United States Department of Labor
Employees' Compensation Appeals Board

B.S., Appellant	)	
and	)	**Docket No. 22-1289**
	)	**Issued: August 20, 2024**
U.S. POSTAL SERVICE, DUTCH HOLLOW POST OFFICE, Belleville, IL, Employer	)	

Appearances:
Larrissa Ann Parde, for the appellant[1]
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 September 6, 2022 appellant filed a timely appeal from a May 25, 2022 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.[3]

[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*.

[3] The Board notes that, following the May 25, 2022 decision, appellant submitted additional evidence to OWCP. 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.*

ISSUE

The issue is whether appellant has established a medical condition causally related to the accepted September 8, 2020 employment incident.

FACTUAL HISTORY

On September 9, 2020 appellant, then a 47-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 8, 2020 he strained his lower back when picking up a letter from the floor while in the performance of duty. On the reverse side of the claim form, appellant's supervisor acknowledged that he was injured in the performance of duty. Appellant stopped work on September 8, 2020.

In a September 18, 2020 development letter, OWCP informed appellant of the deficiencies of his claim. It explained the type of evidence required and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In a September 9, 2020 authorization for examination and/or treatment (Form CA-16), the employing establishment authorized appellant to seek medical care. In the Part B attending physician's report of the Form CA-16, of even date, Ashtynn Braden, a physician assistant, reported that appellant bent over to pick up a letter and felt sudden pain in his lower back. Ms. Braden indicated that appellant had a history of degenerative disc disease, arthritis, and surgery on lumbar discs. She noted that appellant had a muscle spasm in the right lower back and diagnosed acute right lower back strain and chronic back pain. Ms. Braden checked a box marked "Yes," indicating that the diagnosed conditions were caused or aggravated by the employment activity and advised that appellant could return to light-duty work on September 16, 2020. She provided the same information in an attending physician's report (Form CA-20) of even date, except that she diagnosed acute lower back strain without chronic back pain.

In a September 10, 2020 Form CA-20, Dr. David O'Neill, an osteopath Board-certified in family medicine, related that appellant sustained a back injury when he bent over and had an acute onset of pain. He noted that appellant had a back injury over 10 years ago. Dr. O'Neill noted that appellant had a lumbar sprain and diagnosed low back pain. He checked a box marked "Yes," indicating that the diagnosed condition was caused or aggravated by the employment activity. Dr. O'Neill indicated that appellant was temporarily totally disabled until September 17, 2020. In a duty status report (Form CA-17) of even date, he noted that appellant injured his back when he bent over on September 8, 2020 and diagnosed lumbar strain.

In September 17 and 24, 2020 reports, Dr. O'Neill reported no abnormalities upon physical examination and diagnosed strain of lumbar spine. In the September 24, 2020 report, he held appellant off work for one week. In corresponding CA-17 forms dated September 17 and 24, 2020, Dr. O'Neill related appellant's history of injury, diagnosed lumbar strain, and held appellant off work.

In a letter dated September 26, 2020, appellant responded to OWCP's development questionnaire, explaining that the letter he picked up weighed less than an ounce and he immediately felt pain in his back. He stated that he had no similar disability or symptoms before the incident.

In an October 1, 2020 report and Form CA-17, Dr. O'Neill diagnosed strain of lumbar region and held appellant off work. In an October 7, 2020 Form CA-17, he held appellant off work pending review of his magnetic resonance imaging (MRI) scan.

By decision dated November 4, 2020, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that his medical condition was causally related to the accepted September 8, 2020 employment incident.

On November 14, 2020 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on March 10, 2021.

Appellant subsequently submitted a November 24, 2020 note from Dr. O'Neill diagnosing lumbar strain and releasing appellant for work. Dr. O'Neill related that appellant had a back injury approximately 10 years ago, which had resolved. He opined that this previous injury and subsequent surgery did not have any bearing on appellant's new back issue. In a medical form of even date, Dr. O'Neill diagnosed lumbar strain and indicated that appellant was incapacitated from September 8 through November 24, 2020. In a November 25, 2020 Form CA-17, he related appellant's history of injury, diagnosed lumbar strain, and released appellant to full-duty work.

In a December 4, 2020 note, Dr. O'Neill related that appellant sustained a lumbar strain caused by repetitive bending, reaching, lifting, and squatting as required by his federal employment. He explained that when appellant "bends to pick a letter off of the ground he risks twisting or pulling a muscle or tendon which can result in a back strain. It can also be caused by a single instance of improper lifting or by overstressing the back muscles." Dr. O'Neill noted that appellant had a back injury approximately 10 years prior, which had resolved, and opined that that injury and subsequent surgery had no bearing on his new issue, which had now also resolved. In a March 29, 2021 note, he clarified that "being in constant motion it is easy to bend/twist in the wrong way causing injury."

By decision dated May 14, 2021, OWCP's hearing representative affirmed the November 4, 2020 decision.

Appellant subsequently submitted a September 8, 2020 emergency room report by Dr. Maria L. Scarbrough, a Board-certified emergency medicine specialist, relating that, earlier that day, appellant had bent over to pick up a piece of mail at work and had sudden onset of pain. Dr. Scarbrough also noted that appellant had back surgery 10 years prior to release an impinged nerve. Examination revealed shuffling and stiff gait secondary to pain and right lower paraspinous muscle spasm with tenderness to palpation. She diagnosed acute right low back pain without sciatica. A lumbar spine x-ray taken on the same date revealed mild L3-L4 and moderate L4-L5 degenerative disc disease with inferior lumbar facet osteoarthritis.

On April 18, 2022 appellant requested reconsideration of the May 14, 2021 decision. In support of his request, he submitted a March 31, 2022 note from Dr. O'Neill relating that appellant was involved in an accident at work on September 8, 2020. Dr. O'Neill opined that within a degree of medical certainty, "the act of bending down to pick up the letter, even as light as it was, caused the diagnosed condition of a lumbar strain. The act of bending and twisting to pick up the letter caused a strain of the muscles in the lumbar region of the back."

By decision dated May 25, 2022, OWCP denied modification of its May 14, 2021 decision.

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 timely filed within the applicable time limitation period 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 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 component is whether the employee actually experienced the employment incident at the time and place and in the manner alleged.[8] The second component is whether the employment incident caused an injury.[9]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[10] 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 incident identified by the employee.[11]

In any 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,

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[4] *Supra* note 2.

[5] *S.S.*, 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).

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

[7] *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).

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

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

[10] *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).

[11] *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.[12]

ANALYSIS

The Board finds that this case is not in posture for decision.

In a December 4, 2020 note, Dr. O'Neill related that appellant sustained a lumbar strain caused by repetitive bending, reaching, lifting, and squatting as required by his federal employment. He explained that when appellant "bends to pick a letter off of the ground he risks twisting or pulling a muscle or tendon which can result in a back strain. It can also be caused by a single instance of improper lifting or by overstressing the back muscles." Dr. O'Neill noted that appellant had a back injury approximately 10 years prior, which head resolved, and opined that that injury and subsequent surgery had no bearing on his new issue, which had now also resolved. In a March 29, 2021 note, he clarified that "being in constant motion it is easy to bend/twist in the wrong way causing injury.

In a March 31, 2022 note, Dr. O'Neill opined that, "the act of bending down to pick up the letter, even as light as it was, caused the diagnosed condition of a lumbar strain. The act of bending and twisting to pick up the letter caused a strain of the muscles in the lumbar region of the back."

The Board finds that, while Dr. O'Neill's December 4, 2020, and March 29, 2021 and March 31, 2022 notes are insufficiently rationalized to establish appellant's claim, they are sufficient to require further development of the medical evidence. Dr. O'Neill demonstrated an understanding of the medical record and case history. His reports raise an uncontroverted inference between the diagnosed medical conditions and the accepted employment incident and are, therefore, sufficient to require OWCP to further develop appellant's claim.[13]

It is well established that, proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[14] OWCP has an obligation to see that justice is done.[15]

The Board finds that Dr. O'Neill's reports, while not fully rationalized, are sufficient to require further development of the medical evidence.[16] On remand, OWCP shall refer appellant, along with the case record and a statement of accepted facts, to a specialist in the appropriate field

[12] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *M.B.*, Docket No. 20-1275 (issued January 29, 2021); *see R.D.*, Docket No. 18-1551 (issued March 1, 2019).

[13] *D.V.*, Docket No. 21-0383 (issued October 4, 2021); *K.S.*, Docket No. 19-0506 (issued July 23, 2019); *H.T.*, Docket No. 18-0979 (issued February 4, 2019); *D.W.*, Docket No. 17-1884 (issued November 8, 2018); *John J. Carlone*, *supra* note 9.

[14] *Id.*; *see also A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

[15] *See B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, *supra* note 9.

[16] *Id*.

of medicine, for a reasoned opinion regarding whether appellant sustained a medical condition causally related to the accepted September 8, 2020 employment incident. If the second opinion physician disagrees with the opinion of Dr. O'Neill, he or she must provide a fully-rationalized explanation of why the accepted employment incident was insufficient to have caused or aggravated appellant's medical condition. After this and other such further development of the case record as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the May 25, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.[17]

Issued: August 20, 2024
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

[17] The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 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. *See* 20 C.F.R. § 10.300(c); *J.J.*, Docket No. 24-0724 (issued July 20, 2024); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).