

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

J.C., Appellant)

and)

U.S. POSTAL SERVICE, U.S. POSTAL)
INSPECTION SERVICE, Cleveland, OH,)
Employer)
-----)

**Docket No. 24-0315
Issued: May 7, 2024**

Appearances:

*Alan J. Shapiro, Esq., for the appellant¹
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 February 6, 2024 appellant, through counsel, filed a timely appeal from a January 9, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 factors of his federal employment.

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

This case has previously been before the Board.³ The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On May 10, 2022 appellant, then a 51-year-old postal police officer, filed an occupational disease claim (Form CA-2) alleging that he sustained lower lumbar and left leg condition due to factors of his federal employment, including wearing heavy gear/equipment, and vibrations from driving a patrol vehicle. He first became aware of his condition on April 15, 2016 and realized its relation to factors of his federal employment on April 11, 2022.

In an April 30, 2022 narrative statement, appellant recounted that in 2013 he transitioned to a police officer position from his prior 17-year position as a sales and service distribution associate. He further related that he underwent an unsuccessful lumbar surgical procedure in 2016. By 2019, appellant experienced debilitating pain after driving a patrol response vehicle and wearing duty gear.

In an undated report, Dr. Eugene Minnow, a chiropractor, reported that appellant had been a patient for lower back pain since January 14, 2021 and that he had a history of lumbar surgery in 2016. He opined that it was likely that carrying extra weight around the trunk caused an increased strain in the lumbar spine and contributed to further deterioration of appellant's previous lumbar condition.

In an April 11, 2022 report, Dr. Gabriel A. Smith, a Board-certified neurosurgeon, provided a history of appellant's lumbar condition and medical course. He noted a prior L5-S1 laminectomy. Based on his examination and a review of a magnetic resonance imaging (MRI) scan, Dr. Smith assessed left lumbar radiculopathy.

In a development letter dated May 18, 2022, OWCP informed appellant of the deficiencies in his claim. It informed him of the type of additional factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In an undated report, Dr. Kyle J. Wear, an internist, provided a timeline of appellant's visits for continued complaints of back pain. He indicated that appellant currently worked as a police officer and was required to wear 26 pounds of equipment/protective gear daily for his job. Dr. Wear opined that the strain from the weight of that equipment had likely contributed to/exacerbated appellant's chronic low back pain.

By decision dated July 14, 2022, OWCP denied appellant's occupational disease claim, finding that he had not established a diagnosed medical condition in connection with the claimed work factors. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On August 5, 2022 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on December 8, 2022. On December 6, 2022 OWCP received a November 3, 2022 report, wherein

³ Docket No. 23-0755 (issued October 2, 2023).

Dr. Wear addressed appellant's diagnosed lumbar radiculopathy based on appellant's clinical symptoms and radiologic findings. He indicated that he first examined appellant on March 1, 2019. Dr. Wear noted that appellant's work as a police officer required him to wear approximately 26 pounds of gear daily. He opined that the daily weight of this gear caused an exacerbation of appellant's radicular symptoms.

By decision dated January 9, 2023, OWCP's hearing representative modified the July 14, 2022 decision finding that appellant had established a medical diagnosis. However, the claim remained denied, as the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed medical condition and the accepted employment factors. The hearing representative noted that no additional evidence had been received.

On January 23, 2023 appellant, through counsel, requested reconsideration.

Appellant resubmitted a copy of Dr. Wear's November 3, 2022 report.

By decision dated February 1, 2023, OWCP denied appellant's request for reconsideration, of the merits of his claim, pursuant to 5 U.S.C. § 8128(a). It found Dr. Wear's November 3, 2022 report to be repetitious because it "was previously received on December 6, 2022, prior to the January 9, 2023 decision."

On May 1, 2023 appellant, through counsel, appealed to the Board. By decision dated October 2, 2023, the Board reversed OWCP's February 1, 2023 decision. The Board found that Dr. Wear's November 3, 2022 report constituted relevant and pertinent new evidence not previously considered by OWCP. The Board remanded the case to OWCP for an appropriate merit decision.⁴

By decision dated January 9, 2024, OWCP denied modification of its January 9, 2023 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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,⁶ 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

⁴ *Id.*

⁵ *Supra* note 2.

⁶ *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).

employment injury.⁷ 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.⁸

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit the following: (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 employment factors identified by the employee.⁹

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹⁰ 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 the specific employment factor(s) identified by the employee.¹¹

In a 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.¹²

ANALYSIS

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

Appellant submitted several reports from Dr. Wear in support of his claim. In an undated report, Dr. Wear related that appellant currently worked as a police officer and was required to wear 26 pounds of equipment/protective gear daily for his job. He opined that the strain from the weight of that equipment had likely contributed to/exacerbated appellant's chronic low back pain. The Board has held that pain is a description of a symptom, not a diagnosis of a medical

⁷ *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).

⁸ *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).

⁹ *G.J.*, Docket No. 23-0577 (issued August 28, 2023); *T.D.*, Docket No. 20-0921 (issued November 12, 2020); *Ruby I. Fish*, 46 ECAB 276 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁰ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *Robert G. Morris*, 48 ECAB 238 (1996).

¹¹ *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 9.

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (May 2023); *see also L.S.*, Docket No. 18-0518 (issued February 19, 2020).

condition.¹³ It is appellant's burden of proof to obtain and submit medical documentation containing a firm diagnosis in connection with the accepted employment factors. As this report did not provide a firm diagnosis in connection with the accepted employment factors, it is therefore insufficient to meet appellant's burden of proof. OWCP also received a November 3, 2022 report from Dr. Wear wherein he concluded that appellant's exposure to the daily weight of the gear he wore had exacerbated his radiculopathy. Dr. Wear did not, however, explain with medical rationale, how physiologically the accepted factors of appellant's employment caused his diagnosed medical condition.¹⁴ As such, his opinion is conclusory and is insufficient to establish appellant's claim.¹⁵

OWCP received an April 11, 2022 report wherein Dr. Smith assessed left lumbar radiculopathy. However, Dr. Smith failed to provide an opinion regarding the cause of appellant's lumbar condition.¹⁶ 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.¹⁷ This report is therefore insufficient to establish appellant's claim.

In an undated report, Dr. Minnow, a chiropractor, opined that it was likely that carrying extra weight around the trunk caused an increased strain in the lumbar spine and contributed to further deterioration of appellant's previous lumbar condition. The Board has held that a chiropractor is considered a physician as defined by section 8101(2) of FECA only if his or her services consist of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.¹⁸ As Dr. Minnow has not diagnosed subluxation based upon x-ray evidence, he is not considered a physician as defined under FECA and his medical reports do not constitute competent medical evidence.¹⁹

As the medical evidence of record is insufficient to establish a lumbar condition causally related to the accepted factors of appellant's 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.

¹³ See *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).

¹⁴ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁵ *A.K.*, Docket No. 21-0278 (issued July 12, 2021); *J.A.*, Docket No. 20-1195 (issued February 3, 2021).

¹⁶ *L.D.*, Docket No. 18-1468 (issued February 11, 2019).

¹⁷ *J.K.*, Docket No. 23-0896 (issued February 9, 2024); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, *supra* note 14.

¹⁸ 5 U.S.C. § 8101(2). See also *S.L.*, Docket No. 21-0760 (issued January 6, 2022); *T.T.*, Docket No. 18-0838 (issued September 19, 2019); *Thomas W. Stevens*, 50 ECAB 288 (1999); *George E. Williams*, 44 ECAB 530 (1993).

¹⁹ *J.D.*, Docket No. 22-0240 (issued June 8, 2022); *R.P.*, Docket No. 19-0271 (issued July 24, 2019).

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.

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 7, 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