

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

J.A., Appellant)

and)

U.S. POSTAL SERVICE, BETHPAGE)
PROCESSING AND DISTRIBUTION CENTER,)
Bethpage, NY, Employer)
_____)

Docket No. 24-0633
Issued: August 20, 2024

Appearances:

Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On May 24, 2024 appellant, through counsel, filed a timely appeal from a May 6, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 6, 2024 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 met his burden of proof to establish a lumbar or thoracic spine condition causally related to the accepted April 22, 2023 employment incident.

FACTUAL HISTORY

On May 2, 2023 appellant, then a 46-year-old mail handler/equipment operator, filed a traumatic injury claim (Form CA-1) alleging that on April 22, 2023 he sustained a mid-back injury when pushing a gaylord mail container into a truck while in the performance of duty. He stopped work on April 23, 2023. OWCP assigned the claim OWCP File No. xxxxxx401.

Previously, on December 16, 2016, appellant filed a Form CA-1 for a lumbar injury sustained that day when he struck a column when driving a hi-lo forklift while in the performance of duty. OWCP assigned the claim OWCP File No. xxxxxx816. On February 1, 2017 OWCP accepted the claim for lumbar disc herniation.

OWCP received an April 26, 2023 hospital emergency department after-visit summary for thoracic and low back pain, signed by Brittany Morgan Weissman, a physician assistant. On April 26, 2023 appellant underwent computerized tomography (CT) scans of the thoracic and lumbar spine, which revealed degenerative changes at L4-5 and L5-S1 bilaterally.

OWCP received employing establishment statements dated May 1 and 2, 2023 controverting the claim, contending that on April 22, 2023 appellant had been observed “performing an unsafe act” by pushing five gaylord containers with a powered forklift instead of using a pallet jack to load a trailer.

OWCP also received duty status reports (Form CA-17) dated May 3 and 15, 2023 bearing an illegible signature.

In a May 5, 2023 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded appellant 60 days to respond.

Thereafter, OWCP received additional April 26, 2023 hospital emergency department records, signed by Dr. Reginald Mews Rousseau, Board-certified in interventional pain management, and Dr. Patrick Timothy McGoff, Board-certified in emergency medicine, recounting appellant’s lower thoracic back pain that started after heavy lifting at work. The physicians diagnosed thoracic pain and lumbar pain.

OWCP also received a May 2, 2023 letter of controversion and a May 3, 2023 letter of warning from the employing establishment alleging that on April 22, 2023 appellant violated safety procedures and supervisory instructions when he moved four gaylord containers in an unsafe manner and struck a crab cage, which then struck another employee.

In a May 5, 2023 report, Dr. Eugene Wang, a neurologist, recounted a history of the April 22, 2023 employment incident. He diagnosed thoracic back pain.⁴

In a May 15, 2023 attending physician's report (Form CA-20), Dr. Wang diagnosed thoracic back pain. He checked a box marked "Yes" to indicate that the diagnosed condition was causally related to appellant's employment.

In a May 19, 2023 report, Dr. Brett Helfner, a Board-certified diagnostic radiologist, recounted a history of the April 22, 2023 employment incident. He noted that appellant had undergone chiropractic treatment for an occupational lumbar injury under a separate claim. On examination, Dr. Helfner observed tenderness to palpation over the thoracic facets bilaterally. He diagnosed thoracic back pain. Dr. Helfner administered an intra-articular injection.

In a May 19, 2023 report, Jillian Peragallo, a physician assistant, diagnosed myofascial pain syndrome and administered intra-articular injections.

In a follow-up letter dated June 2, 2023, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim. It noted that he had 60 days from the May 5, 2023 letter to submit the requested supporting evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

In a June 5, 2023 report, Dr. Nathaniel Schilling, a chiropractor, diagnosed a thoracic sprain causally related to the April 22, 2023 employment incident.

In a June 12, 2023 statement, the employing establishment contended that, on April 22, 2023, appellant operated his forklift in an unsafe manner by pushing five pallets of mail across the workroom floor instead of lifting and transporting each pallet.

In a June 16, 2023 Form CA-17, Dr. Timothy Groth, a Board-certified anesthesiologist, diagnosed thoracic back pain and held appellant off work.

In a June 16, 2023 Form CA-20, Ms. Peragallo diagnosed thoracic spine pain.

In a June 24, 2023 statement, appellant contended that, on April 22, 2023, he pushed only one gaylord container into a truck and did not use a forklift.

By decision dated July 7, 2023, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the employment incident occurred in the performance of duty on April 22, 2023, as alleged due to appellant's willful misconduct. It, therefore, concluded that he failed to establish an injury as defined by FECA.

In a July 14, 2023 Form CA-20, Dr. Groth recounted a history of the claimed April 22, 2023 employment incident when moving and lifting heavy boxes while at work. On examination,

⁴ A May 5, 2023 magnetic resonance imaging (MRI) scan of the thoracic spine revealed a T7-8 central disc herniation impressing upon the thecal sac, resulting in mild central stenosis.

he observed thoracic spinal muscle spasm and tenderness. Dr. Groth diagnosed thoracic back pain. He answered a question “Yes” to indicate that the condition found was caused or aggravated by the described employment incident. Dr. Groth added that the onset of appellant’s back pain occurred on April 22, 2023 while he was at work moving heavy boxes.

In a July 14, 2023 Form CA-17, Dr. Groth held appellant off work.

On July 19, 2023 appellant, through counsel, requested a hearing before a representative of OWCP’s Branch of Hearings and Review.

Thereafter, OWCP received an April 4, 2023 MRI scan of the lumbar spine, which revealed a left foraminal L3-4 disc herniation, L4-5 disc bulge, L4-5 right foraminal disc herniation, and L5-S1 disc bulge narrowing the left neural foramen.

OWCP also received a May 9, 2023 electromyogram and nerve conduction velocity (EMG/NCV) study of the upper and lower extremities, which revealed “evidence suggestive of sub-acute axonal pathology affecting L5-S1 nerve root levels bilaterally,” and evidence “suggestive of a sensorimotor axonal and demyelinating peripheral neuropathic process affecting the lower greater than the upper extremities, with a distal greater than proximal and symmetric distribution.”

Additionally, OWCP received a June 9, 2023 report by Dr. Erick Sorto, a chiropractor, who diagnosed thoracic, lumbar, and sacroiliac conditions. He opined that these conditions were directly caused by the “documented” employment injury.⁵

In a July 19, 2023 Form CA-17, Dr. Groth diagnosed thoracic back pain and held appellant off work.

In an August 11, 2023 report and work slip of even date, Selena La France, a physician assistant, noted administering intra-articular injections and held appellant off work.

In a September 8, 2023 statement, appellant contended that he sustained a thoracic spine injury at approximately midnight during a shift that began at 8:00 p.m. on April 22, 2023, and that a safety official erred in indicating that the injury occurred at noon.

In an October 2, 2023 report, Dr. Sathish Subbaiah, a Board-certified neurosurgeon, provided a history of a prior employment-related lumbar injury and the April 22, 2023 employment incident. On examination, he observed tenderness to palpation of the lumbar paraspinal muscles. Dr. Subbaiah diagnosed lumbosacral radiculopathy at L3-4, L4-5, and L5-S1, lumbar spondylosis with radiculopathy, and low back pain. He noted that a May 5, 2023 thoracic MRI scan revealed a T7-8 central disc herniation with mild central stenosis.

A telephonic hearing was held on November 9, 2023.

⁵ OWCP also received additional reports by Ms. Peragallo dated from June 16 through July 19, 2023.

Thereafter, OWCP received reports by Ms. Peragallo dated May 19 and December 18, 2023.

In reports dated October 24 through November 21, 2023, Dr. Subbaiah recounted appellant's symptoms of continued thoracic pain and radiating right lower extremity pain, which originated with the April 22, 2023 employment incident, and lumbar pain related to a December 16, 2016 employment injury. He diagnosed left-sided lumbar radiculopathy at L3-4, L4-5, and L5-S1, lumbar spondylosis with radiculopathy, and low back pain. Dr. Subbaiah prescribed medication.

In a November 28, 2023 report, Danielle Zick, a physician assistant, treated appellant and diagnosed left-sided lumbar radiculopathy at L3-4, L4-5, and L5-S1, lumbar spondylosis with radiculopathy, and low back pain. Dr. Subbaiah prescribed medication.

In work slips dated January 3 and 9, 2024, Dr. Subbaiah held appellant off work.

By decision dated January 19, 2024, an OWCP hearing representative affirmed the July 7, 2023 decision as modified, finding that the April 22, 2023 employment incident had occurred within the performance of duty, as alleged. However, the claim remained denied as the medical evidence of record was insufficient to establish causal relationship. The hearing representative directed that OWCP administratively combine appellant's claims under OWCP File No. xxxxxx401 and OWCP File No. xxxxxx816.

On January 30, 2024 OWCP administratively combined appellant's claims under OWCP File Nos. xxxxxx401 and xxxxxx816, with the latter designated as the master file.

In a February 21, 2024 Form CA-20, Dr. Subbaiah recounted that appellant injured his thoracic spine on April 22, 2023 when he attempted to dislodge a gaylord container that had become stuck as he pushed it with a pallet jack. He diagnosed lumbar spinal stenosis with neurogenic claudication. Dr. Subbaiah answered a question "Yes" to indicate that the April 22, 2023 employment incident caused or aggravated the diagnosed condition.

OWCP also received a February 20, 2024 Form CA-17 with an incomplete signature block.

On May 1, 2024 appellant, through counsel, requested reconsideration.

Thereafter, OWCP received a May 3, 2023 report by Dr. Jacqueline McMahon, an osteopath Board-certified in family practice, who recounted a history of the April 22, 2023 employment incident. On examination, she observed thoracic paravertebral hypertonicity with bilateral tenderness to palpation. Dr. McMahon diagnosed thoracic back pain.

In a May 22, 2023 form report, Dr. Keith Hoerning, an osteopath specializing in family medicine, recounted a history of the April 22, 2023 employment incident. On examination, he observed tenderness of the back. Dr. Hoerning diagnosed thoracic spine pain. He opined that appellant's medical conditions were causally related to the April 22, 2023 employment incident and noted appellant was totally disabled.

OWCP also received chiropractic daily treatment notes dated February 19, 2024 by Dr. Carson Tagner, a chiropractor, chiropractic daily treatment notes dated from March 1 through 23, 2024 by Dr. Kerry Wittich, a chiropractor, and an April 3, 2024 report by Ms. Peragallo.

By decision dated May 6, 2024, OWCP denied modification of the January 19, 2024 decision.

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,⁶ that the claim was timely filed within the applicable time limitation period of FECA, 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.⁷ 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.⁸

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 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

⁶ *K.R.*, Docket No. 20-0995 (issued January 29, 2021); *A.W.*, Docket No. 19-0327 (issued July 19, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁸ *J.B.*, Docket No. 20-1566 (issued August 31, 2021); *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).

⁹ *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).

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 *R.K.*, Docket No. 24-0545 (issued June 28, 2024); *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

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, 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 appellant has not met his burden of proof to establish a lumbar or thoracic spine condition causally related to the accepted April 22, 2023 employment incident.

Drs. Rousseau and McGoff, in reports dated April 26, 2023, recounted a history of injury and diagnosed lumbosacral strain, sciatica, and disc herniation. However, these physicians did not offer an opinion regarding the cause of the diagnosed conditions. The Board has held that an opinion which does not address the cause of an employee's condition is of no probative value on the issue of causal relationship.¹³ Thus, these reports are insufficient to establish appellant's claim.

Dr. McMahon, in a May 3, 2023 report, Dr. Wang, in reports dated May 5 and 15, 2023, Dr. Helfner, in a May 19, 2023 report, Dr. Hoerning, in a May 22, 2023 report, and Dr. Groth, in reports dated June 16 through July 19, 2023, recounted a history of the April 22, 2023 employment incident and diagnosed thoracic back pain. However, the Board has held that pain is a description of a symptom, not a diagnosis of a medical condition.¹⁴ Medical reports lacking a firm diagnosis and a rationalized medical opinion regarding causal relationship are of no probative value.¹⁵ The lack of rationale is particularly crucial in this case as appellant had a prior accepted employment-related spine injury.¹⁶ Therefore, this evidence is insufficient to meet appellant's burden of proof.¹⁷

Dr. Subbaiah, in reports dated October 2, 2023 through January 9, 2024, recounted a history of a December 15, 2016 employment-related lumbar injury and the April 22, 2023 employment incident. He diagnosed left-sided lumbar radiculopathy at L3-4, L4-5, and L5-S1, lumbar spondylosis with radiculopathy, and low back pain. In a February 21, 2024 Form CA-20, Dr. Subbaiah recounted the April 22, 2023 employment incident and diagnosed lumbar spinal stenosis with neurogenic claudication. He answered a question "Yes" to indicate that the April 22, 2023 employment incident caused or aggravated the diagnosed conditions. Although Dr. Subbaiah generally supported causal relationship, he did not provide a rationalized medical opinion explaining a pathophysiological process of how the accepted employment incident caused or

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (May 2023); *A.F.*, Docket No. 24-0469 (issued June 24, 2024); *J.L.*, Docket No. 20-0717 (issued October 15, 2020).

¹³ *R.K.*, *supra* note 11; *T.D.*, Docket No. 19-1779 (issued March 9, 2021); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.* Docket No. 17-1549 (issued July 6, 2018).

¹⁴ *A.F.*, *supra* note 12; *see V.S.*, Docket No. 23-1050 (issued March 27, 2024); *K.S.*, Docket No. 19-1433 (issued April 26, 2021); *S.L.*, Docket No. 19-1536 (issued June 26, 2020); *D.Y.*, Docket No. 20-0112 (issued June 25, 2020).

¹⁵ *A.F.*, *id.*; *see A.C.*, Docket No. 20-1510 (issued April 23, 2021); *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

¹⁶ *A.F.*, *id.*

¹⁷ *A.F.*, *id.*; *see J.P.*, Docket No. 18-0349 (issued December 30, 2019); *D.D.*, 57 ECAB 734 (2006).

contributed to the diagnosed condition. Moreover, with regard to the February 21, 2024 Form CA-20, the Board has held that when a physician’s opinion on causal relationship consists only of responding “Yes” to a form question, without more by the way of medical rationale, that opinion is of limited probative value and is insufficient to establish causal relationship.¹⁸ This evidence is, therefore, insufficient to establish the claim.

Appellant also submitted chiropractic treatment notes from Drs. Schilling, Sorto, Tagner, and Wittich, dated June 5, 2023 through March 23, 2024. The Board notes that section 8101(2) of FECA 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 regulations by the Secretary.¹⁹ OWCP’s implementing federal regulations 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.²⁰ The Board has reviewed the reports from Drs. Schilling, Tagner, and Wittich and finds that the reports do not diagnose a subluxation as demonstrated by x-ray. As these reports did not diagnose subluxation as demonstrated by x-ray, they do not constitute competent medical evidence.²¹

Appellant also submitted reports dated April 26, 2023 by Ms. Weissman, a physician assistant, from May 19, 2023 through April 3, 2024 by Ms. Peragallo, a physician assistant, and an August 11, 2023 report, and work slip by Ms. La France, a physician assistant. Certain healthcare providers such as physician assistants are not considered “physician[s]” as defined under FECA.²² Consequently, their medical findings or opinions will not suffice for purposes of establishing entitlement to FECA benefits.²³

OWCP also received May 3 and 5, 2023 Form CA-17’s bearing an illegible signature, and a February 20, 2024 Form CA-17 with an incomplete signature block. Reports that are unsigned

¹⁸ *D.B.*, Docket No. 24-0552 (issued July 31, 2024); *D.S.*, Docket No. 22-0323 (issued September 26, 2022); *J.A.*, Docket No. 18-1586 (issued April 9, 2019); *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

¹⁹ 5 U.S.C. § 8101(2).

²⁰ *Id.*; 20 C.F.R. § 10.311.

²¹ *G.L.*, Docket No. 24-0366 (issued May 17, 2024); *see J.A.*, Docket No. 22-0869 (issued July 3, 2023); *L.M.*, Docket No. 22-0667 (issued November 1, 2022); *T.H.*, Docket No. 17-0833 (issued September 7, 2017); *George E. Williams*, 44 ECAB 533 (1993); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

²² Section 8101(2) of FECA provides that medical opinions can only be given by a qualified physician. This section defines a physician as 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 supra* note 12 at Chapter 2.805.3a(1) (May 2023); *D.B.*, *supra* note 18 (physician assistants are not considered physicians as defined under FECA and, therefore, are not competent to provide a medical opinion); *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).

²³ *K.A.*, Docket No. 18-0999 (issued October 4, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, *id.*

or that bear illegible signatures cannot be considered probative medical evidence because they lack proper identification²⁴ as the author cannot be identified as a physician.²⁵

The remaining evidence of record consisted of diagnostic test results. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the accepted employment incident caused a diagnosed condition.²⁶ Therefore, this evidence is also insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish a lumbar or thoracic spine condition causally related to the accepted April 22, 2023 employment incident, the Board finds that appellant has not met his burden of proof to establish his claim.²⁷

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 or thoracic spine condition causally related to the accepted April 22, 2023 employment incident.

²⁴ *W.L.*, Docket No. 19-1581 (issued August 5, 2020).

²⁵ *D.T.*, Docket No. 20-0685 (issued October 8, 2020); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

²⁶ *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

²⁷ *See A.F.*, *supra* note 12. *See also R.K.*, *supra* note 11; *J.T.*, Docket No. 18-1755 (issued April 4, 2019); *T.O.*, Docket No. 18-0139 (issued May 24, 2018).

ORDER

IT IS HEREBY ORDERED THAT the May 6, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 20, 2024
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board