Board-certified in diagnostic radiology, again demonstrated suspected bilateral L5 spondylolysis without associated spondylolisthesis.

In a February 16, 2018 report, Dr. Kenneth L. Klein, Board-certified in physical medicine and rehabilitation, provided examination findings and diagnosed left lumbar radiculopathy, low back pain, lumbar herniated nucleus pulposus (HNP), and spondylolysis.[3] In a work excuse note of even date, he indicated that appellant may return to work with restrictions.

A February 27, 2018 lumbar spine magnetic resonance imaging (MRI) scan read by Dr. Eric Goth, Board-certified in diagnostic radiology, demonstrated L5 spondylolysis and mild degenerative changes at L5-S1, but no significant canal or foraminal stenosis.

In medical reports dated March 6 and 20, 2018, Dr. Klein reiterated examination findings and diagnosed left lumbar radiculopathy, low back pain, contusion, lumbar HNP, and

[3] The reports of Dr. Klein of record also note that examination was also performed by Brian Mulder, an advanced practice nurse,

spondylolysis. In a series of work excuse notes dated March 6 through April 10, 2018, Dr. Klein released appellant to work with restrictions.[4]

In a development letter dated April 18, 2018, OWCP informed appellant of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. It afforded him 30 days to submit the necessary evidence.

Appellant resubmitted a March 6, 2018 medical report, by Dr. Klein.

Appellant underwent physical therapy treatment on April 24, 2018.

In an April 24, 2018 response to OWCP's questionnaire, appellant asserted that on February 10, 2018 he slipped on ice and fell down approximately four stairs, landing on the edge of the last step on his back. He indicated that he had no similar disability or symptoms before the February 10, 2018 employment incident.

In a May 4, 2018 medical report, Dr. Klein reported that appellant was doing better and undergoing physical therapy treatment, which was helping. He reiterated his diagnoses. In a work excuse note of even date, Dr. Klein again indicated that appellant could return to work with restrictions.[5]

By decision dated May 22, 2018, OWCP accepted that the February 10, 2018 employment incident had occurred, as alleged, but found that the evidence of record did not establish a diagnosed medical condition in connection to the accepted employment incident and, thus, the requirements had not been met to establish an injury as defined by FECA.

In a May 18, 2018 medical report, Dr. Klein noted that appellant's pain worsened since the last examination and reiterated his diagnoses. In a work excuse note of even date, he again indicated that appellant may return to work with restrictions. A lumbosacral spine x-ray of even date revealed no acute findings.

Appellant continued to receive physical therapy treatment through May 29, 2018.

In an August 31, 2018 medical report, Dr. Klein reiterated his diagnoses. In a work excuse note of even date, he indicated that appellant may return to work without restrictions.

In October 17, 2018 progress notes, Dr. James W. Leonard, Board-certified in physical medicine and rehabilitation, noted that on February 10, 2018 appellant slipped and fell on ice, striking his lower back on the edge of steps, while at work. He indicated that appellant underwent physical therapy without relief. Dr. Leonard conducted a physical examination and reviewed appellant's medical history and diagnostic studies, which demonstrated L5 spondylolysis and disc degeneration at L5-S1. He diagnosed underlying L5 spondylolysis. Dr. Leonard opined that "the fall at work aggravated this underlying L5 spondylolysis beyond its normal progression." He

[4] On April 14, 2018 appellant filed a claim for wage-loss compensation (Form CA-7) for the period March 31 through April 13, 2018.

[5] On May 15, 2018 appellant filed a Form CA-7 for the period April 14 through May 7, 2018.

concluded that appellant's symptoms were directly due to the accepted February 10, 2018 employment incident.

Appellant continued with physical therapy treatment.

On November 27, 2018 appellant requested reconsideration.

In December 17, 2018 progress notes, Dr. Leonard noted that appellant returned with persistent pain and noted that his symptoms were not improving. He reported that appellant's MRI scan revealed bilateral L5 spondylolysis and minimal spondylolisthesis.

By decision dated February 1, 2019, OWCP modified its May 22, 2018 decision, finding that the evidence of record was sufficient to establish a diagnosed condition. However, the claim remained denied, as the evidence of record was insufficient to establish causal relationship between appellant's diagnosed condition and the accepted February 10, 2018 employment incident.

In a March 19, 2019 narrative report, Dr. Leonard indicated that appellant was initially seen by him on October 17, 2018. He noted that appellant slipped on ice and fell down some steps on February 10, 2018 while at work. Dr. Leonard indicated that appellant was seen again on December 17, 2018 with persisting pain and was referred to Dr. Seth K. Williams, a Board-certified orthopedic surgeon, for surgical consultation. He noted that appellant's diagnostic studies demonstrated bilateral L5 spondylolysis with minimal spondylolisthesis at L5-S1. Dr. Leonard reiterated that prior to his fall on February 10, 2018, appellant experienced no pain. He again opined that the fall at work aggravated appellant's underlying L5 spondylolysis beyond its normal progression. Dr. Leonard concluded, with a reasonable degree of medical certainty, that the accepted February 10, 2018 employment incident was the direct cause of appellant's symptoms.

In an April 17, 2019 narrative report, Dr. Williams noted that appellant was evaluated on March 2, 2019 and was diagnosed with L5 spondylolysis. He further indicated that appellant was previously evaluated on January 16, 2019 when he referred appellant for L5 pars injections to confirm L5 spondylolysis as the primary pain generator. Dr. Williams noted that appellant was highly functional and performing well at his job prior to the accepted February 10, 2018 employment incident. He explained that appellant's L5 spondylolysis was "likely" preexisting, as the condition was present in up to five percent of the population and typically occurred during childhood or adolescence. Dr. Williams further explained that the majority of people with L5 spondylolysis typically are without significant symptoms but, in some cases, they become symptomatic and require surgery. He opined that appellant was functioning well until his fall, which produced significant back pain that was persistent despite ongoing efforts with conservative treatment. Dr. Williams, therefore, concluded, within a reasonable degree of medical certainty, that the fall itself exacerbated appellant's preexisting L5 spondylolysis. He recommended surgery.

On May 24, 2019 appellant requested reconsideration.

By decision dated August 19, 2019, OWCP denied modification of its February 1, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[6] 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 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. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[10]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[11] 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 factors identified by the employee.[12]

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] *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).

[8] *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).

[9] *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).

[10] *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).

[11] *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).

[12] *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).

the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[13]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a lumbar condition causally related to his accepted February 10, 2018 employment incident.

Dr. Williams, in his April 17, 2019 narrative report, opined with a reasonable degree of medical certainty that the accepted February 10, 2018 employment incident exacerbated appellant's preexisting L5 spondylolysis. He noted that appellant's diagnosed L5 spondylolysis was "likely" preexisting, as the condition was present in up to five percent of the population, most of which lived without any significant symptoms. While Dr. Williams supported causal relationship, his report does not contain rationale explaining how the accepted employment incident of slipping on ice and falling on the edge of stairs caused or aggravated appellant's preexisting lumbar condition. The Board has held that a medical report is of limited probative value on a given medical issue if it contains an opinion which is unsupported by medical rationale.[14] Further, the Board has consistently held that complete medical rationalization is particularly necessary when there is a preexisting condition involving the same body part,[15] and has required medical rationale differentiating between the effects of the work-related injury and the preexisting condition in such cases.[16] Therefore, Dr. Williams' April 17, 2019 report is insufficient to establish appellant's claim.

In October 17, 2018 progress notes and a March 19, 2019 narrative report, Dr. Leonard noted that appellant experienced no pain prior to the accepted February 10, 2018 employment incident and therefore he concluded that the incident aggravated appellant's underlying L5 spondylolysis beyond its normal progression. The Board has held that the mere fact that symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between a diagnosed condition and employment factors.[17] A medical opinion must provide an explanation of how the specific employment incident or employment factors physiologically caused or aggravated the diagnosed conditions.[18] As such, these notes and report are insufficient to establish appellant's burden of proof.

[13] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *V.W.*, Docket No. 19-1537 (issued May 13, 2020); *N.C.*, Docket No. 19-1191 (issued December 19, 2019); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

[14] *B.M.*, Docket No. 19-1341 (issued August 12, 2020).

[15] *Supra* note 11.

[16] *Id.*; *see also A.J.*, Docket No. 18-1116 (issued January 23, 2019); *M.F.*, Docket No. 17-1973 (issued December 31, 2018); *J.B.*, Docket No. 17-1870 (issued April 11, 2018).

[17] *A.S.*, Docket No. 19-1955 (issued April 9, 2020).

[18] *G.L.*, Docket No. 18-1057 (issued April 14, 2020).

In December 17, 2018 progress notes, Dr. Leonard diagnosed bilateral L5 spondylolysis and minimal spondylolisthesis, but did not offer an opinion as to whether appellant's employment incident caused or aggravated his diagnosed conditions. Likewise, Dr. Klein, in his series of reports, diagnosed left lumbar radiculopathy, low back pain, contusion, lumbar herniated nucleus pulposus (HNP), and spondylolysis. However, he also did not address whether appellant's employment incident caused or aggravated his diagnosed condition. 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] For this reason, these reports are also insufficient to establish appellant's claim.

In a form report and note dated February 10, 2018, Dr. Patel diagnosed left low back pain and provided work restrictions. The Board has held, however, that pain is a symptom and not a compensable medical diagnosis.[20] These reports are, therefore, insufficient to meet appellant's burden of proof.

Dr. Patel excused appellant from work until further notice in his February 13, 2018 note. However, he did not provide a specific diagnosis of an injury or medical condition or an opinion on causation. The Board has held that a medical report lacking a firm diagnosis and a rationalized medical opinion regarding causal relationship is of no probative value.[21] As such, Dr. Patel's February 13, 2018 note is insufficient to meet appellant's burden of proof.

Finally, the record contains diagnostic reports dated February 10, 16, 27, and May 18, 2018. The Board has held, however, that diagnostic test reports standing alone lack probative value on the issue of causal relationship as they do not provide an opinion on causal relationship between an employment incident and a diagnosed condition.[22] For this reason, these diagnostic reports are insufficient to meet appellant's burden of proof.

As there is no rationalized medical evidence of record explaining how appellant's accepted February 10, 2018 employment incident caused or aggravated his diagnosed conditions, the Board finds that he 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.

[19] *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018)..

[20] *T.S.*, Docket No. 20-0343 (issued July 15, 2020); *J.P.*, 59 ECAB 178 (2007).

[21] *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

[22] *L.F.*, Docket No. 19-1905 (issued April 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a lumbar condition causally related to the accepted February 10, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the August 19, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 11, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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