

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

I.W., Appellant)	
)	
and)	Docket No. 24-0275
)	Issued: October 31, 2024
DEPARTMENT OF DEFENSE, DEFENSE)	
COMMISSARY AGENCY, CHERRY POINT)	
COMMISSARY, Cherry Point, NC, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On January 24, 2024 appellant filed a timely appeal from a January 10, 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.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the January 10, 2024 decision, a appellant submitted additional evidence on appeal to the Board. However, the Board's *Rules of Procedures* 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish a lumbar spine condition causally related to the accepted November 18, 2021 employment incident.

FACTUAL HISTORY

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

On November 30, 2021 appellant, then a 63-year-old store worker, filed a traumatic injury claim (Form CA-1), alleging that on November 18, 2021 she injured her back when she pulled a cart into the chill freezer and ran into a pallet hand jack that had been stored improperly at the entrance to the freezer while in the performance of duty.⁴ She stated that she was "jerked hard" and experienced the onset of back pain. Appellant did not stop work.

In support of her claim, appellant provided a November 29, 2021 report from Dr. Douglas DeSantis, a Board-certified anesthesiologist who recounted the November 18, 2021 employment incident when she "walked into something that was out of its normal position," and experienced the onset of back pain. On examination, he observed left-sided sacroiliac tenderness to palpation, and left-sided sacroiliac pain when rising from a flexed position to standing upright. Dr. DeSantis provided an assessment of "[s]acro ilial pain" and prescribed medication. He noted that appellant had been under work restrictions at the time of the November 18, 2021 employment incident.

In a report dated February 17, 2022, Dr. DeSantis noted the November 18, 2021 employment incident, and that appellant had sustained chronic sciatica from a prior occupational injury. He explained that, during the initial November 29, 2021 examination, she "was found to have sacroiliac discomfort related to trauma at work." Dr. DeSantis did not obtain x-rays. He prescribed anti-inflammatory medication and recommended physical therapy. Dr. DeSantis concluded that the mechanism of injury appellant had described "correlated with the physical exam[ination] findings."

By decision dated March 23, 2022, OWCP accepted that appellant struck a pallet jack at the entrance to a chill freezer in the performance of duty on November 18, 2021 as alleged. However, it denied her claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted November 18, 2021 employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

³ Docket No. 23-0567 (issued October 25, 2023); Docket No. 22-1065 (issued January 3, 2023).

⁴ Previously, under OWCP File No. xxxxxx149, OWCP accepted that on April 23, 2019 appellant sustained a lower back contusion in a workplace assault while in the performance of duty.

On April 12, 2022 appellant requested reconsideration.

On April 12, 2022 OWCP received an April 4, 2022 report by Dr. DeSantis noting the November 18, 2021 employment injury. Dr. DeSantis explained that, during his November 29, 2021 examination, he observed “inflammation of [appellant’s] sacroiliac joint and evidence of piriformis spasm on the left side related to the trauma.” He prescribed anti-inflammatory medication and recommended physical therapy. Dr. DeSantis opined that the mechanism of injury appellant described correlated with the findings on physical examination. Appellant also submitted documents previously of record.

By decision dated July 5, 2022, OWCP denied appellant’s request for reconsideration of the merits of the claim, pursuant to 5 U.S.C. § 8128(a).

On July 11, 2022 appellant appealed to the Board. By decision dated January 3, 2023, the Board affirmed the March 23, 2022 decision, finding that she had not met her burden of proof to establish a diagnosed medical condition in connection with the accepted November 18, 2021 employment incident.⁵ Additionally, the Board set aside the July 5, 2022 decision, finding that appellant had submitted new, relevant evidence on reconsideration requiring a review of the merits of the claim. The case was remanded for a merit review of the evidence submitted on reconsideration and issuance of an appropriate merit decision on her claim.

Appellant subsequently requested reconsideration and submitted additional medical evidence.

July 12, 2022 x-rays of the lumbar spine demonstrated mild scoliosis, minimal degenerative anterolisthesis at L4-5, and disc space narrowing and degeneration at L4-5 and L5 S1.

In a January 20, 2023 report, Dr. DeSantis recounted that appellant’s low back pain “initially began with [an] assault at work and it was reinjured by another event at work.” Physical therapy improved her symptoms, but had only been authorized by OWCP for a brief period. On examination, Dr. DeSantis observed point tenderness to palpation in the lumbosacral region, limited flexion of the back secondary to discomfort, and no radicular symptoms. He diagnosed “[d]egenerative disc disease of the lumbosacral spine with aggravation of the injuries due to episodes at her workplace.” Dr. DeSantis recommended additional physical therapy and prescribed medication.

By decision dated February 7, 2023, OWCP found that appellant had established a medical diagnosis in connection with the accepted November 18, 2021 employment incident. The claim remained denied, however, because the medical evidence of record was insufficient to establish causal relationship between the diagnosed condition and the accepted November 18, 2021 employment incident.

⁵ Docket No. 22-1065 (issued January 3, 2023).

On March 13, 2023 appellant appealed to the Board.⁶

During the pendency of the prior appeal, OWCP received a June 14, 2021 and March 31, 2023 questionnaire by Dr. DeSantis regarding appellant's request for reasonable accommodations, wherein he diagnosed chronic lumbar radiculopathy and limited lifting to 15 pounds and standing to 30 minutes.⁷ He indicated that appellant's condition substantially limited her ability to stand, lift, and bend.

By decision dated October 25, 2023,⁸ the Board affirmed OWCP's February 7, 2023 decision, finding that appellant had not met her burden of proof to establish a diagnosed medical condition causally related to the accepted November 18, 2021 employment incident.

On October 30, 2023 appellant requested reconsideration. She submitted a July 12, 2022 report by Dr. DeSantis wherein he recounted appellant's sacroiliac discomfort "secondary to presumptive trauma." He noted that x-rays revealed "mild scoliosis and degenerative disc changes at L4[-]5 and L5[-]S1."

In a November 21, 2023 report, Dr. DeSantis recounted that appellant had sustained lumbar radiculopathy and low back discomfort in an April 23, 2019 workplace assault, and predominantly right-sided sacroiliac discomfort caused by a November 18, 2021 employment incident "when she had a jarring impact with a pallet jack at work." Dr. DeSantis opined that both conditions would be "lifelong."

In a November 27, 2023 statement, appellant asserted that her lumbar condition was caused by the combined effects of the April 23, 2019 workplace assault accepted under OWCP File No. xxxxxx149, and the accepted November 18, 2021 employment incident under the current claim.

By decision dated January 10, 2024, OWCP denied modification of its October 25, 2023 decision.

⁶ Prior to filing an appeal with the Board, on February 18, 2023 appellant requested reconsideration of the February 7, 2023 decision before OWCP. By decision dated July 12, 2023, while the appeal on the same underlying issue was still pending, OWCP denied appellant's request for reconsideration of the merits of the claim. However, the July 12, 2023 decision is null and void as it was issued while the Board had jurisdiction over the same issue in the case. The Board's *Rules of Procedure* provides: "The Board and OWCP may not exercise simultaneous jurisdiction over the same issue in a case on appeal. Following the docketing of an appeal before the Board, OWCP does not retain jurisdiction to render a further decision regarding the issue on appeal until after the Board relinquishes jurisdiction." 20 C.F.R. §§ 501.2(c)(3). *See also Order Dismissing Appeal*, Docket No. 22-1014 (issued November 29, 2023); *Order Dismissing Appeal, T.T.*, Docket No. 20-0864 (issued December 17, 2020); *M.S.*, Docket Nos. 19-1090 & 20-0408 (issued April 20, 2020); *J.W.*, Docket No. 19-1688 (issued March 18, 2020); *George Simpson*, Docket No. 93-0452 (issued February 18, 1994); *Douglas E. Billings*, 41 ECAB 880 (1990).

⁷ OWCP also received administrative documents regarding appellant's request for reasonable accommodations from the employing establishment.

⁸ Docket No. 23-0567 (issued October 25, 2023).

LEGAL PRECEDENT

An employee seeking benefits under FECA⁹ 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.¹⁰ 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.¹¹

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 actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.¹²

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹³ 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.¹⁴ 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 the alleged employment incident.¹⁵ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁶

⁹ *Supra* note 1.

¹⁰ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

¹¹ *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).

¹² *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).

¹³ *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).

¹⁴ *S.W.*, Docket No. 24-0302 (issued July 26, 2024); *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).

¹⁵ *Id.*

¹⁶ *S.W.*, *supra* note 14; *T.M.*, Docket No. 22-0220 (issued July 29, 2022); *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *see also J.L.*, Docket No. 18-1804 (issued April 12, 2019).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a lumbar spine condition causally related to the accepted November 18, 2021 employment incident.

Preliminarily, the Board notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of OWCP's February 7, 2023 decision, because the Board considered that evidence in its October 25, 2023 decision. Findings made in prior Board decisions are *res judicata* absent further review by OWCP under section 8128 of FECA.¹⁷

Following the February 7, 2023 decision, OWCP received additional evidence from Dr. DeSantis. In reports dated July 12, 2022 through November 21, 2023, Dr. DeSantis recounted a history of chronic lumbar radiculopathy and low back discomfort following an April 23, 2019 workplace assault, and predominantly right-sided sacroiliac discomfort following the November 18, 2021 employment incident. He opined that the diagnosed conditions would be lifelong. The Board finds that as Dr. DeSantis did not set forth the pathophysiologic mechanisms whereby the November 18, 2021 employment incident would cause or aggravate the diagnosed conditions, his opinion is insufficient to meet appellant's burden of proof.¹⁸

As the medical evidence of record is insufficient to establish causal relationship between the diagnosed lumbar conditions and the November 18, 2021 employment incident, the Board finds that appellant has not met her 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 her burden of proof to establish a lumbar spine condition causally related to the accepted November 18, 2021 employment incident.

¹⁷ *D.A.*, Docket No. 19-1965 (issued February 10, 2021); *G.B.*, Docket No. 19-1448 (issued August 21, 2020); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

¹⁸ *T.S.*, Docket No. 23-0772 (issued March 28, 2024); *D.F.*, Docket No. 19-0067 (issued May 3, 2019).

ORDER

IT IS HEREBY ORDERED THAT the January 10, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 31, 2024
Washington, DC

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

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

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