

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

O.Z., Appellant)	
)	
and)	Docket No. 24-0853
)	Issued: November 14, 2024
U.S. POSTAL SERVICE, NORTH TEXAS)	
PROCESSING & DISTRIBUTION CENTER,)	
Coppell, TX, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 19, 2024 appellant filed a timely appeal from an April 22, 2024 merit decision and an August 12, 2024 nonmerit decision of the Office of Workers' Compensation Programs

(OWCP).¹ 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.³

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish a low back condition causally related to the accepted December 18, 2023 employment incident; and (2) whether OWCP properly determined that appellant abandoned his request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

FACTUAL HISTORY

On January 30, 2024 appellant, then a 34-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 18, 2023 he injured the left side of his lower back and experienced left hip and leg pain when he bent to pick up a medium-sized package from the back of his vehicle while in the performance of duty. On the reverse side of the claim form, his supervisor acknowledged that he was injured in the performance of duty. Appellant did not stop work.

In a February 12, 2024 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim and provided a factual questionnaire for his completion. OWCP afforded appellant 60 days to submit the necessary evidence. In a separate development letter of even date, it requested that the employing establishment provide additional information, including information regarding the circumstances of the claimed December 18, 2023 employment incident. OWCP afforded the employing establishment 30 days to respond.

OWCP thereafter received a December 19, 2023 statement, wherein appellant recounted the claimed December 18, 2023 work injury. It also received a December 23, 2023 work injury report.

¹ Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of the oral argument request, appellant asserted that oral argument should be granted because he was unable to call into the scheduled hearing as he was delayed at work and did not have access to a telephone but had provided the necessary medical evidence to support his claim. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the April 22, 2024 decision, OWCP received additional evidence. 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.*

In a December 19, 2023 medical report, Dr. G. Emory Warren, a family medicine specialist, reported a history of the December 18, 2023 date of injury as appellant experiencing sharp pain in left low back at work while lifting and moving heavy boxes. He noted appellant's current symptoms, provided examination findings and diagnosed sacrococcygeal disorders, including sacroiliac joint dysfunction of left side and pain of left sacroiliac joint. In a duty status report (Form CA-17) of even date, Dr. Warren noted diagnoses of sacroiliac joint dysfunction of left side and pain of left sacroiliac joint and provided work restrictions.

In a January 10, 2024 report, Dr. Warren provided examination findings and diagnosed sacrococcygeal disorders, which included sacroiliac joint dysfunction of left side and pain of left sacroiliac joint. He released appellant from care for his December 18, 2023 low back injury. In an accompanying January 10, 2024 Form CA-17, Dr. Warren indicated that appellant could resume regular work. He continued to diagnose work-related injuries of sacroiliac joint dysfunction of left side and pain of left sacroiliac joint.

In a December 28, 2023 report, Dr. Christopher Brown, a Board-certified family practitioner, reported a December 18, 2023 date of injury and noted that appellant had been working modified duty. He noted examination findings and diagnosed sacrococcygeal disorders, which included sacroiliac joint dysfunction of left side and pain of left sacroiliac joint. In an accompanying Form CA-17 of even date, Dr. Brown noted diagnoses of sacroiliac joint dysfunction of left side and pain of left sacroiliac joint and continued appellant on modified duty.

OWCP also received physical therapy notes dated December 20 and 27, 2023 and January 4, 2024.

In a follow-up letter dated March 8, 2024, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim. It noted that he had 60 days from the February 12, 2024 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.

OWCP thereafter received a March 13, 2024 letter from the employing establishment and reports of work status (Form CA-3) which indicated that appellant had returned to full-time modified duty with restrictions on December 19, 2023, and full-time regular duty without restrictions on December 30, 2023.

By decision dated April 22, 2024, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed conditions and the accepted December 18, 2023 employment incident.

On May 6, 2024, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a June 13, 2024 notice, OWCP's hearing representative informed appellant that his oral hearing would be conducted by telephone, scheduled for July 30, 2024 at 11:00 a.m. Eastern Standard Time (EST). The hearing representative provided the toll-free number and passcode for access to the hearing and mailed the notice to appellant's last known address of record, as well as

to the employing establishment. Appellant did not appear for the telephonic hearing and no request for postponement was received.

By decision dated August 12, 2024, OWCP found that appellant had abandoned his request for an oral hearing as he had received written notification of the hearing 30 days in advance but failed to appear. It further noted that there was no indication in the record that he had contacted the Branch of Hearings and Review either prior to, or subsequent to, the scheduled hearing to explain his failure to appear.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA,⁴ that the claim was timely filed within the applicable time limitation period 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.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 whether the employee has established 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 employee has established that the employment incident caused an injury.⁷

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁸ 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 incident identified by the employee.⁹

⁴ *K.R.*, Docket No. 20-0995 (issued January 29, 2021); *A.W.*, Docket No. 19-0327 (issued July 19, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *J.B.*, Docket No. 20-1566 (issued August 31, 2021); *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).

⁷ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019).

⁸ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a low back condition causally related to the accepted December 18, 2023 employment incident.

In a report dated December 19, 2023, Dr. Warren described appellant's history of left low back pain while lifting and moving heavy boxes at work on December 18, 2023. He diagnosed sacrococcygeal disorders, including sacroiliac joint dysfunction of left side and pain of left sacroiliac joint. Dr. Warren also provided a progress report dated January 10, 2024 reiterating his diagnoses. Likewise, in a report dated December 28, 2023, Dr. Brown noted the December 18, 2023 date of injury, appellant's treatment and work status, and diagnosed sacrococcygeal disorders, which included sacroiliac joint dysfunction of left side and pain of left sacroiliac joint. These providers, however, did not provide an opinion on causal relationship. The Board has long held that a medical report which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁰ Therefore, this medical evidence is insufficient to establish appellant's traumatic injury claim.

The record contains CA-17 forms from both Drs. Warren and Brown providing work restrictions. These providers, however, did not provide an opinion on causal relationship. As noted above, the Board has held that a medical report which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹¹ Therefore, this medical evidence is insufficient to establish appellant's traumatic injury claim.

OWCP also received reports from a physical therapist. However, physical therapists are not considered physicians as defined under FECA.¹² Consequently, this evidence is of no probative value and insufficient to establish the claim.

As the medical evidence of record is insufficient to establish causal relationship between a low back condition and the accepted 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.

¹⁰ See *R.P.*, Docket No. 22-0621 (issued July 20, 2022); *S.S.*, Docket No. 21-0837 (issued November 23, 2021); *L.D.*, Docket No. 20-0894 (issued January 26, 2021); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018); *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

¹¹ *Id.*

¹² Section 8101(2) of FECA provides that the term 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); 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 *P.D.*, Docket No. 21-0920 (issued January 12, 2022) (a physical therapist is not a physician under FECA).

LEGAL PRECEDENT -- ISSUE 2

Under FECA and its implementing regulations, a claimant who has received a final adverse decision by OWCP is entitled to receive a hearing by writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.¹³ Unless otherwise directed in writing by the claimant, OWCP's hearing representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date.¹⁴ OWCP has the burden of proving that it properly mailed notice of the scheduled hearing to a claimant and any representative of record.¹⁵

A claimant who fails to appear at a scheduled hearing may request in writing, within 10 days after the date set for the hearing, that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference.¹⁶ The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing.¹⁷

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly determined that appellant abandoned his request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following OWCP's April 22, 2024 decision denying the acceptance of appellant's claim for lack of causal relationship, he filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a June 13, 2024 notice, OWCP's hearing representative informed appellant that his oral hearing would be conducted by telephone, and was scheduled for July 30, 2024 at 11:00 a.m. EST. The hearing representative mailed the notice to appellant's last known address of record and provided instructions on how to participate.¹⁸

Appellant did not appear for the scheduled hearing. He also did not request a postponement or provided an explanation to OWCP for failure to appear for the hearing within 10 days of the scheduled hearing. As appellant failed to call in to the scheduled hearing or provide notification

¹³ 20 C.F.R. § 10.616(a).

¹⁴ *Id.* at § 10.617(b).

¹⁵ *L.L.*, Docket No. 21-1194 (issued March 18, 2022); *L.T.*, Docket No. 20-1539 (issued August 2, 2021); *V.C.*, Docket No. 20-0798 (issued November 16, 2020); *M.R.*, Docket No. 18-1643 (issued March 1, 2019); *T.P.*, Docket No. 15-0806 (issued September 11, 2015); *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

¹⁶ 20 C.F.R. § 10.622(f).

¹⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6g (September 2020); *see also L.L. and V.C.*, *supra* note 15; *K.H.*, Docket No. 20-1198 (issued February 8, 2021); *A.J.*, Docket No. 18-0830 (issued January 10, 2019).

¹⁸ The Board has held that, absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received. This is called the mailbox rule. *See L.L., V.C.*, and *L.T.*, *supra* note 15.

to OWCP's Branch of Hearings and Review within 10 days of the scheduled hearing explaining the failure to appear, the Board finds that OWCP properly determined that he abandoned his request for an oral hearing.¹⁹

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a low back condition causally related to the accepted December 18, 2023 employment incident. The Board further finds that OWCP properly determined that appellant abandoned his request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

ORDER

IT IS HEREBY ORDERED THAT the April 22 and August 12, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 14, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁹ *C.M.*, Docket No. 24-0895 (issued September 30, 2024); *supra* note 16.