United States Department of Labor
Employees' Compensation Appeals Board

J.S., Appellant	)	
	)	**Docket No. 24-0248**
and	)	**Issued: July 9, 2024**
	)	
DEPARTMENT OF VETERANS AFFAIRS, LYONS VA MEDICAL CENTER, Lyons, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant[1]
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 January 11, 2024 appellant, through counsel, filed a timely appeal from a July 25, 2023 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 to consider the merits of this case.

[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*.

ISSUE

The issue is whether appellant has met his burden of proof to establish a medical condition causally related to his accepted March 18, 2018 employment incident.

FACTUAL HISTORY

This case has previously been before the Board.[3] The facts and circumstances as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On March 28, 2018 appellant, then a 34-year-old human resources specialist, filed a traumatic injury claim (Form CA-1) alleging that on March 23, 2018 he injured his lower back and left wrist/forearm when an elevator he was riding in "abruptly stopped and/or dropped," causing him to be tossed into the air while in the performance of duty.[4] He landed on his knees and hands. Appellant did not stop work.[5]

In a March 28, 2018 authorization for examination and/or treatment (Form CA-16) the employing establishment indicated that the date of injury was March 23, 2018 and that the injury was to his knees and hands. In a November 27, 2023 attending physician's report, Part B of a Form CA-16, Dr. Robert B. Grossman, an orthopedic surgeon, diagnosed herniated disc and degenerative disc disease of the lumbar spine. He checked a box marked "Yes" indicating that appellant's condition was caused or aggravated by an employment activity.

On March 29, 2018 Dr. Grossman examined appellant following his March 23, 2018 employment incident and diagnosed lumbar disc degeneration, low back pain, intervertebral disc disorders with radiculopathy, and lumbar radiculopathy. He reviewed x-rays which demonstrated the prior back surgery and mild degenerative changes. Dr. Grossman related that appellant had a severely pinched nerve in his lumbar spine which was causing weakness, decreased reflexes, and inability to walk.

In an April 3, 2018 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

OWCP subsequently received an April 4, 2018 lumbar spine magnetic resonance imaging (MRI) scan which demonstrated a herniated disc superimposed on moderate spondylosis at L5-S1, herniated disc at L1-2, spondylosis at L3-4 and L4-5 with grade 1 retrolisthesis at L5-S1. It recounted appellant's history of lumbar radiculopathy with pain radiating from the back to the legs

[3] *Order Remanding Case*, Docket No. 20-0823 (issued February 25, 2022).

[4] The employing establishment determined that the elevator was ascending from the ground floor to the third floor. It either stopped or dropped as it was traveling between the second and third floors and became stuck momentarily, before descending to the first floor.

[5] OWCP assigned the present claim OWCP File No. xxxxxx836. Under OWCP File No. xxxxxx692. Appellant also has an accepted claim for a February 2, 2015 strain of the lower back.

with left lower extremity numbness, a history of herniated disc with microdiscectomy on October 12, 2016 and trauma from an elevator malfunction on March 23, 2018.

On May 3, 2018 Dr. Grossman completed an attending physician's report (Form CA-20) diagnosing degenerative disc disease of the lumbar spine, herniated disc, and low back pain with radiculopathy. He recounted that appellant fell down an elevator shaft and indicated by checking a box marked "Yes" that the diagnosed conditions were caused or aggravated by this employment activity.

By decision dated May 9, 2018, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish that his diagnosed medical conditions were causally related to the accepted March 23, 2018 employment incident.

On May 16, 2018 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a June 11, 2018 report, Dr. Grossman recounted appellant's February 2015 employment injury and resultant surgery. He advised that appellant returned to work without symptoms. Dr. Grossman further described the March 23, 2018 elevator malfunction which caused appellant to fall injuring his knees and low back. Following physical examination and diagnostic studies, he diagnosed low back entrapment secondary to the March 29, 2018 fall. Dr. Grossman opined that the March 23, 2018 work accident directly caused the fall and that appellant currently exhibited disc irritation at L5-S1 below his previous surgery.

Following a preliminary review, by decision dated August 2, 2018, the hearing representative vacated the May 9, 2018 decision and remanded the case to OWCP for further development of the medical evidence.

By *de novo* decision dated April 9, 2019, OWCP again denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish that his diagnosed medical conditions were causally related to the accepted March 23, 2018 employment incident.

On November 29, 2018 OWCP referred appellant, a statement of accepted facts (SOAF), medical records, and a series of questions to Dr. Howard Pecker, a Board-certified orthopedic surgeon, for a second opinion evaluation.

In a December 27, 2018 report, Dr. Pecker noted his review of the SOAF and the medical record, and listed his findings on physical examination. He diagnosed degenerative disc changes and facet arthrosis of the lumbar spine. Dr. Pecker opined that there was no evidence of causal relationship between appellant's current symptoms and his accepted employment injury by direct causation or aggravation. He explained that the tenderness to light palpation of the left paralumbar area, collapsing weakness and right/left confusion in the upper and lower extremities was not consistent with the accepted March 23, 2018 employment incident. Dr. Pecker opined that appellant's current limitations were based on his preexisting condition.

On January 29, 2019 OWCP requested that Dr. Pecker provide a supplemental report listing all diagnosed conditions, the relationship of these conditions to the March 23, 2018 employment injury, and rationalized medical opinion supporting his conclusions.

In a February 11, 2019 addendum report, Dr. Pecker repeated the diagnoses listed on the SOAF including herniated disc L5-S1 and degenerative disc disease L5-S1, and opined that these conditions were not related to the March 23, 2018 employment injury as they were present on MRI scans in 2016. He further reasoned that there was no acceleration or aggravation of these injuries as there was no evidence of neurologic deficit to suggest a new injury and as the multilevel degenerative changes could not be caused by the March 23, 2018 employment incident. Dr. Pecker also noted the diagnosis of left S1 radiculopathy, but found no signs or symptoms of this condition on physical examination.

By decision dated April 9, 2019, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish that his diagnosed medical conditions were causally related to the accepted March 23, 2018 employment incident.

On April 15, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on August 9, 2019.

In an August 16, 2019 addendum to his June 11, 2018 report, Dr. Grossman reviewed appellant's 2018 diagnostic studies and diagnosed degenerative disc disease and significant disc bulges at L3-4, and L4-5 and disc herniations at L1-2 and L5-S1. He further diagnosed carpal tunnel syndrome of the left wrist as a result of the March 23, 2018 fall. Dr. Grossman determined that a May 16, 2018 electromyogram (EMG) demonstrated radiculopathy at L5-S1. He advised that degenerative disc disease was known to cause weakness in the back, recounted that appellant fell at least 30 feet, and opined that the trauma sustained from this fall was the direct cause of his herniated discs and carpal tunnel syndrome of the left wrist. Dr. Grossman found that appellant was stable and without pain prior to the March 23, 2018 fall.

By decision dated October 21, 2019, OWCP's hearing representative affirmed OWCP's April 9, 2019 decision.

On March 3, 2020 appellant, through counsel appealed to the Board. By order dated February 25, 2022, the Board remanded the case for OWCP to administratively combine the current claim with OWCP File No. xxxxxx692, followed by a *de novo* decision.

On February 28, 2022 OWCP administratively combined OWCP File Nos. xxxxxx836 and xxxxxx692, with the latter serving as the master file.

By decision dated December 2, 2022, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish that his diagnosed medical condition was causally related to the accepted March 23, 2018 employment incident.

On December 8, 2022 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on May 11, 2023.

By decision dated July 25, 2023, OWCP's hearing representative affirmed OWCP's December 2, 2022 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[6] 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,[7] 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.[8] 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.[9]

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. First, 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. Second, the employee must submit sufficient evidence to establish that the employment incident caused an injury.[10]

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence.[11] 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 employee.[12]

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, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[13]

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[6] *Supra* note 2.

[7] *See Y.S.*, Docket No. 22-1142 (issued May 11, 2023); *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).

[8] *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).

[9] *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).

[10] *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[11] *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).

[12] *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).

[13] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (May 2023). *See L.W.,* Docket No. 22-0995 (issued October 11, 2023); *R.D.,* Docket No. 18-1551 (issued March 1, 2019).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to his accepted March 18, 2018 employment incident.

On a December 27, 2018 report Dr. Pecker, an OWCP referral physician, described the March 23, 2018 employment incident, reviewed the SOAF and the medical record, and listed his findings on physical examination, diagnosing degenerative disc changes and facet arthrosis of the lumbar spine. He opined that there was no evidence of a causal relationship between appellant's current symptoms and his accepted employment incident by direct causation or aggravation. Dr. Pecker opined that appellant's current limitations were based on his preexisting condition. In a supplemental report dated February 11, 2019, he reviewed the diagnoses on the SOAF and asserted herniated disc L5-S1 and of degenerative disc disease L5-S1 were not related to the March 23, 2018 employment injury as these conditions were present on MRI scans in 2016. Dr. Pecker reasoned that there was no acceleration or aggravation of these injures as there was no evidence of neurologic deficit to suggest a new injury and the March 23, 2018 employment incident could not have caused the diagnosed conditions of herniated disc L5-S1 and degenerative disc disease L5-S1. In regard to left S1 radiculopathy, on physical examination, he found no signs or symptoms of this condition. The Board finds that Dr. Pecker's opinion is detailed, well-reasoned, and based on an accurate history, and thus represents the weight of the evidence.

The remaining evidence is insufficient to meet appellant's burden of proof to establish his claim.

In June 11, 2018 and August 16, 2019 reports, Dr. Grossman described the March 23, 2018 employment incident and diagnosed low back entrapment and left carpal tunnel syndrome secondary to this incident. He explained that degenerative disc disease was known to cause weakness in the back, recounted that appellant fell at least 30 feet, and opined that the trauma sustained from this fall was the direct cause of his herniated discs and carpal tunnel syndrome of the left wrist. Dr. Grossman further related that appellant was stable and without pain prior to the March 23, 2018 fall. The Board notes that Dr. Grossman failed to provide rationale to explain how the accepted employment incident caused appellant's diagnosed condition. The Board has held that a medical opinion should offer a medically-sound explanation of how the specific employment incident physiologically caused the injury.[14] Consequentially, Dr. Grossman's opinion is of diminished probative value.[15]

On March 29, 2018 Dr. Grossman examined appellant following his March 23, 2018 employment incident and diagnosed lumbar disc degeneration, low back pain, intervertebral disc disorders with radiculopathy, and lumbar radiculopathy. He reviewed x-rays which demonstrated a prior back surgery and mild degenerative changes. Dr. Grossman related that appellant had a severely pinched nerve in his lumbar spine which was causing weakness, decreased reflexes, and inability to walk. While he noted the history of injury, he did not provide an opinion on causal

[14] *S.P.,* Docket No. 22-0711 (issued March 13, 2023); *E.T.*, Docket No. 21-0014 (issued May 20, 2021); *C.D.*, Docket No. 20-0762 (issued January 13, 2021).

[15] *Id.*

relationship. 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.[16] Thus, the March 29, 2018 report of Dr. Grossman is insufficient to establish appellant's claim.

In a Form CA-20 dated May 3, 2018, Dr. Grossman diagnosed degenerative disc disease of the lumbar spine, herniated disc, and low back pain with radiculopathy. He indicated by checking a box marked "Yes" that the diagnosed condition was caused or aggravated by this employment activity. However, the Board has held that when a physician's opinion on causal relationship consists only of checking a box marked "Yes" to a form question, without additional medical rationale, that opinion is of limited probative value and is insufficient to establish causal relationship.[17] Consequently, this report is also insufficient to establish appellant's claim.

The remaining medical evidence of record consists of x-ray reports and MRI scans. The Board has held that diagnostic studies standing alone, lack probative value, and are insufficient to establish that claim.[18]

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

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 10.606.[19]

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish medical a medical condition causally related to his accepted March 18, 2018 employment incident.

[16] *S.P., id.*; *R.O.*, Docket No. 20-1243 (issued May 28, 2021); *D.C.*, Docket No. 19-1093 (issued June 25, 2020).

[17] *See S.P., id.*; *P.C.*, Docket No. 20-0855 (issued November 23, 2020); *M.S.*, Docket No. 20-0437 (issued July 14, 2020); *Barbara J. Williams*, 40 ECAB 649 (1989).

[18] *H.A.,* Docket No. 24-0004 (issued January 26, 2024); *J.K.*, Docket No. 20-0591 (issued August 12, 2020); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

[19] The Board notes that the employing establishment issued a Form CA-16, dated March 28, 2018. 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); *V.S.*, Docket No. 20-1034 (issued November 25, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the July 25, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 9, 2024
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