United States Department of Labor
Employees' Compensation Appeals Board

R.P., Appellant	)	
and	)	**Docket No. 22-0621**
	)	**Issued: July 20, 2022**
DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS & BORDER PROTECTION, San Ysidro, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On March 20, 2022 appellant filed a timely appeal from a December 21, 2021 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish a back condition causally related to the accepted June 9, 2021 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 16, 2021 appellant, then a 50-year-old customs and border patrol agriculture specialist, filed a traumatic injury claim (Form CA-1) alleging that on June 9, 2021 he strained his lower back when lifting heavy contraband while in the performance of duty. He did not stop work.

In a work status report dated June 13, 2021, Cori Anne McMahon, a physician assistant, diagnosed lumbar muscle strain and placed appellant on modified duty from June 14 to 27, 2021. She noted that the onset of his condition was June 10, 2021.

In a June 24, 2021 development letter, OWCP informed appellant of the deficiencies of his claim. It advised 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. No response was received.

By decision dated July 29, 2021, OWCP accepted that the June 9, 2021 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that he had not submitted medical evidence containing a medical diagnosis in connection with the accepted employment incident. Consequently, OWCP found that he had not met the requirements to establish an injury as defined by FECA.

OWCP continued to receive evidence. An August 15, 2021 magnetic resonance imaging (MRI) scan report by Dr. Adam Wang, a Board-certified radiologist, noted that appellant had complained of ongoing lower back pain, precipitated by heavy lifting, for greater than three weeks. The MRI scan report noted an impression of a small left paracentral disc protrusion at L3-L4 resulting in mild left neural foraminal narrowing, and a high signal intensity zone in the posterior annulus consistent with annular fissure or tear at L5-S1.

In a work status report dated August 17, 2021, Dr. Scott Andrew McIver, a family medicine specialist, diagnosed lumbar disc annular tear and placed appellant on modified duty from August 18 to 31, 2021.

In a letter dated August 27, 2021, appellant explained that he was assigned to collect and weigh contraband as part of his federal work duties. He asserted that he injured his lower back on June 9, 2021 while placing heavy contraband on the weighing scale. Appellant noted that there were no witnesses. He thought it was a minor sprain, but on June 13, 2021 he was assigned a 16-hour double shift, which aggravated the injury and caused pain to the point of limited movement. Appellant subsequently sought medical treatment on June 13, 2021. He provided a summary of his medical treatment and encounters.

On August 28, 2021 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held telephonically on November 16, 2021.

In a September 28, 2021 work status report, Dr. Adrian Christopher Nickolescu, a physiatrist, noted a diagnosis of chronic low back pain of greater than three months with lumbosacral radiculopathy. He placed appellant on modified duty from September 22 to November 5, 2021 and noted that, thereafter, appellant could return to full duty.

In a letter dated November 22, 2021, appellant explained that he was initially examined by a physician assistant rather than a doctor, and this was beyond his control. He then revisited the urgent care center on June 27, 2021 and was seen by a physician who ordered an MRI scan of his lower back. Appellant noted that he underwent an MRI scan on August 8, 2021, which showed damage to his lower back as a result of the June 9, 2021 employment incident. He related that on August 17, 2021 Dr. McIver provided a diagnosis and referred him to Dr. Nickolescu, for rehabilitation, which he was undergoing. Appellant attached a copy of the August 15, 2021 MRI scan report and Dr. McIver's August 17, 2021 return-to-work note. He also attached a work status report dated August 30, 2021, in which Dr. Nickolescu diagnosed low back pain, lumbar disc degeneration, and lumbar radiculopathy and placed appellant on modified duty from September 1 to 21, 2021.

By decision dated December 21, 2021, OWCP's hearing representative affirmed, as modified, the July 21, 2021 decision, finding that appellant had established a medical diagnosis in connection with the accepted June 9, 2021 employment incident. However, the claim remained denied because the evidence of record was insufficient to establish a causal relationship between the accepted June 9, 2021 employment incident and the diagnosed lower back conditions.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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,[3] 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.[4] 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.[5]

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. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is

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[2] *Supra* note 1.

[3] *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).

[4] *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).

[5] *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).

whether the employment incident caused a personal injury and can be established only by medical evidence.[6]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[7] 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 the specific employment incident identified by the claimant.[8]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a back condition causally related to the accepted June 9, 2021 employment incident.

In his work status report dated August 17, 2021, Dr. McIver provided a diagnosis of lumbar disc annular tear and provided work restrictions. He did not, however, offer an opinion as to whether the diagnosed conditions were causally related to the accepted employment incident. 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.[9] Therefore, Dr. McIver's August 17, 2021 report is insufficient to establish appellant's claim.

Likewise, in his August 30 and September 28, 2021 work status reports, Dr. Nickolescu diagnosed chronic low back pain, lumbar disc degeneration, and lumbar radiculopathy and provided work restrictions. He did not offer an opinion on causal relationship. As noted above, a report that does not address causation is of no probative value. Therefore, Dr. Nickolescu's August 30 and September 28, 2021 reports are also insufficient to establish appellant's claim.[10]

Appellant also submitted an August 15, 2021 MRI scan report from Dr. Wang. 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 a diagnosed condition.[11] For this reason, this evidence is also insufficient to meet appellant's burden of proof.

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[6] *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).

[7] *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).

[8] *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

[9] *See S.S.*, Docket No. 21-0837 (issued November 23, 2021); *J.M.*, Docket No. 19-1926 (issued March 19, 2021); *L.D.*, Docket No. 20-0894 (issued January 26, 2021); *T.F.*, Docket No. 18-0447 (issued February 5, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[10] *Id*.

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

The remaining medical evidence of record consists of a June 13, 2021 work status report signed by a physician assistant. However, physician assistants are not considered "physician[s]" as defined under FECA and, thus, their reports do not constitute competent medical opinion evidence.[12]

As appellant has not submitted rationalized medical evidence establishing that his diagnosed conditions are causally related to the accepted June 9, 2021 employment incident, the Board finds that he 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 back condition causally related to the accepted June 9, 2021 employment incident.

[12] Section 8101(2) 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* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, 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 S.S.*, Docket No. 21-1140 (issued June 29, 2022) (physician assistants are not considered physicians under FECA).

ORDER

IT IS HEREBY ORDERED THAT the December 21, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 20, 2022
Washington, DC

Patricia H. Fitzgerald, 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