

Appellant submitted a duty status report from a nurse practitioner, dated June 12, 2014, who diagnosed lumbar strain and advised appellant that she could return to work on June 12, 2014 with restrictions.

By letter dated June 25, 2014, OWCP advised appellant of the type of evidence needed to establish her claim, particularly requesting that she submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors.

Appellant submitted a work excuse note dated June 6, 2014 from a nurse practitioner who diagnosed lumbago and reported that appellant was disabled until June 8, 2014. She was treated by a nurse practitioner from June 12 and 24, 2014 for low back pain. Appellant reported lifting trays of mail and experiencing lower back pain. She was prescribed analgesics. Examination of the lumbar spine revealed no abnormalities, no abrasions or scoliosis, tenderness with palpation to bilateral paravertebral musculature, tenderness of lumbar spine, and limited range of motion. The nurse practitioner diagnosed lumbar sprain. She opined that the work accident was the prevailing factor in causing appellant's medical condition and need for treatment. The nurse practitioner recommended physical therapy and noted that appellant could return to restricted duty. She continued to note appellant's status in reports through July 17, 2014. Appellant also submitted physical therapy notes dated June 27 to July 17, 2014.

In a July 28, 2014 decision, OWCP denied the claim because the evidence was insufficient to establish a medical diagnosis in connection with the claimed event or work factors as described.

On August 18, 2014 appellant requested reconsideration and reported continuing low back symptoms. She submitted physical therapy reports and a July 17, 2014 report from a nurse practitioner.

Appellant was treated by Dr. Thomas B. Kibby, a Board-certified physiatrist, on August 15, 2014 for lower back pain. Dr. Kibby reported that appellant injured her back after "lifting trays off the tray racks." Appellant reported returning to work and having low back pain when lifting. Dr. Kibby noted that examination of the lumbar spine revealed no abnormalities, no kyphosis or scoliosis. Appellant was obese. She had no tenderness to palpation of the paravertebral musculature, full active range of motion in all planes except flexion, deep tendon reflexes were intact and equal at the patella and Achilles, and straight leg raises were negative bilaterally. Dr. Kibby noted preliminary x-ray of the lumbar spine revealed normal findings, possible degenerative changes and mild scoliosis. He diagnosed sprain lumbar region and noted that appellant had reached maximum medical improvement. Dr. Kibby noted that no future medical treatment was expected, including prescription medications or services associated with the claimed injuries. He noted that appellant could work without restrictions and there was no permanent disability expected from this incident. In a work status summary dated August 15, 2014, Dr. Kibby diagnosed sprain of the lumbar region improved, noted that appellant had reached maximum medical improvement, and discharged appellant from his care.

In a March 6, 2015 merit decision, OWCP denied the claim finding that appellant failed to establish that the diagnosed condition was causally related to her employment.

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, that the claim was filed within the applicable time limitation of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury. 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.²

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 actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.³

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 factors identified by the claimant.⁴

ANALYSIS

On June 6, 2014 appellant was lifting mail trays off a rack. She was later diagnosed with a lumbar sprain/strain. However, appellant has not submitted sufficient medical evidence to establish that her diagnosed medical conditions were caused or aggravated by this incident.

On June 25, 2014 OWCP advised appellant of the type of medical evidence needed to establish her claim. Appellant did not submit a rationalized medical report from an attending physician addressing how specific employment factors may have caused or aggravated her claimed condition.

Appellant was treated by Dr. Kibby on August 15, 2014 for lower back pain. She reported injuring her back after “lifting trays off the tray racks.” Appellant reported increased low back pain when she returned to work. Dr. Kibby found no abnormalities of the lumbar spine. He noted preliminary x-ray of the lumbar spine revealed normal findings, possible degenerative changes and mild scoliosis. Dr. Kibby diagnosed sprain lumbar region and noted that appellant had reached maximum medical improvement. He noted that no future medical treatment was expected, including prescription medications or services associated with her

² *Gary J. Watling*, 52 ECAB 357 (2001).

³ *T.H.*, 59 ECAB 388 (2008).

⁴ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

claimed injuries. Dr. Kibby noted that appellant could work without restrictions or permanent disability. He merely repeats the history of injury as reported by appellant without providing his own opinion regarding whether appellant's condition is work related.⁵ Dr. Kibby failed to provide a rationalized opinion regarding the causal relationship between appellant's low back sprain and the factors of employment believed to have caused or contributed to such condition.⁶ Therefore, his reports are insufficient to meet appellant's burden of proof.

There is no other medical evidence which provides an opinion on the causal relationship between appellant's job and her diagnosed lumbar condition.

Appellant submitted reports from a nurse practitioner. She was also treated by a physical therapist. However, the Board has held that treatment notes signed by a nurse or a physical therapists are not probative medical evidence as these providers are not considered physicians under FECA.⁷

Consequently, the medical evidence is not sufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment, nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence.⁸ Appellant failed to submit such evidence, and OWCP, therefore, properly denied her claim for compensation.

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 did not meet her burden of proof to establish that her claimed conditions were causally related to her employment.

⁵ See *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

⁶ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

⁷ *L.D.*, 59 ECAB 648 (2008) (a nurse practitioner is not a physician as defined under FECA). See *David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection 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).

⁸ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ORDER

IT IS HEREBY ORDERED THAT the March 6, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 17, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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