

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

J.M., Appellant)

and)

U.S. POSTAL SERVICE, COPPELL POST)
OFFICE, Coppell, TX, Employer)
_____)

Docket No. 22-0779
Issued: December 12, 2022

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On April 19, 2022 appellant filed a timely appeal from an April 4, 2022 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.²

ISSUE

The issue is whether appellant has established a medical condition causally related to the accepted January 20, 2022 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the April 4, 2022 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 February 11, 2022 appellant, then a 49-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on January 20, 2022 he injured his neck, shoulder, left elbow, and chest when he lost his footing on an uneven drive, fell on his left side under the van while in the performance of duty. He explained that this caused pain from his. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty. Appellant stopped work on January 20, 2022.

In a development letter dated February 22, 2022, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary and afforded him 30 days to submit the necessary evidence.

Appellant subsequently submitted a February 7, 2022 cervical spine magnetic resonance imaging (MRI) scan, which demonstrated advanced multilevel spondylosis, C2-3 severe right foraminal stenosis, C3-4 mild left and moderate-to-severe right foraminal stenosis, C4-5 mild canal stenosis and cord impingement, C4-5 moderate-to-severe left and severe right foraminal stenosis, C5-6 mild canal stenosis and cord impingement, C5-6 severe bilateral foraminal stenosis, more pronounced on the right, and C6-7 moderate-to-severe bilateral foraminal stenosis.

In a February 9, 2022 report, Dr. Andrew M. Jen, a Board-certified orthopedic surgeon, related that appellant was seen for a one-week follow up for left shoulder pain and left arm radiculopathy. Appellant reported that the tingling and shooting sensation in his chest wall had stopped, but he still had pain going down his shoulder and arm. Dr. Jen noted that appellant had a history of prior lumbar spine problems for which he had received treatment, but that he had not received any treatment for his cervical spine. He reviewed MRI scans of appellant's cervical and thoracic spine, noting findings of significant foraminal stenosis, particularly at C5-6 and C6-7 on the left, as well as some mild compression of a few nerve roots in the thoracic spine. Examination of the left shoulder demonstrated forward flexion of 170 degrees, abduction of 90 degrees, external rotation of 60 degrees, and mid-thoracic internal rotation. Dr. Jen diagnosed cervical radiculopathy and recommended evaluation by a spine surgeon for further evaluation of the cervical spine and possible injections to the cervical spine.

In a February 22, 2022 work excuse note, Dr. Jen indicated that appellant was seen on February 9, 2022. He held appellant off work pending evaluation on March 11, 2022. Dr. Jen also advised that appellant could not drive until further notice.

In a March 8, 2022 work excuse note, Dr. Jen advised that appellant should not drive long distances until further notice. He noted that appellant would be scheduled for surgery on a date to be determined.

A March 11, 2022 report from Dr. Jose Reyna, a Board-certified orthopedic spine surgeon, related that appellant experienced neck and left upper extremity pain, which began on January 20, 2022 when he sustained a ground-level fall while performing yard work. He reviewed the February 7, 2022 cervical spine MRI scan and a thoracic spine MRI scan taken on the same date that demonstrated T9-10 right-sided disc osteophyte complex projecting posteriorly, T7-8 left-sided disc osteophyte complex with abutment of the left-side of the spinal cord, and 42 degree

levoscoliosis of the thoracolumbar region. Dr. Reyna also reviewed March 11, 2022 cervical spine x-rays demonstrating C4-5 and C5-6 moderate-degenerative disc disease with early anterior osteophyte formation, thoracic spine x-rays demonstrating mild dextroscoliosis of the mid-thoracic spine and significant osteophyte formation in the lower thoracic spine suggestive of diffuse idiopathic skeletal hyperostosis (DISH), and lumbar spine x-rays demonstrating approximately 50 degree degenerative or idiopathic dextroscoliosis of the thoracolumbar region, mild left lateral listhesis of L3 or L4, and large diffuse osteophyte formation suggestive of DISH. Examination findings revealed bilateral tenderness to palpation over the paraspinal muscles of the upper thoracic spine and positive left Spurling test. Dr. Reyna diagnosed spondylosis of cervical spine with radiculopathy, adolescent idiopathic scoliosis of thoracic region, thoracic spondylosis, degenerate scoliosis in adult patient, lumbar spondylosis, DISH, C4-5 degenerative disc disease, multilevel foraminal stenosis, left greater than right cervical spondylosis, and degenerative or idiopathic right thoracic and left thoracolumbar scoliosis.

By decision dated April 4, 2022, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish causal relationship between his diagnosed conditions and the accepted January 20, 2022 employment incident. Consequently, it found that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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,⁴ 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.⁵ 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.⁶

To determine whether an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first

³ *Supra* note 1.

⁴ *S.A.*, Docket No. 19-1815 (issued June 26, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *S.A.*, Docket No. 19-1221 (issued June 9, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

component is whether the employee actually experienced the employment incident that allegedly occurred.⁷ The second component is whether the employment incident caused a personal injury.⁸

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁹ 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.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted January 20, 2022 employment incident.

In his March 11, 2022 report, Dr. Reyna related that appellant experienced neck and left upper extremity pain, which began on January 20, 2022 when he fell while performing yard work and diagnosed multiple cervical and thoracic conditions. This history, however, contradicts appellant's account of falling under his work van while in the performance of duty. Dr. Reyna did not provide an opinion on causal relationship between appellant's diagnosed conditions and the accepted January 20, 2022 employment incident. The Board has held that evidence that fails to provide an opinion on causal relationship is of no probative value.¹¹ Thus, this evidence is insufficient to establish the claim.

In a February 9, 2022 report, Dr. Jen diagnosed cervical radiculopathy. Appellant also submitted work restriction notes from Dr. Jen dated February 22 and March 8, 2022. None of these notes offered an opinion on causal relationship. As noted above, 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.¹² For this reason, this evidence is insufficient to meet appellant's burden of proof.

Appellant also submitted a February 7, 2022 cervical spine MRI scan. The Board has held, however, that diagnostic testing reports, standing alone, lack probative value on the issue of causal relationship as they do not address the relationship between the accepted employment factors and

⁷ *R.K.*, Docket No. 19-0904 (issued April 10, 2020); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *Y.D.*, Docket No. 19-1200 (issued April 6, 2020); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *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).

¹⁰ *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).

¹¹ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² *Id.* *See also, S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019).

a diagnosed condition.¹³ For this reason, this evidence is also insufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted January 20, 2022 employment incident, the Board finds that appellant has not met his burden of proof to establish his claim.

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 January 20, 2022 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the April 4, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 12, 2022
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

¹³ *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).