United States Department of Labor
Employees' Compensation Appeals Board

J.K., Appellant	)	
and	)	**Docket No. 20-0527**
	)	**Issued: May 24, 2022**
U.S. POSTAL SERVICE, RENSSELAER POST OFFICE, Rensselaer, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On January 8, 2020 appellant filed a timely appeal from a July 18, 2019 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 lumbar condition was causally related to the accepted April 25, 2019 employment incident.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the July 18, 2019 decision, OWCP received 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 evidence for the first time on appeal. *Id*.

FACTUAL HISTORY

On April 30, 2019 appellant, then a 44-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 25, 2019 he felt a sharp pain in the right lower back when he bent to pick-up mail from a tray while in the performance of duty. He stopped work on April 28, 2019.

In an April 25, 2019 report, Dr. Aruna Sahoo, a Board-certified pain specialist, noted appellant's history of injury and diagnosed lumbar radiculopathy and degenerative disc disease. She explained that appellant "started experiencing this pain when he bent over to collect mail from the truck. I do feel that his pain does directly correlate with this maneuver." In a work release form report of even date, Dr. Sahoo indicated that appellant would not be able to return to work until May 9, 2019.

An April 26, 2019 attending physician's report (Form CA-20) from Dr. Sahoo noted a history of injury that appellant "[b]ent to get something out of a truck caused shooting pain." She diagnosed lumbar radiculopathy and checked a box marked "Yes" in response to whether she believed that the conditions found were caused or aggravated by an employment activity.

On May 2, 2019 the employing establishment executed an authorization for examination and/or treatment (Form CA-16) authorizing appellant to seek medical treatment for the alleged April 25, 2019 employment injury.

In a May 2, 2019 Form CA-16, Part B-attending physician's report, Dr. John T. Whalen, a Board-certified orthopedic surgeon, noted that appellant bent over to remove something from a truck and felt lower back pain. He also noted that x-rays revealed degenerative disc disease at L5-S1. Dr. Whalen checked a box marked "Yes" in response to whether he believed the injury was caused or aggravated by an employment activity.

In a May 8, 2019 report, Dr. Sahoo related that appellant's history of injury that he was removing something from his truck when he started experiencing low back pain, which continued down his right lower extremity. She noted appellant's physical examination findings and diagnosed lumbar radiculopathy and degenerative disc disease. Dr. Sahoo recommended physical therapy, and placed appellant off work. In a May 8, 2019 duty status report (Form CA-17), she noted appellant's history of injury and placed him off work. Dr. Sahoo found that appellant had ongoing back pain due to disc degeneration.

Dr. Sahoo completed another Form CA-17 on May 22, 2019 wherein she noted that appellant should remain off work due to ongoing back pain and provided a diagnosis of disc degeneration.

In a June 5, 2019 development letter, OWCP informed appellant that additional factual and medical evidence was required to establish his claim and attached a questionnaire for his completion. It afforded appellant 30 days to submit the requested evidence. OWCP received treatment notes dating from May 13 to 24, 2019 from Dr. Joseph E. Lowe, a chiropractor, in which he diagnosed lumbar sprain/strain. In a form report containing notes dated from May 13 to 24,

2019, Dr. Lowe indicated that manual manipulation had been performed to correct L4-5 subluxation.

In a May 22, 2019 treatment note, Dr. Sahoo noted that appellant had mowed the lawn the previous day. Appellant felt that this activity as well as walking on uneven surfaces had caused his low back and right lower extremity pain to return. She diagnosed lumbar radiculopathy and degenerative disc disease.

Dr. Sahoo saw appellant again in follow up on June 5, 2019. She noted that appellant's low back pain was more intermittent in nature, and that his right lower extremity pain was no longer present. In a June 5, 2019 Form CA-17, Dr. Sahoo diagnosed radiculopathy. She indicated that appellant could return to work with restrictions.

In a June 13, 2019 report, Dr. Sahoo noted appellant's history of injury and medical treatment. She noted that appellant was seen again on May 22, 2019 after he had mowed his lawn, which had worsened his pain. Dr. Sahoo also noted that he had a history of back pain that waxed and waned, but was "never to this degree of intensity." She indicated that currently, appellant had almost returned to backline function and could return to full-duty work, with the ability to rest in between sitting, standing, or walking for extended periods of time. Dr. Sahoo opined, "I do feel that his current pain complaints are directly correlated to the events at work."

OWCP received physical therapy notes dated from May 17 through June 26, 2019.

On June 28, 2019 OWCP received appellant's response to OWCP's development questionnaire. Appellant reiterated that on April 25, 2019 he bent over to pick up mail from a tray that was located on the floor of his postal vehicle and felt a sharp pain in his right lower back. He noted the medical treatment he had received and that he had returned to work part time on June 10, 2019.

By decision dated July 18, 2019, OWCP denied appellant's claim, finding that he had not established that his diagnosed conditions were causally related to the accepted April 25, 2019 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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,[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

[3] *G.L.*, Docket No. 18-1057 (issued April 14, 2020); *see J.C.*, Docket No. 19-0219 (issued July 26, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *M.G.*, Docket No. 18-1616 (issued April 9, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

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. 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. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[6]

Causal relationship is a medical question that requires rationalized medical opinion to resolve.[7] The opinion of the physician must be based on a complete factual and medical background, 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 factors identified by the claimant.[8]

In a case where 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.[9]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a lumbar condition was causally related to the accepted April 25, 2019 employment incident.

The work excuse dated April 25, 2019 from Dr. Sahoo is insufficient to establish the claim as she did not provide a diagnosis in connection with the April 25, 2019 employment incident and did not address whether appellant's accepted employment incident caused or aggravated a diagnosed medical condition. As the Board has held, medical evidence which does not offer an

[5] *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

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

[8] *A.S.*, *supra* note 5; *Leslie C. Moore*, 52 ECAB 132 (2000).

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship. As such, these reports are insufficient to establish the claim.[10]

In a report dated April 26, 2019, Dr. Sahoo diagnosed lumbar radiculopathy and, in a May 2, 2019 report, Dr. Whalen diagnosed L5-S1 degenerative disc disease. They both checked a box marked "Yes" in response to a question as to whether the condition found was caused or aggravated by the employment activity. While these reports generally support causal relationship, the physicians did not offer medical rationale sufficient to explain how and why they believe that the April 25, 2019 employment incident resulted in or contributed to the diagnosed condition. When a physician's opinion on causal relationship consists only of checking a box marked "Yes" in response to a form question, without explanation or rationale, that opinion has limited probative value and is insufficient to establish a claim.[11]

OWCP received additional reports dated April 25, May 8 and 22, and June 5, and 13, 2019, from Dr. Sahoo wherein she diagnosed lumbar radiculopathy, and degenerative disc disease. While Dr. Sahoo noted appellant's history of injury in her progress reports and generally opined in her April 25, May 22, and June 13, 2019 reports that she believed appellant's conditions were caused by his employment event, she did not provide a rationalized opinion. A medical report lacking a rationalized medical opinion regarding causal relationship, explaining how the employment incident physiologically caused the diagnosed condition is insufficient to establish causal relationship.[12] Such rationale is particularly important here, as Dr. Sahoo noted that appellant had a preexisting condition of degenerative disc disease.[13] Thus, these reports are insufficient to meet appellant's burden of proof.

The record also contains treatment notes, dating from May 13 to 24, 2019, from Dr. Lowe, a chiropractor, who diagnosed a lumbar sprain/strain and subluxation at L4-5. The Board notes that section 8101(2) of FECA[14] provides that the term physician, as used therein, includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary.[15] OWCP's implementing federal regulation at 20 C.F.R. § 10.5(bb) defines subluxation as an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrated on x-ray. As Dr. Lowe did not

[10] *See D.Y.*, Docket No. 20-0112 (issued June 25, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[11] *J.K.*, Docket No. 20-0590 (issued July 17, 2020); *J.A.*, Docket No. 17-1936 (issued August 13, 2018); *Donald W. Long*, 41 ECAB 142 (1989); *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

[12] *See T.H.*, Docket No. 19-1891 (issued April 3, 2020); *P.C.*, Docket No. 18-0167 (issued May 7, 2019).

[13] *See K.M.*, *supra* note 5; *B.R.*, Docket No. 16-0456 (issued April 25, 2016).

[14] 5 U.S.C. § 8101(2).

[15] *Id.*; 20 C.F.R. § 10.311.

diagnose a subluxation as demonstrated by x-ray, he is not considered a physician under FECA and his report does not constitute probative medical evidence.[16]

The physical therapy notes dated May 17 to June 26, 2019, also are of no probative value. The Board has held that a medical report signed solely by a physical therapist is of no probative value as a physical therapist is not considered a physician as defined under FECA and therefore is not competent to render a medical opinion.[17] These reports are therefore insufficient to establish the claim.

As there is no well-rationalized medical opinion establishing appellant's traumatic injury claim, the Board finds that he has not met his burden of proof.[18]

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 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 was causally related to the accepted April 25, 2019 employment incident.[19]

[16] *T.H.,* Docket No. 17-0833 (issued September 7, 2017); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

[17] 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). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *R.L., supra* note 9; *see also 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); *L.F., supra* note 7.

[18] *F.D.*, Docket No. 19-0932 (issued October 3, 2019); *D.N.*, Docket No. 19-0070 (issued May 10, 2019); *R.B.*, Docket No. 18-1327 (issued December 31, 2018).

[19] The Board notes that the case record contains an authorization for examination and/or treatment (Form CA-16) dated May 2, 2019. A properly completed Form CA-16 form authorization 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. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 20-0704 (issued September 25, 2020); *P.R.*, Docket No. 18-0737 (issued November 2, 2018); *Tracy P. Spillane,* 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the July 18, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 24, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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