United States Department of Labor
Employees' Compensation Appeals Board

G.C., Appellant	)	
and	)	**Docket No. 24-0672**
	)	**Issued: September 16, 2024**
DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, NATIONAL CAPITOL REGION, Luray, VA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 10, 2024 appellant, through counsel, filed a timely appeal from a May 15, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP).[2] Pursuant to the

[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] The Board notes that, following the May 15, 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*. The Board further notes that OWCP issued a decision on May 29, 2024 addressing appellant's traumatic injury claim. Appellant, through counsel, did not appeal the May 29, 2024 decision and therefore, the Board will not address it in this appeal. 20 C.F.R. § 501.2(c).

Federal Employees' Compensation Act[3] (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 October 16, 2023 employment incident.

FACTUAL HISTORY

On October 31, 2023 appellant, then a 61-year-old maintenance mechanic, filed a traumatic injury claim (Form CA-1) alleging that on October 16, 2023 he injured his low back while in the performance of duty.[4] He noted that he experienced pain in the left side of his back, radiating down his left leg into his left foot after shoveling loose gravel off of a broken water line. Appellant stopped work on October 27, 2023, and returned to full-time modified-duty work with restrictions on December 22, 2023.

In a November 7, 2023 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of additional factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded appellant 60 days to submit the necessary evidence.

OWCP thereafter received an October 26, 2023 emergency room report by Dr. Kent R. Folsom, a Board-certified emergency medicine physician, who noted that appellant related complaints of back pain to the left of midline in the area of L5 and down to the left foot, which he attributed to shoveling gravel on October 16, 2023. Dr. Folsom also noted that he related a history of back problems in the past but without severe leg pain. On physical examination of the back, he documented minimal tenderness of the left paraspinous musculature at L4 and normal neurologic and lower extremity findings. Dr. Folsom diagnosed acute left-sided low back pain with left-sided sciatica.

On October 27, 2023 the employing establishment issued an authorization for examination and/or treatment report (Form CA-16) which indicated that appellant had injured his low back while shoveling. In an attached attending physician's report, Part B of the Form CA-16, dated October 26, 2023, Dr. Folsom diagnosed low back pain with sciatica. He checked a box marked "Yes" indicating that he believed these conditions were caused or aggravated by an employment activity.

In an undated form report, Jennifer L. Anderson, a nurse practitioner, indicated that appellant was under her care due to an injury. She noted that he would be unable to work from November 12 through December 31, 2023.

[3] 5 U.S.C. § 8101 *et seq*.

[4] OWCP assigned the present claim OWCP File No. xxxxxx321. Appellant previously filed an April 13, 2014 traumatic injury claim, which OWCP accepted for right knee strain and lumbar strain under OWCP File No. xxxxxx779. He also previously filed a December 2, 2020 traumatic injury claim for injuries to his left knee, left hip, and left center lower back, which OWCP processed as a short form closure under OWCP File No. xxxxxx920. OWCP has not administratively combined these claims with the present claim.

A December 5, 2023 magnetic resonance imaging (MRI) scan of the lumbar spine demonstrated multilevel lumbar spondylosis, possible impingement of the nerve roots at L3 and L4 on the right, and interval worsening at L2-3 and L4-5 as compared with a prior lumbar MRI scan of December 7, 2018.

X-rays of the cervical spine dated December 5, 2023 revealed mild degenerative changes. An MRI scan of the cervical spine of even date demonstrated degenerative changes from C3 through C7, with progression of disease and stenosis at C5-6 and C6-7 as compared with a prior cervical MRI scan of December 7, 2018.

In a December 21, 2023 statement, appellant recounted that on October 16, 2023 he shoveled loose gravel, used a mini excavator to uncover a pipe, and used a skid steer to fill in a trench. He noted that the skid steer was jarring and rough to operate.

In a narrative letter dated December 21, 2023, Ms. Anderson noted appellant's work duties on October 16, 2023 and that he experienced back pain while hand shoveling, which worsened due to the jerking and bouncing inside of the steer cat. She released him to return to work with restrictions of no lifting greater than 20 pounds, no operating heavy equipment, no walking on steep, uneven, or rocky ground, and no bending at the waist. Ms. Anderson also indicated that appellant could not ride over rough surfaces for more than two hours without a break.

On January 4, 2024 appellant accepted a full-time position as a sign painter helper.

By decision dated January 9, 2024, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted October 16, 2023 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On January 23, 2024 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

In a January 29, 2024 attending physician's report (Form CA-20), Dr. Erin Gundersen, a Board-certified internist, diagnosed lumbar spondylolysis and radiculopathy. She noted that the December 5, 2023 lumbar MRI scan revealed worsening spondylosis at L2-3 and L4-5. Dr. Gundersen opined that "his lower back radiculopathy was worsened by the injury on October 16, 2023," including hand shoveling and the jerking and bouncing of the skid steer, and that the injury exacerbated the pain in this lower back and increased muscle spasms.

A hearing was held on March 27, 2024. Appellant testified regarding his work duties on October 16, 2023 and subsequent treatment and symptoms.

By decision dated May 15, 2024, OWCP's hearing representative modified the January 9, 2024 decision to find that appellant had submitted sufficient evidence to establish diagnosed conditions of lumbar spondylolysis and lumbar radiculopathy; however, the claim remained denied

as he did not provide a rationalized medical opinion explaining how the diagnosed conditions were causally related to the accepted October 16, 2023 employment incident.[5]

LEGAL PRECEDENT

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,[6] 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.[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 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 that the employee must submit sufficient evidence to establish 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 employment incident caused an injury.[9]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[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 specific employment incident identified by the employee.[11]

In a case in which a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation,

[5] The OWCP hearing representative also directed that OWCP administratively combine OWCP File Nos. xxxxxx779, xxxxxx920, and xxxxxx321.

[6] *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).

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

[8] *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).

[9] *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).

[10] *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).

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

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 the accepted October 16, 2023 employment incident.

In support of his claim, appellant submitted a January 29, 2024 Form CA-20 by Dr. Gundersen, who diagnosed lumbar spondylolysis and radiculopathy. She opined that his lower back radiculopathy was worsened by the injury on October 16, 2023 and that the injury exacerbated the pain in this lower back and increased muscle spasms. The Board finds, however, that Dr. Gundersen's report is conclusory and fails to provide a rationalized medical opinion explaining how she arrived at her conclusions.[13] The Board has held that medical opinion evidence should offer a medically-sound explanation of how the specific employment incident physiologically caused injury.[14] Further, the Board has held that medical rationale is particularly necessary where, as here, there are preexisting conditions involving some of the same body parts.[15] In such cases, the Board has required medical rationale differentiating between the effects of the work-related injury and the preexisting condition.[16] This evidence is therefore insufficient to establish the claim.

Dr. Folsom, in an emergency room report and attending physician's report, Part B of the Form CA-16, dated October 26, 2023, diagnosed low back pain with sciatica. He checked a box marked "Yes" indicating that he believed these conditions were caused or aggravated by an employment activity. The Board has held that an opinion on causal relationship with an affirmative check mark, without more by the way of medical rationale, is insufficient to establish the claim.[17] As such, this evidence is insufficient to establish the claim.

OWCP also received reports by Ms. Anderson, a nurse practitioner. However, certain healthcare providers such as nurses and physician assistants are not considered physicians as

[12] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *S.J.*, Docket No. 20-0896 (issued January 11, 2021); *R.G.*, Docket No. 18-0917 (issued March 9, 2020); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

[13] *See D.A.*, Docket No. 20-0951 (issued November 6, 2020); *G.M.*, Docket No. 15-1288 (issued September 18, 2015).

[14] *K.J.*, Docket No. 21-0020 (issued October 22, 2021); *L.R.*, Docket No. 16-0736 (issued September 2, 2016); *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

[15] *R.W.*, Docket No. 19-0844 (issued May 29, 2020); *A.M.*, Docket No. 19-1138 (issued February 18, 2020); *A.J.*, Docket No. 18-1116 (issued January 23, 2019).

[16] *Id*.

[17] *See C.S.*, Docket No. 18-1633 (issued December 30, 2019); *D.S.*, Docket No. 17-1566 (issued December 31, 2018); *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

defined under FECA.[18] Consequently, their medical findings or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[19]

The remaining evidence of record consisted of x-ray studies. The Board has held that diagnostic reports, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the accepted employment incident caused a diagnosed condition.[20] Therefore, this evidence is also insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish causal relationship between a diagnosed lumbar condition and the accepted October 16, 2023 employment incident, the Board finds that he has not met his burden of proof.[21]

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 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 October 16, 2023 employment incident.[22]

[18] Section 8101(2) of FECA provides that medical opinions can only be given by a qualified physician. This section defines a physician as 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 supra* note 12 at Chapter 2.805.3a(1) (May 2023); *L.S.*, Docket No. 19-1231 (issued March 30, 2021) (a physician assistant and nurse practitioner are not considered physicians as defined under FECA); *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).

[19] *K.A.*, Docket No. 18-0999 (issued October 4, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, *id*.

[20] *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

[21] *See J.T.*, Docket No. 18-1755 (issued April 4, 2019); *T.O.*, Docket No. 18-0139 (issued May 24, 2018).

[22] The Board notes that the employing establishment executed a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *S.G.*, Docket No. 23-0552 (issued August 28, 2023); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the May 15, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 16, 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