

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

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| D.W., Appellant |) | |
| |) | |
| and |) | Docket No. 24-0479 |
| |) | Issued: June 11, 2024 |
| DEPARTMENT OF DEFENSE, DEFENSE |) | |
| LOGISTICS AGENCY, New Cumberland, PA, |) | |
| 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 3, 2024 appellant filed a timely appeal from a January 18, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 lumbar condition causally related to the accepted September 8, 2022 employment incident.

FACTUAL HISTORY

On September 13, 2022 appellant, then a 28-year-old materials handler, filed a traumatic injury claim (Form CA-1) alleging that on September 8, 2022 he injured his lower back when

¹ 5 U.S.C. § 8101 *et seq.*

pulling boxes weighing over 60 pounds and twisting while in the performance of duty. He stopped work on September 8, 2022 and returned to full-time regular-duty work on September 12, 2022. Appellant began working full-time modified duty with restrictions on October 13, 2022.

In a development letter dated October 7, 2022, OWCP advised appellant of the deficiencies in his claim. It notified appellant of the additional factual and medical evidence required. OWCP provided him with a questionnaire for his completion and afforded him 30 days to respond.

In response, OWCP received appellant's completed questionnaire and statement dated October 31, 2022, wherein he described the facts and circumstances surrounding his claimed injury.

An October 10, 2022 lumbar spine magnetic resonance imaging (MRI) scan noted degenerative changes in the lumbar spine at L4-5 and L5-S1 level similar in appearance as compared to the July 23, 2021 prior MRI scan.

In an October 12, 2022 report, Dr. David T. Thoryk, a family medical specialist, reported that appellant had a history of previous lumbar disc herniation and surgery for discectomy that occurred when he was struck as a pedestrian by a vehicle in a parking garage. He reported that appellant's symptoms were resolved until he developed methicillin-resistant staphylococcus aureus (MRSA) in the spine nine months later and underwent additional surgery, which was successful. Dr. Thoryk reported the history of the September 8, 2022 claimed work injury, noting that appellant was moving a 60-pound item at shoulder level and felt a shift in his lower back while turning. He did not immediately feel pain, but his back worsened as the day progressed. Dr. Thoryk noted examination findings. He also reported that the updated lumbar MRI scan from a few days prior demonstrated a chronic L4-5 disc bulge, which was causing some lateral recess stenosis, and a disc bulge at L5-S1, which appeared to be causing lateral recess stenosis and some mass-effect upon the descending S1 nerve root, which was likely responsible for appellant's new onset of symptoms.

By decision dated November 7, 2022, OWCP denied the traumatic injury claim, finding that the medical evidence submitted failed to provide a medical diagnosis in connection with the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP received a September 21, 2022 x-ray of lumbosacral spine, which noted moderate multilevel degenerative disc changes, and an October 12, 2022 report from Joshua Galinato, a certified registered nurse practitioner.

In an October 25, 2022 report, Dr. Matthew Evers, a resident physician, reported appellant's past medical history of thoracic epidural abscess status post decompressive surgery L5-S1 in 2019 following an accident in which he was hit by a car while walking in a parking lot. He indicated that since the surgery appellant had numbness in his left fourth and fifth toe at baseline, and weakness in the hamstring muscles of his left leg with occasional tingling down the posterior left leg. Dr. Evers noted that appellant was referred to the clinic for his left-sided lower back pain which radiated to his left leg. He provided examination findings, which included symptoms consistent with radiculopathy in an S1 distribution and reviewed the October 10, 2022

lumbar MRI scan. Dr. Evers provided an assessment of radiculopathy, lumbosacral region. His report was reviewed and cosigned by Dr. Yakov M. Vorobeychik, Board-certified in psychiatry and neurology.

In a December 9, 2022 note and July 5, 2023 report, Dr. Jesse E. Bible, a Board-certified orthopedic surgeon, noted appellant's prior history of lumbar discectomy with symptoms resolved until recently when he had a September 8, 2022 work injury, during which he moved a 60-pound item at shoulder level and developed back pain. He advised that appellant's recent MRI scan demonstrated an annulus tear and some disc protrusion more in the left paracentral L4-5 as well as L5-S1, where he had the previous discectomy surgery. Dr. Bible opined that the findings on lumbar MRI scan likely started at the time of appellant's work accident, given that he was symptom-free until the September 8, 2022 work injury.

On July 7, 2023 appellant requested reconsideration based on additional medical documentation.

By decision dated July 11, 2023, OWCP modified the November 7, 2022 decision to find that appellant established a medical diagnosis. However, the claim remained denied as he failed to establish that the September 8, 2022 incident occurred, as alleged.

On October 20, 2023 appellant requested reconsideration and submitted new evidence. Evidence relating to his preexisting lumbar spine conditions, for which he underwent surgical intervention in 2019 included: a January 19, 2019 emergency department summary regarding appellant's accident that day; February 26, 2019 x-ray of lumbar spine assessing lumbago with left sciatica; a March 24, 2019 MRI scan of lumbar spine noting a large left-sided disc herniation at L5-S1 contributing to foraminal stenosis at that level and mild diffuse bulging disc at L4-5; and an April 8, 2019 operative report documenting a L5-S1 microdiscectomy. OWCP also received medical reports dated February 26, March 20, March 27, April 23, June 7, and October 10, 2019 from Dr. Raymond E. Dahl, an osteopath Board-certified in orthopedic surgery, documenting appellant's progress following his January 19, 2019 injury. In the October 10, 2019 report, Dr. Dahl noted that appellant was six months post microdiscectomy, had excellent strength throughout the lower extremities without any focal motor or sensory deficits, and could return to essentially normal activities.

In an October 18, 2023 report, Dr. Bible opined that appellant's prior back condition symptoms resolved post L5-S1 lumbar discectomy surgery until the claimed September 8, 2022 work injury. He further opined that lifting and turning could cause this type of injury to the spine and that appellant's disc injury "more likely than not" occurred at the time of the reported work accident.

By decision dated January 18, 2024, OWCP modified the July 11, 2023 decision to find that the September 8, 2022 employment incident occurred, as alleged. However, the claim remained denied as appellant had not established that his diagnosed conditions were causally related to the accepted September 8, 2022 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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,³ 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.⁴ 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.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. There are two components involved in establishing fact of injury. The first component is whether 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.⁶

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.⁷ 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 factors identified by the employee.⁸

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.⁹

² *Id.*

³ *D.D.*, Docket No. 19-1715 (issued December 3, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *Y.G.*, Docket No. 20-0688 (issued November 13, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *C.H.*, Docket No. 19-1781 (issued November 13, 2020); *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).

⁶ *C.G.*, Docket No. 12-1270 (issued December 20, 2023); *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).

⁷ *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); see *G.M.*, Docket No. 22-0730 (issued October 26, 2022).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a lumbar condition causally related to the accepted September 8, 2022 employment incident.

In an October 12, 2022 report, Dr. Thoryk noted appellant's medical history as well as the history of the September 8, 2022 employment incident. He reported disc bulges on lumbar MRI scan which he opined were "likely responsible for appellant's new onset of symptoms." The Board has held that medical opinions that suggests a condition was likely or possibly caused by work activities are speculative and equivocal.¹⁰ Dr. Thoryk did not provide a firm diagnosis or a rationalized medical opinion regarding causal relationship. Medical reports lacking a firm diagnosis and a rationalized medical opinion regarding causal relationship are of no probative value.¹¹ Therefore, this evidence is insufficient to meet appellant's burden of proof.¹²

In an October 25, 2022 report, Dr. Evers noted appellant's past medical history of post-decompressive surgery L5-S1 in 2019 and his symptoms following the 2019 decompressive surgery, as well as his current symptoms. While he provided an assessment of radiculopathy, lumbosacral region, Dr. Evers did not mention appellant's September 8, 2022 work incident or provide any rationale regarding causal relationship. 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 Therefore, this evidence is insufficient to meet appellant's burden of proof.

In a December 9, 2022 note and reports dated July 5 and October 18, 2023, Dr. Bible opined that appellant's prior back condition symptoms resolved post L5-S1 lumbar discectomy surgery until the September 8, 2022 work injury. He opined that the findings on lumbar MRI "likely" started at the time of appellant's work accident, given that he was symptom-free until the September 8, 2022 work injury. In his October 18, 2023 report, Dr. Bible further opined that the activities of lifting and turning can cause the type of appellant's disc injury and that his disc injury "more likely than not" occurred at the time of the reported work accident.

As support for a work-related traumatic injury, Dr. Bible referenced appellant's symptomology. Initially the Board notes that an opinion that a condition is causally related because the employee was asymptomatic before the injury is insufficient, without adequate rationale, to establish causal relationship.¹⁴ A rationalized medical opinion is especially necessary in light of appellant's preexisting left herniated L5-S1 condition and April 8, 2019 left L5-S1

¹⁰ *B.B.*, Docket No. 21-0284 (issued October 5, 2022); *J.W.*, Docket No. 18-0678 (issued March 3, 2020).

¹¹ *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).

¹² *See J.P.*, Docket No. 18-0349 (issued December 30, 2019); *D.D.*, 57 ECAB 734 (2006).

¹³ *D.K.*, Docket No. 21-0214 (issued September 29, 2021); *S.W.*, Docket No. 19-1579 (issued October 9, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ *J.C.*, Docket No. 22-0215 (issued February 14, 2023); *M.R.*, Docket No. 14-0011 (issued August 27, 2014).

microdiscectomy.¹⁵ Dr. Bible, however, provided only a conclusory opinion regarding causal relationship. He failed to explain the physiological process by which the September 8, 2022 work incident caused or aggravated the diagnosed disc conditions seen on MRI scan. Rather, he just stated without further explanation that lifting and turning can cause the type of appellant's disc injury. Medical conclusions lacking rationale are of diminished probative value.¹⁶ For these reasons, the reports from Dr. Bible are insufficient to establish appellant's claim.

Appellant submitted reports from a certified registered nurse practitioner. The Board has held that certain healthcare providers including nurse practitioners are not considered physician[s] as defined under FECA.¹⁷ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹⁸

The remaining evidence consists of diagnostic reports. The Board has held that diagnostic tests, standing alone, lack probative value on the issue of causal relationship as they do not address the relationship between the accepted employment factors and a diagnosed condition.¹⁹ For this reason, the diagnostic reports of record are insufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish a lumbar condition in connection with the accepted September 8, 2022 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 lumbar condition causally related to the accepted September 8, 2022 employment incident.

¹⁵ See *H.K.*, Docket No. 23-0739 (issued September 27, 2023); *J.H.*, Docket No. 19-0838 (issued October 1, 2019); *D.M.*, Docket No. 19-0389 (issued July 16, 2019).

¹⁶ See *F.C.*, Docket No. 19-1267 (issued December 20, 2019); *T.A.*, Docket No. 18-0431 (issued November 7, 2018).

¹⁷ 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.B.*, Docket No. 23-0827 (issued December 27, 2023) (nurse practitioners are not considered physicians as defined under FECA).

¹⁸ *Id.* See *V.S.*, Docket No. 23-1050 (issued March 27, 2024).

¹⁹ See *L.S.*, Docket No. 22-0023 (issued March 1, 2023); *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

ORDER

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

Issued: June 11, 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