United States Department of Labor
Employees' Compensation Appeals Board

A.F., Appellant	)	
and	)	**Docket No. 24-0469**
	)	**Issued: June 24, 2024**
U.S. POSTAL SERVICE, ELGIN POST OFFICE, Elgin, SC, Employer	)	

Appearances:
Paul H. Felser, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On April 1, 2024 appellant, through counsel, filed a timely appeal from an October 4, 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish a medical condition causally related to the accepted April 30, 2022 employment incident.

[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.*

FACTUAL HISTORY

On May 13, 2022 appellant then a 51-year-old assistant rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 30, 2022 he developed sharp pain through his neck and shoulder area after he delivered four oversized parcels and one of the parcels shifted while in the performance of duty. He stopped work on April 30, 2022.

On May 12, 2022 appellant underwent cervical spine x-rays which revealed a previous anterior fusion of C5, C6, and C7 with no acute findings. Thoracic spine x-rays of even date were unremarkable.

In a June 2, 2022 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In an undated response to OWCP's development letter, appellant asserted that he injured his right shoulder, back, and neck on April 30, 2022 while delivering parcels. He noted that he informed management that he had injured himself and was unable to work the following day due to increased pain. Appellant also provided a May 12, 2022 work capacity evaluation (Form OWCP-5c) from Leslie Driggers, a family nurse practitioner, noting bilateral posterior neck pain and acute thoracic back pain. In a note of even date, Ms. Driggers provided work restrictions.

By decision dated July 7, 2022, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted employment incident. Consequently, it found that he had not met the requirements to establish an injury as defined by FECA.

OWCP continued to receive evidence. On March 6, 2019 Dr. Tim Bryan, a Board-certified orthopedic surgeon, performed an anterior cervical discectomy and fusion at C5-6 and C6-7. On January 14, 2021 appellant underwent a cervical magnetic resonance imaging (MRI) scan which demonstrated bilateral foraminal stenosis at C3-4, C6-7, and C7-T1. On May 3, 2022 appellant received treatment from Torill P. Nelson, a family nurse practitioner, and on June 13, 2022 and November 2, 2022 appellant received treatment from April Smith, a physician assistant. OWCP also received physical therapy notes dated July 13 through August 1, 2022.

In a July 5, 2022 note, Dr. Bryan described appellant's previous anterior cervical discectomy and fusion at C5-6 and C6-7. He further recounted that appellant was doing well following surgery until April 30, 2022 when boxes that he was lifting at work shifted and threw him to the side, resulting in an immediate onset of neck and bilateral shoulder pain. Dr. Bryan diagnosed chronic pain syndrome, cervicalgia, occipital neuralgia, and low back pain. Appellant underwent a July 5, 2022 MRI scan which demonstrated mild-to-moderate stenosis at C4-5, and neural foraminal narrowing at C3-6 with progression since prior studies. In an August 16, 2022 report, Dr. Bryan repeated appellant's history of injury and his previous diagnoses.

Dr. Mark D. Netherton, a Board-certified anesthesiologist, examined appellant on August 16, 2022 and related his symptoms of an increase in headaches and neck pain beginning in April 2022 when a box shifted while he was carrying it at work, injuring his neck and shoulder. He diagnosed cervical radiculopathy and occipital neuralgia.

On September 13, 2022 appellant underwent an electromyogram and nerve conduction velocity (EMG/NCV) study which was normal. In a report of even date, Dr. Bryan reviewed the EMG/NCV study finding no evidence of cervical radiculopathy or neuropathy. He opined that appellant was experiencing adjacent segment disease above and below his fusion. Appellant indicated that his work duties caused his pain to "flareup."

On July 6, 2023 appellant, through counsel, requested reconsideration. Thereafter, OWCP received additional evidence. In a July 6, 2023 report, Dr. Bryan related appellant's April 30, 2022 employment incident and diagnosed cervical degenerative disc disease, occipital neuralgia, chronic pain syndrome, and adjacent segment disease above and below the levels of the previous fusion. He opined that the lifting incident on April 30, 2022 aggravated appellant's preexisting condition and caused or contributed to the need for additional surgery and fusion on April 6, 2023.

By decision dated October 4, 2023, OWCP modified its July 7, 2022 decision to find that appellant had established a medical diagnosis; however, the claim remained denied, as the medical evidence of record was insufficient to establish a diagnosed condition causally related to the accepted April 30, 2022 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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,[4] 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.[5] 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.[6]

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.[7]

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[3] *Supra* note 2.

[4] *J.I.,* Docket No. 23-1122 (issued March 11, 2024); *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).

[5] *J.I., id.*; *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).

[6] *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).

[7] *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).

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[8] 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 factors.[9]

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.[10]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted April 30, 2022 employment incident.

Dr. Bryan, in his July 6, 2023 report, opined that the lifting incident on April 30, 2022 aggravated appellant's preexisting condition and caused or contributed to the need for additional surgery and fusion on April 6, 2023. Although he generally supported causal relationship, he did not provide a rationalized medical opinion explaining a pathophysiological process of how the accepted employment incident caused or contributed to the diagnosed condition. The Board has held that the physician must offer a rationalized explanation of how the specific employment incident or work factors physiologically caused injury.[11] This evidence is, therefore, insufficient to establish the claim.

In his July 5, 2022 reports, Dr. Bryan explained that appellant was doing well until he experienced immediate neck and bilateral shoulder pain following the accepted employment incident. He did not offer an opinion on causal 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.[12] As such, these reports are of no probative value and are insufficient to establish appellant's claim.

Likewise, on August 16, 2022 Dr. Netherton recounted an increase in headaches and neck pain beginning in April 2022 when a box appellant was carrying while working shifted, injuring his neck and shoulder. He diagnosed cervical radiculopathy and occipital neuralgia.

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[8] *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

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

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (May 2023); *J.L.*, Docket No. 20-0717 (issued October 15, 2020).

[11] *M.V.,* Docket No. 24-0092 (issued March 28, 2024); *G.R.*, Docket No. 21-1196 (issued March 16, 2022); *K.J.*, Docket No. 21-0020 (issued October 22, 2021); *L.R.*, Docket No. 16-0736 (issued September 2, 2016); *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

[12] *G.M.*, Docket No. 24-0388 (issued May 28, 2024); *C.R.*, Docket No. 23-0330 (issued July 28, 2023); *K.K.*, Docket No. 22-0270 (issued February 14, 2023); *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019); *L.B.*, *supra* note 9; *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

Dr. Netherton did not, however, provide an opinion on the cause of appellant's conditions. As noted above, 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.[13] Accordingly, these reports are insufficient to establish causal relationship.

In his July 5 and August 16, 2022 reports, Dr. Bryan described chronic pain syndrome, cervicalgia, occipital neuralgia, and low 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] Therefore, this evidence is insufficient to meet appellant's burden of proof.[16]

OWCP also received MRI scans and EMG/NCV studies. The Board has held that diagnostic reports, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion regarding whether the accepted employment incident caused a diagnosed condition.[17]

The remaining evidence consists of reports from a family nurse practitioner, a physician assistant, and physical therapists. The Board has held that certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered physician[s] as defined under FECA.[18] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[19]

As appellant has not submitted rationalized medical evidence to establish a medical condition causally related to the accepted April 30, 2022 employment incident, the Board finds that he has not met his burden of proof.

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[13] *D.G.,* Docket No. 23-1192 (issued March 20, 2024); *J.M.*, Docket No. 19-1926 (issued March 19, 2021); *L.B.*, *id.*; *D.K.*, *id.*

[14] *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] *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] *See J.P.*, Docket No. 18-0349 (issued December 30, 2019); *D.D.,* 57 ECAB 734 (2006).

[17] *T.H.,* Docket No. 23-1142 (issued March 28, 2024); *A.W.*, Docket No. 22-1196 (issued November 23, 2022); *S.W.*, Docket No. 21-1105 (issued December 17, 2021); *W.L.*, Docket No. 20-1589 (issued August 26, 2021).

[18] Section 8102(2) of FECA provides as follows: (2) 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. § 8102(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *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); *see also A.M.*, Docket No. 20-1575 (issued May 24, 2021) (physical therapists are not physicians as defined by FECA); *T.H.,* Docket No. 23-1142 (issued March 28, 2024) (physician assistants are not considered physicians as defined under FECA); *A.B.*, Docket No. 23-0827 (issued December 27, 2023) (nurse practitioners are not considered physicians as defined under FECA).

[19] *Id.*

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 April 30, 2022 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the October 4, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 24, 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