

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

C.W., Appellant	)	
	)	
and	)	Docket No. 24-0493
	)	Issued: June 13, 2024
U.S. POSTAL SERVICE, GATEWAY CARRIER	)	
ANNEX, Jacksonville, FL, 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  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On April 9, 2024 appellant filed a timely appeal from a March 20, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met his burden of proof to establish a lumbar condition causally related to the accepted factors of his federal employment.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the March 20, 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.*

## **FACTUAL HISTORY**

On September 21, 2023 appellant, then a 58-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that he developed a back condition due to factors of his federal employment, including repetitive bending, twisting, and lifting of mail/packages. He noted that he first became aware of his condition and realized its relation to his federal employment on September 5, 2023. Appellant stopped work on September 5, 2023.

In a development letter dated September 22, 2023, 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 60 days to respond. By separate development letter of the same date, it requested that the employing establishment provide additional evidence, including comments from a knowledgeable supervisor regarding appellant's claim. OWCP afforded the employing establishment 30 days to respond.

On September 22, 2023 the employing establishment challenged appellant's claim asserting that appellant delayed in reporting his September 5, 2023 employment injury and waited until September 21, 2023 to file his claim. It further noted that he stopped work on September 12, 2023 after his supervisor indicated that he would perform a street observation and accompany him on his mail route. The employing establishment submitted a job description for a city carrier.

In a development letter dated October 18, 2023, OWCP notified appellant of the ongoing deficiencies of his claim. It advised him of the type of factual and medical evidence needed. OWCP reminded appellant that he had 60 days from its September 22, 2023 letter to respond. No response was received.

By decision dated November 24, 2023, OWCP denied appellant's occupational disease claim, finding that he had not submitted medical evidence containing a medical diagnosis in connection with the accepted factors of his federal employment. It concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

OWCP continued to receive additional evidence. Dr. Jesus Logronio, a Board-certified family practitioner, treated appellant on September 26, September 29, October 10, and November 28, 2023, for low back pain that radiated into the bilateral legs. He diagnosed obesity, acute gout, allergic rhinitis, anemia, anxiety, left carpal tunnel syndrome, erectile dysfunction, essential hypertension, low back pain, lumbar spondylosis, mixed hyperlipidemia, pain in right hip, prediabetes, and left sciatica. Dr. Logronio held appellant off work in 10-day increments beginning September 26, 2023. In form reports dated September 29, October 13, and November 28 2023, he returned appellant to sedentary work.

In medical reports dated November 7 and December 5, 2023 and January 2, 2024, Brian Leland, a physician assistant, treated appellant for acute low back pain. He noted an October 5, 2023 magnetic resonance imaging (MRI) scan of the lumbar spine demonstrated moderate spondylosis in the lumbar spine, moderate left foraminal stenosis at L3-4, moderate-to-severe bilateral foraminal stenosis at L4-5, and severe bilateral foraminal stenosis at L5-S1. Mr. Leland diagnosed herniated lumbar disc, lumbago, intervertebral lumbar disc degeneration, foraminal stenosis, and lumbar radiculopathy. He advised that appellant was totally disabled.

In a state form report dated December 5, 2023, Dr. Fady El-Bahri, a Board-certified orthopedist, noted appellant was injured on September 5, 2023. He diagnosed multilevel lumbar herniated discs and recommended lumbar steroid injections. Dr. El-Bahri advised that appellant was totally disabled.

On January 29, 2024 appellant requested reconsideration.

In a statement dated January 29, 2024, appellant reported working as a letter carrier for 36 years. He related duties including repetitive bending, carrying up to 35 pounds, climbing, grasping, kneeling, lifting from floor to waist up to 70 pounds, pulling, pushing, reaching overhead, sitting, squatting, standing, twisting, walking, and entering and exiting his postal vehicle. Appellant asserted that he performed these duties up to 10 hours a day, six days a week.

Appellant submitted a January 26, 2024 report by Dr. Lourdes Deluc-Perez, a Board-certified family practitioner, who reported she had treated appellant for 15 years for cervical, thoracic, lumbar, bilateral hip, bilateral knee, and feet conditions that were the direct result of his 36-year history of working as a letter carrier. She noted that lifting heavy postal carrier bags, carrying mailbags on his shoulder, and walking on concrete for 36 years caused his conditions to progressively worsen and limited his ability to continue to perform these tasks due to pain and deterioration of his joints. Dr. Deluc-Perez opined that appellant's "arduous vocation ... significantly and directly contributed to his current injuries and chronic continuous pain."

By decision dated February 5, 2024, OWCP modified its November 24, 2023 decision, to reflect that appellant had established the medical component of fact of injury. However, the claim remained denied, as the medical evidence of record was insufficient to establish a causal relationship between a diagnosed medical condition and the accepted factors of his federal employment.

OWCP received additional evidence. In a report dated February 1, 2024, Dr. El-Bahri noted treating appellant since November 7, 2023 for lumbar spine pain. He noted that an electromyogram and nerve conduction velocity (EMG/NCV) study revealed some evidence of chronic interventional changes at L5-S1 bilaterally. Dr. El-Bahri diagnosed lumbar spine stenosis and opined that appellant's employment was a contributing factor to his permanent lumbar spine injury. He further opined that the strenuous activity required in his work environment contributed to his current pain and diagnosis. Dr. El-Bahri concluded, after reviewing diagnostic testing, nerve conductions, and physical examination, appellant would need a lumbar spine discectomy and fusion. In a state form report dated February 20, 2024, he diagnosed multilevel lumbar herniated disc and noted that appellant could return to work with restrictions.

On February 20, 2024 appellant requested reconsideration. He submitted two statements dated February 20 and February 21, 2024 disagreeing with OWCP's decision and reiterating that his work duties contributed to his back condition.

By decision dated February 21, 2024, OWCP denied modification of the February 5, 2024 decision.

OWCP received additional evidence. In a duty status report (Form CA-17) dated February 20, 2023, Dr. El-Bahri diagnosed lumbar herniated disc and returned appellant to work with restrictions.

An EMG/NCV study dated January 9, 2024 revealed no abnormalities of the lower extremities including the distal and proximal latencies and evidence of chronic reinnervational changes at L5-S1 bilaterally including paraspinals.

On February 20, 2024 Mr. Leland treated appellant in follow up and indicated that his symptoms remained unchanged. He noted the findings of EMG/NCV studies and diagnosed lumbago, intervertebral lumbar disc degeneration, herniated lumbar disc, and lumbar radiculopathy. Mr. Leland returned appellant to work with restrictions.

On March 19, 2024 appellant requested reconsideration.

By decision dated March 20, 2024, OWCP denied modification of the February 21, 2024 decision.

### **LEGAL PRECEDENT**

A claimant seeking benefits under FECA<sup>3</sup> 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,<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *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).

<sup>6</sup> *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).

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>7</sup> 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.<sup>8</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a lumbar condition causally related to the accepted factors of his federal employment.

In reports dated September 26 through November 28, 2023, Dr. Logronio provided diagnoses and held appellant off work. Similarly, in state form reports dated September 29, October 13, and November 28, 2023, he returned appellant to sedentary work. Likewise, in a Form CA-17 dated February 20, 2024, Dr. El-Bahri diagnosed lumbar herniated disc and returned appellant to work with restrictions. In state form reports dated December 5, 2023 and February 20, 2024, he diagnosed multilevel lumbar herniated discs and opined that appellant was totally disabled. However, these reports failed to provide an opinion regarding the cause of appellant's lumbar condition.<sup>9</sup> 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.<sup>10</sup> Therefore these reports are insufficient to establish causal relationship.

On February 1, 2024 Dr. El-Bahri diagnosed lumbar spine stenosis and noted that appellant's employment was a contributing factor to his lumbar spine injury. He opined that the strenuous activity required in his work environment contributed to his current pain and diagnosis. Similarly, on January 26, 2024, Dr. Deluc-Perez noted treating appellant for 15 years. She indicated that lifting heavy postal carrier bags, carrying mailbags on his shoulder, and walking on concrete for 36 years caused his conditions to progressively worsen and limit his ability to perform these tasks now. Dr. Deluc-Perez concluded that appellant's arduous vocation significantly and directly contributed to his current injuries and chronic continuous pain. While Drs. El-Bahri and Deluc-Perez indicated that appellant's medical conditions were work related, they failed to provide medical rationale explaining the basis of their opinions. Without explaining, physiologically, how the specific employment factors caused or aggravated a diagnosed condition, Drs. El-Bahri and Deluc-Perez's opinions on causal relationship are of limited probative value and insufficient to establish appellant's claim.<sup>11</sup>

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<sup>7</sup> *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>8</sup> *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018).

<sup>9</sup> *L.D.*, Docket No. 18-1468 (issued February 11, 2019).

<sup>10</sup> *See L.B.*, *supra* note 8; *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

<sup>11</sup> *G.L.*, Docket No. 18-1057 (issued April 14, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

Appellant also submitted notes from Mr. Leland, a physician assistant. However, certain healthcare providers such as physician assistants are not considered “physician[s]” as defined under FECA.<sup>12</sup> Consequently, these notes will not suffice for purposes of establishing appellant’s claim.<sup>13</sup>

The record also contains an EMG/NCV study. The Board has held, however, that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the accepted employment injuries resulted in appellant’s diagnosed medical conditions.<sup>14</sup>

As the medical evidence of record is insufficient to establish causal relationship between a medical condition and the accepted factors of his federal employment, 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 factors of his federal employment.

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<sup>12</sup> 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). *See also* 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 C.K.*, Docket No. 19-1549 (issued June 30, 2020) (physician assistants are not considered physicians under FECA).

<sup>13</sup> *Id.*

<sup>14</sup> *L.A.*, Docket No. 22-0463 (issued September 29, 2022); *D.K.*, Docket No. 21-0082 (issued October 26, 2021); *O.C.*, Docket No. 20-0514 (issued October 8, 2020); *R.J.*, Docket No. 19-0179 (issued May 26, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 20, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 13, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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