

(2) whether OWCP properly denied appellant's request for a review of the written record as untimely filed, pursuant to 5 U.S.C. § 8124(b).

FACTUAL HISTORY

On September 19, 2023 appellant, then a 59-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on September 13, 2023 he sustained an injury to the left side while in the performance of duty. He explained that he tripped while working on a dock and "tweaked" his left side in trying to avoid a fall resulting in pain radiating from the left abdomen to the hip and groin area. On the reverse side of the claim form, appellant's supervisor acknowledged that he was injured in the performance of duty. Appellant stopped work on September 14, 2023.

On September 16, 2023 appellant was seen by Paul West, a physician assistant. He related that he tripped and fell at work and used his arms to break his fall, straining his abdominal muscles and obliques on the left side as a result. Mr. West diagnosed an abdominal muscle strain and placed appellant on restricted duty. A duty status report (Form CA-17) of even date and signed by Mr. West reiterated his diagnosis and work restrictions.

In a development letter dated October 4, 2023, OWCP advised appellant of the deficiencies in his claim. It explained the type of additional factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP provided an attending physician's report (Form CA-20) for completion by appellant's attending physician. It afforded appellant 60 days to respond.

A duty status report (Form CA-17) dated October 2, 2023, with an illegible signature, indicated a diagnosis of lumbar strain and placed appellant off work.

A Form CA-17 dated October 30, 2023 and signed by Dr. Blair Rhode, a Board-certified orthopedic surgeon, indicated a diagnosis of lumbar strain. He released appellant to return to work at full duty.

In a follow-up letter dated November 6, 2023, OWCP advised appellant that it conducted an interim review and the evidence remained insufficient to establish his claim. It noted that he had 60 days from the October 4, 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.

In a report dated November 19, 2023, Dr. Rhode recounted appellant's history of injury of tripping over lock hooks and twisting while trying to break his fall at work. He noted that appellant related experiencing an onset of low back pain as well as abdominal pain that radiated to his groin. Dr. Rhode opined that appellant sustained a work-related lumbar strain secondary to his slip and fall at work on September 13, 2023. He concluded that the fall on September 13, 2023 was the cause of appellant's current low back condition.

In a narrative report dated November 19, 2023, Dr. Rhode provided additional medical rationale as requested. He reiterated appellant's injury history that appellant tripped in a trailer when loading and hitting the side of the trailer and subsequently twisted his body, causing injury

to his left side, groin, and low back as his body hit the side of a trailer. Dr. Rhode opined that appellant sustained a work-related traumatic lumbar strain as a result of tripping and falling. He concluded that “the patient’s trip and fall over the hook intended to stabilize an [all-purpose container] within the trailer was the incident that caused his injury and subsequent symptoms.”

By decision dated December 7, 2023, OWCP denied appellant’s traumatic injury claim, finding that the evidence of record was insufficient to establish 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.

On January 10, 2024 appellant requested a review of the written record by a representative of OWCP’s Branch of Hearings and Review.

By decision dated January 24, 2024, OWCP denied appellant’s request for a review of the written record, finding that it was untimely filed as it was not made within 30 days from the issuance of the December 7, 2023 decision. It further exercised its discretion and determined that the issue in the case could equally well be addressed by a request for reconsideration before OWCP, along with the submission of new evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ 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, 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 an employee sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is whether the employee actually experienced the employment incident that allegedly occurred at the time and place and in the manner alleged. The second component is whether the employment incident caused an injury.⁶

³ *Id.*

⁴ *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 *B.H.*, Docket No. 20-0777 (issued October 21, 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 *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁷ A physician's opinion on whether there is a causal relationship between the diagnosed condition and the employment injury must be based on a complete factual and medical background.⁸ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's employment incident.⁹

ANALYSIS -- ISSUE 1

The Board finds that appellant has established a medical diagnosis in connection with the accepted September 13, 2023 employment incident.

A Form CA-17 dated October 30, 2023 by Dr. Rhode indicated a diagnosis of lumbar strain. On November 19, 2023 Dr. Rhode reported appellant's history of injury on September 13, 2023 and opined that appellant sustained a work-related lumbar strain. He concluded that the employment incident was the cause of his diagnosed condition. In a narrative report dated November 19, 2023, Dr. Rhode again noted appellant's diagnosis of lumbar strain and further opined that the mechanism of the injury was consistent with the sustained injury.

The Board finds that Dr. Rhode's reports are sufficient to establish a diagnosed medical condition of lumbar strain in connection with the accepted September 13, 2023 employment incident.¹⁰

As the medical evidence of record establishes a diagnosed medical condition, the case must be remanded for consideration of the medical evidence with regard to the issue of causal relationship.¹¹ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹²

CONCLUSION

The Board finds that appellant has met his burden of proof to establish a medical diagnosis of lumbar strain in connection with the accepted September 13, 2023 employment incident.

⁷ *R.P.*, Docket No. 21-1189 (issued July 29, 2022); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *R.P.*, *id.*; *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁹ *Id.*

¹⁰ *See E.T.*, Docket No. 22-1085 (issued January 18, 2023); *E.L.*, Docket No. 21-0587 (issued July 6, 2022); *see also T.C.*, Docket No. 17-0624 (issued December 19, 2017).

¹¹ *See S.R.*, Docket No. 22-0453 (issued March 2, 2023); *S.A.*, Docket No. 20-1498 (issued March 11, 2021).

¹² In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the December 7, 2023 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for further proceedings consistent with this decision of the Board. The January 24, 2024 decision of the Office of Workers' Compensation Programs is set aside as moot.

Issued: June 18, 2024
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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