

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

C.G., Appellant)	
)	
and)	Docket No. 21-0727
)	Issued: December 21, 2021
U.S. POSTAL SERVICE, POST OFFICE,)	
Catonsville, MD, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On April 16, 2021 appellant filed a timely appeal from a March 9, 2021 merit 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

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 his oral argument request, appellant asserted that oral argument should be granted because recorded calls existed and he submitted documents in support of his claim that had not been reviewed. He further alleged that he was being discriminated against. The Board, in exercising its discretion, denies appellant's request for oral argument because this matter requires an evaluation of the medical evidence presented. As such, the Board finds that the arguments on a appeal can be adequately 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 March 9, 2021 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.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a left hip condition causally related to the accepted June 10, 2020 employment incident.

FACTUAL HISTORY

On July 13, 2020 appellant, then a 33-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 10, 2020 he injured his left hip as he was in the process of defending himself from a loose dog that tried to bite him while in the performance of duty. He did not stop work.

Appellant submitted a June 16, 2020 visit summary in which Nora Bianco, a physician assistant, indicated that appellant had undergone an x-ray scan of his left hip and was diagnosed with an unspecified sprain of the left hip.

In an undated statement, appellant explained that, in the process of trying to get away from a pit bull on June 10, 2020, he twisted his hip. He informed his manager of his injury and took the next couple of days off from work before visiting a physician on June 15, 2020. Appellant returned to work on June 22, 2020 and when he attempted to deliver to another route he experienced more pain. He treated his symptoms with ice that night, but the next morning experienced pain shooting from his left foot up to his left hip. At the direction of his manager, appellant completed a Form CA-1 on June 25, 2020. Appellant indicated that he had been in pain and had not received reimbursement for medical treatment or wage-loss compensation since June 10, 2020.

Appellant also submitted a photograph of the medical center where he went for treatment, as well as photographs of receipts demonstrating that he purchased prescription medication. He also submitted an illegible duty status report (Form CA-17).

In a development letter dated July 17, 2020, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information regarding appellant's alleged injury, including comments from a knowledgeable supervisor regarding the accuracy of her allegations and an explanation of any areas of disagreement. It afforded both parties 30 days to submit the requested evidence. No additional evidence was received.

By decision dated August 18, 2020, OWCP denied appellant's traumatic injury claim, finding that he had not submitted medical evidence signed by a qualified physician containing a diagnosis in connection with his claimed injury. It concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

OWCP continued to receive evidence. In a July 30, 2020 report, Dr. Motti Mulleta, Board-certified in internal medicine, indicated that appellant's hip pain was aggravated by a December 2019 motor vehicle accident as well as the June 10, 2020 employment incident in which appellant was attacked by a pit bull. On evaluation she diagnosed an unspecified sprain of the left hip.

In an August 18, 2020 medical report, Dr. Stephen Faust, a Board-certified orthopedic surgeon, indicated that appellant twisted his left hip two months prior while trying to avoid an attack from a dog. He also observed that appellant had two prior episodes over the last year and a

history of injury in the same area. Dr. Faust reviewed a June 15, 2020 x-ray scan of appellant's left hip and diagnosed chronic left hip pain. In a workers' compensation case report of even date, he checked a box to indicate appellant's need for severe work restrictions and arranged for appellant to undergo a magnetic resonance imaging scan of his left hip.

On September 1, 2020 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP subsequently received medical reports dated June 15 and 25, 2020 wherein Dr. Eric Simball, Board-certified in family medicine, evaluated appellant for hip pain appellant had been experiencing for approximately nine months. Appellant reported that he strained his hip when his foot slipped as he was walking and overextended. He alleged that this injury happened at work, but he did not inform his physician that it was work related. Dr. Simball diagnosed an unspecified sprain of the left hip and a left hip strain with an onset date of June 8, 2020.

An oral hearing was held on January 6, 2021. Appellant recounted the events of the accepted June 10, 2020 employment incident. The hearing representative informed appellant of the medical evidence necessary in order to establish his claim and held the case record open for submission of additional evidence for at least 30 days. No additional evidence was submitted.

By decision dated March 9, 2021, OWCP's hearing representative affirmed, as modified, the August 18, 2020 decision, finding that the medical evidence submitted was sufficient to establish a diagnosed medical condition. The claim remained denied, however, as the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed condition and the accepted June 10, 2020 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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,⁵ 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.⁶ 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.⁷

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. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the

⁴ *Supra* note 2.

⁵ *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).

⁶ *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).

⁷ *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).

time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury.⁸

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁹ A physician's opinion on whether there is causal relationship between the diagnosed condition and the accepted employment incident must be based on a complete factual and medical background. 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 specific employment incident.¹⁰

In any 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.¹¹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left hip injury causally related to the accepted June 10, 2020 employment incident.

Dr. Mulleta, in a July 30, 2020 report, opined that appellant's left hip pain was related to both, a December 2019 motor vehicle accident and the June 10, 2020 employment incident. On evaluation she diagnosed an unspecified sprain of the left hip. However, Dr. Mulleta did not offer any rationale for this opinion relative to causal relationship. The Board has held that medical opinion evidence should offer a medically-sound explanation of how the specific employment incident or work factors physiologically caused the injury.¹² Dr. Mulleta's report is, therefore, insufficient to establish appellant's claim.

Appellant submitted reports dated June 15 and 25, 2020 in which Dr. Simball diagnosed an unspecified left hip strain with an onset date of June 8, 2020. Dr. Simball related this injury to an incident approximately nine months prior when appellant was walking and strained his hip as he slipped on something and overextended it. As the Board has held, medical opinions based on an incomplete or inaccurate history are of diminished probative value.¹³ Additionally, in any 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 medical evidence must provide a rationalized medical opinion that differentiates between the effects of the work-

⁸ *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).

⁹ *L.S.*, Docket No. 19-1769 (issued July 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁰ *B.C.*, Docket No. 20-0221 (issued July 10, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). See *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

¹² See *H.A.*, Docket No. 18-1466 (issued August 23, 2019); *L.R.*, Docket No. 16-0736 (issued September 2, 2016).

¹³ See *D.B.*, Docket No. 19-0663 (issued August 27, 2020); *D.W.*, Docket No. 18-0123 (issued October 4, 2018); *L.G.*, Docket No. 09-1692 (issued August 11, 2010).

related injury or disease and the preexisting condition. As Dr. Simball did not specifically differentiate between appellant's preexisting condition and the effects of the accepted June 10, 2020 employment incident, and did not explain how the employment incident aggravated his preexisting condition, his medical reports are insufficient to establish causal relationship.¹⁴

Dr. Faust's August 18, 2020 medical report observed left hip injury due to the June 10, 2020 employment incident in which he twisted while trying to avoid an attack from a dog. On evaluation Dr. Faust diagnosed chronic left hip pain. The Board has held that pain is a symptom and not a compensable medical diagnosis.¹⁵ For this reason, Dr. Faust's August 18, 2020 medical report is also insufficient to meet appellant's burden of proof.

The remaining medical evidence consists of a June 16, 2020 visit summary signed by a physician assistant. The Board has long held that certain healthcare providers such as physical therapists, nurses, physician assistants, and social workers are not considered physicians as defined under FECA.¹⁶ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.

As appellant has not submitted rationalized medical evidence establishing a left hip condition causally related to the accepted June 10, 2020 employment incident, the Board finds that he has not met his burden of proof to establish his claim.

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 his burden of proof to establish a left hip condition causally related to the accepted June 10, 2020 employment incident.

¹⁴ *Supra* note 10.

¹⁵ *See S.L.*, Docket No. 19-1536 (issued June 26, 2020); *D.Y.*, Docket No. 20-0112 (issued June 25, 2020).

¹⁶ Section 8101(2) of FECA provides that 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 also supra* note 11 at Chapter 2.805.3a(1) (January 2013); *M.F.*, Docket No. 17-1973 (issued December 31, 2018); *K.W.*, 59 ECAB 271, 279 (2007); *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).

ORDER

IT IS HEREBY ORDERED THAT the March 9, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 21, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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