United States Department of Labor
Employees' Compensation Appeals Board

J.J., Appellant	)	
and	)	**Docket No. 24-0724**
	)	**Issued: July 30, 2024**
DEPARTMENT OF THE AIR FORCE, F.E. WARREN AIR FORCE BASE, Cheyenne, WY, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On June 27, 2024 appellant filed a timely appeal from a June 18, 2024 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 medical condition causally related to the accepted September 8, 2023 employment incident.

FACTUAL HISTORY

On September 15, 2023 appellant, then a 43-year-old geospatial integration program specialist, filed a traumatic injury claim (Form CA-1) alleging that on September 8, 2023 he experienced low back pain and right leg numbness picking up and moving survey equipment while

[1] 5 U.S.C. § 8101 *et seq*.

in the performance of duty. He advised that he had previously aggravated his preexisting back condition in July 2023 moving manhole covers at work.

On September 15, 2023 appellant filed a claim for compensation (Form CA-7) for disability from work for the period September 19 to October 2, 2023.

In a development letter dated September 21, 2023, OWCP informed appellant of the deficiencies in his claim. It advised him of the type of factual and medical evidence needed, provided him with a questionnaire, and afforded him 60 days to respond.

Subsequently, OWCP received the results of a magnetic resonance imaging (MRI) scan of the lumbar spine, obtained on July 15, 2023, which demonstrated degenerative findings significantly contributing to moderate neural foraminal stenosis on the right and moderate spinal canal stenosis at L4-5.

On August 2, 2023 Dr. Steven Beer, a Board-certified neurosurgeon, evaluated appellant for "low back pain which dates back [to] 2009 when he was enlisted. Pain improved with exercise and over time has steadily increased with severity." Dr. Beer reviewed the July 15, 2023 MRI scan and found a disc herniation at L4-5 larger on the right that was "likely responsible for [appellant's] symptoms." He diagnosed an L4-5 herniated disc with radiculopathy and L2-3 degenerative disc disease. Dr. Beer submitted similar progress reports on September 11 and 19, 2023. In his September 19, 2023 report, he recommended an L4-5 posterior decompression and inner body allograft with instrumentation.

On August 23, 2023 appellant underwent an L3-4 lumbar epidural steroid injection.

An authorization for examination and/or treatment (Form CA-16) dated September 18, 2023, provided the date of injury as September 8, 2023, and the history as appellant sustaining an aggravation of low back pain due to surveying and organization equipment. Dr. George Giradi, a Board-certified anesthesiologist, completed the attending physician's report, Part B of the CA-16 form. He advised that appellant related a history of experiencing back pain and left more than right leg numbness on August 2, 2023 "which dates back to 2009 when he was enlisted." Dr. Giradi diagnosed intervertebral disc disorders with radiculopathy of the lumbar region, and provided findings of an L4-5 herniated disc with radiculopathy and degenerative disc disease at L2-3. He checked a box marked "Yes" that the condition was caused or aggravated by the described employment activity. Dr. Giradi noted that he had performed a lumbar epidural steroid injection on August 23, 2023 and a facet injection at L4-5 two weeks later. He indicated that appellant had undergone a posterior decompression with interbody arthrodesis and posterior instrumentation with neural monitoring on September 19, 2023.

In a September 30, 2023 report of work status (Form CA-3), the employing establishment advised that appellant had stopped work on September 19, 2023. In an October 3, 2023 Form CA-3, it indicated that he had resumed full-time modified employment on that date.

On October 4, 2023 the employing establishment asserted that appellant advised that he had applied for benefits with the Department of Veterans Affairs (DVA) for his back but had not yet been approved. It provided a statement from the DVA indicating that he had a 90 percent disability rating for conditions unrelated to the back.

In a follow-up letter dated November 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 September 21, 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.

Dr. Beer performed a postoperative evaluation on December 4, 2023. He again noted that appellant had a history of back pain beginning in 2009 during his enlistment.

In a Form CA-3 received December 13, 2023, the employing establishment indicated that appellant had resumed his usual work duties on December 4, 2023.

By decision dated January 2, 2024, OWCP denied appellant's traumatic injury claim. It found that he had not submitted a medical report containing a diagnosis in connection with the accepted September 8, 2023 work events. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On January 19, 2024 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on April 5, 2024, at which appellant testified.

In an April 8, 2024 progress report, Cesar Garcia, a physician assistant, indicated that appellant had returned to "better clarify his back pain history." He noted that appellant related that his pain beginning in 2009 while he was enlisted in the military increased until September 8, 2023, when he felt severe low back pain "moving and organizing his survey equipment." Appellant sought treatment at the emergency department. He underwent an L4-5 posterior decompression and fusion at L4-5 on September 19, 2024. Mr. Garcia diagnosed an L4-5 herniated disc with radiculopathy status post decompression and fusion and noted that appellant was doing well and working without restrictions.

By decision dated June 18, 2024, OWCP's hearing representative affirmed the January 2, 2024 decision as modified. She determined that the medical records provided a diagnosis of a herniated disc at L4-5 but did not find the condition causally related to the accepted September 8, 2023 work incident.

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 filed within the applicable time limitation of FECA,[3] that an injury was sustained while in the performance of duty as alleged; and that any disability or medical condition for which compensation is claimed is causally related to the

[2] *Supra* note 1.

[3] *C.B.*, Docket No. 21-1291 (issued April 28, 2022); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

employment injury.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on 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.[6] There are two components involved in establishing fact of injury. The first component is whether the employee actually experienced the employment incident at the time and place and in the manner alleged.[7] The second component is whether the employment incident caused an injury.[8]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[9] The opinion of the physician must be based upon 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 incident.[10]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted September 8, 2023 employment incident.

In a Form CA-16 dated September 18, 2023, Dr. Giradi obtained a history of appellant experiencing back pain and left leg numbness that began on August 2, 2023 and dated back to 2009 during his enlistment.[11] He indicated that he had performed a lumbar epidural steroid injection on August 23, 2023. Dr. Giradi diagnosed intervertebral disc disorders with radiculopathy of the lumbar region and checked a box marked "Yes" that the condition was caused or aggravated by the described employment activity. However, he attributed appellant's condition to an incident on August 2, 2023 rather than September 8, 2023, and described his treatment of appellant on August 23, 2023, prior to the accepted employment incident. Consequently,

[4] *N.B.*, Docket No. 23-0690 (issued December 5, 2023); *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *R.C.*, 59 ECAB 427 (2008).

[5] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388 (2008).

[7] *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[8] *Id*.

[9] *E.G.*, Docket No. 20-1184 (issued March 1, 2021); *T.H.*, 59 ECAB 388 (2008).

[10] *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018).

[11] 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.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

Dr. Giradi's opinion is insufficient to establish a medical diagnosis in connection with the accepted September 8, 2023 employment incident.

In progress reports dated August and September 2023, Dr. Beer evaluated appellant for low back pain. He obtained a history of the pain beginning in 2009, when appellant was enlisted in the military. Dr. Beer diagnosed a herniated disc at radiculopathy at L4-5 and degenerative disc disease at L2-3. He did not, however, provide an opinion on causal relationship or relate the diagnosed condition to the accepted September 8, 2023 employment incident. The Board has held that a medical report 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.[12] Accordingly, Dr. Beer's reports are insufficient to establish a diagnosis in connection with the accepted September 8, 2023 employment injury.

The record contains an April 8, 2024 report from a physician assistant. The Board has held that medical reports signed solely by a physician assistant are of no probative value, as such healthcare providers are not considered physicians as defined under FECA and, therefore, are not competent to provide a medical opinion.[13] Thus, this evidence is insufficient to establish the claim.

Appellant submitted the results of a July 2023 lumbar MRI scan, which predated the employment incident. The Board has held that diagnostic studies, standing alone, are of limited probative value as they do not provide an opinion regarding whether the accepted employment incident caused a diagnosed condition.[14] This report, therefore, is insufficient to establish the claim.

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted September 8, 2023 employment incident, the Board finds that appellant has not met his 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 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted September 8, 2023 employment incident.

[12] *See J.G.*, Docket No. 24-0403 (issued May 20, 2024); *C.H.*, Docket No. 22-1186 (issued December 22, 2022); *D.Y.*, Docket No. 20-0112 (issued June 25, 2020).

[13] 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); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a (January 2013); *C.G.*, Docket No. 20-0957 (issued January 27, 2021) (physician assistants are not considered physicians as defined under FECA); *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).

[14] *See R.K.*, Docket No. 24-0545 (issued June 28, 2024); *P.G.*, Docket No. 24-0511 (issued June 26, 2024).

ORDER

IT IS HEREBY ORDERED THAT the June 18, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 30, 2024
Washington, DC

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

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

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