

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

H.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Philadelphia, PA, Employer**

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**Docket No. 16-1603
Issued: December 14, 2016**

Appearances:

*Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 4, 2016 appellant, through counsel, filed a timely appeal of a May 17, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof to establish a traumatic injury causally related to a June 5, 2015 employment incident.

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 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 5, 2015 appellant, then a 52-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that she sustained lower back pain that day while sitting and reaching for a parcel while in the performance of duty. She felt a pop in her lower middle back.

Dr. Alicia Rech, an osteopath, examined appellant on June 6, 2015 and noted her history of reaching for something while sitting on a stool at work and acutely hurting her back. She reported that appellant had a history of degenerative disc disease. Dr. Rech diagnosed back pain.

The employing establishment provided appellant with an authorization for examination (Form CA-16) on June 5, 2015. Dr. Vincent C. Sacco, an osteopath, completed this form on June 9, 2015 and indicated by checking a box marked “yes” that appellant’s back injury was caused or aggravated by her employment activity of sitting on a work stool, reaching with her left hand to get a package, and hearing a pop with immediate pain in her back. In an accompanying form report, he repeated appellant’s history of injury and noted that she experienced back pain starting in her lower back radiating to her neck resulting in headaches. Dr. Sacco diagnosed cervical back pain.

In a letter dated June 26, 2015, OWCP requested that appellant provide additional information in support of her traumatic injury claim. It noted that she had not provided a medical diagnosis resulting from her employment incident. OWCP explained that under FECA a finding of pain was considered a symptom and not a valid diagnosis. It further requested medical opinion evidence explaining how appellant’s employment incident resulted in a diagnosed medical condition. OWCP allowed 30 days for a response.

Dr. Jason D. Berk, a physiatrist, examined appellant on June 23, 2015 and noted her history of degenerative disc disease. He reported her history of reaching at work and experiencing a “pop” in the low back that radiated up to her neck. Dr. Berk found that appellant had an acute flare of axial low back pain as a result of this work injury. He diagnosed back pain, degeneration of lumbar or lumbosacral disc, myalgia and myositis, and thoracic or lumbosacral neuritis or radiculitis. Dr. Berk concluded, “Acute-on-chronic back pain in a patient reporting a history of lumbar [degenerative disc disease] due to a work-related injury, in which the patient describes having been working in a machine requiring lot of reaching-like activities when she experienced an acute ‘pop’ in the low back with overall clinical picture and exam[ination] raising clinical suspicion that her current pain symptomatology may be related to a discogenic etiology with associated myofascial component.” He recommended a magnetic resonance imaging (MRI) scan of the lumbar spine.

Dr. Matthew McLean, an orthopedic surgeon, examined appellant on July 17, 2015 and diagnosed lumbar degenerative disc disease and lumbar radiculopathy. He described her history of injury on June 6, 2015 as reaching for a package while sitting at work and developing pain in her lower back. Dr. McLean reviewed a July 14, 2015 lumbar MRI scan which demonstrated degenerative disc bulge on the left at L4-5 and a degenerative disc at L5-S1.

By decision dated August 5, 2015, OWCP denied appellant’s traumatic injury claim finding that Dr. Berk attributed her current condition to her preexisting degenerative disc disease.

It noted that appellant had failed to establish causal relationship between her diagnosed condition and the accepted work incident.

Appellant requested reconsideration on February 18, 2016. She submitted additional medical evidence. In a note dated July 1, 2015, Dr. Berk diagnosed lumbar disc herniation based on MRI scan. Appellant underwent a July 14, 2015 MRI scan which demonstrated disc bulges at L4-5 with mild central canal narrowing, and L5-S1 with superimposed left foraminal disc protrusion and moderate left foraminal narrowing.

On September 25 and December 8, 2015 Dr. McLean noted that, although appellant had a history of back problems, she did not have any symptoms until she reaggavated her back during the June 5, 2015 work incident. He reported that on June 5, 2015 appellant injured her back when she reached for a package and developed pain in her lower back which radiated to her left leg. Dr. McLean opined that this condition was directly related to appellant's June 5, 2015 work incident. He diagnosed lumbar degenerative disc disease and lumbar radiculopathy. Dr. Sacco completed a report on November 20, 2013 and diagnosed degenerative joint disease, lumbosacral joint ligament sprain, myalgia and myositis, neck sprain, thoracic sprain, and sprain of the shoulder and upper arm. Appellant also resubmitted Dr. Berk's June 23, 2015 reports.

By decision dated May 17, 2016, OWCP denied review of the additional evidence and modification of its prior decision. It found that appellant failed to submit rationalized medical opinion evidence establishing that her diagnosed conditions were causally related to her June 5, 2015 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including the fact 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 period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³ 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.⁴

OWCP defines a traumatic injury as, "[A] condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected."⁵ To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First the employee must

³ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ 20 C.F.R. § 10.5(ee).

submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.⁶ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷

A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.⁸ Medical rationale includes a physician's detailed opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, 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 activity or factors identified by the claimant.⁹

ANALYSIS

The Board finds that appellant has failed to meet her burden of proof to establish a traumatic injury causally related to a June 5, 2015 employment incident.

Appellant alleged that she sustained a back injury on June 5, 2015 when she reached for a package and felt a "pop" in her back. She experienced pain radiating from her low back to her neck. OWCP accepted that the employment incident occurred as alleged, but denied appellant's claim finding that she had failed to submit the necessary medical opinion evidence to establish an employment-related diagnosed condition in addition to her preexisting degenerative disc disease.

In support of her claim, appellant submitted a series of reports from Dr. Sacco. Dr. Sacco initially diagnosed back pain and indicated on a form by checking a box marked "yes" that appellant's condition of back pain was caused or aggravated by her accepted employment activity. His initial reports are insufficient to meet appellant's burden of proof as he did not provide a clear diagnosis. The Board has held that the mere diagnosis of "pain" does not constitute the basis for payment of compensation.¹⁰ Dr. Sacco completed a report on November 20, 2013 and diagnosed a series of conditions including degenerative joint disease, lumbosacral joint ligament sprain, myalgia and myositis, neck sprain, thoracic sprain, and sprain of the shoulder and upper arm. He did not provide a medical opinion that any of these diagnosed conditions were caused or aggravated by appellant's June 5, 2015 employment incident. As

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *J.Z.*, 58 ECAB 529 (2007).

⁸ *T.F.*, 58 ECAB 128 (2006).

⁹ *A.D.*, 58 ECAB 149 (2006).

¹⁰ *Robert Broome*, 55 ECAB 339 (2004).

Dr. Sacco did not explain how or why appellant's back conditions were related to her accepted employment incident, the reports are insufficient to meet appellant's burden of proof.¹¹

Appellant submitted several reports from Dr. Berk, beginning on June 23, 2015 and including her history of degenerative disc disease and her history of injury on June 5, 2015. Dr. Berk initially diagnosed back pain and radiculitis, but later diagnosed lumbar disc herniation based on MRI scan findings. He described appellant's condition as an, "Acute-on-chronic back pain in a patient reporting a history of lumbar [degenerative disc disease] due to a work-related injury, in which the patient describes having been working in a machine requiring lot of reaching-like activities when she experienced an acute 'pop' in the low back with overall clinical picture and exam[ination] raising clinical suspicion that her current pain symptomatology may be related to a discogenic etiology with associated myofascial component." While Dr. Berk offered his "clinical suspicion" that appellant's later diagnosed condition of lumbar disc herniation was due to the experienced "acute 'pop' in the low back" that she experienced on June 5, 2015, this suspicion is insufficient to meet appellant's burden of proof to establish a traumatic injury claim. His use of the term "clinical suspicion" renders his opinion speculative in nature and insufficient to meet appellant's burden of proof to establish a traumatic injury claim.¹²

Dr. McLean submitted a series of notes dated June 6, 2015 on September 25 and December 8, 2015. He noted appellant's history of back problems and found that she had not had any symptoms until she reaggravated her back during the work injury on June 6, 2015. Dr. McLean provided an accurate history of injury noting that on June 5, 2015 appellant sustained an injury to her back when she reached for a package and developed pain in her lower back which radiated to her left leg. He diagnosed lumbar degenerative disc disease and lumbar radiculopathy and opined that this condition was directly related to appellant's June 5, 2015 work injury. Dr. McLean has provided a clear diagnosis, an appropriate history of injury, and an opinion that appellant's diagnosed condition is related to her June 5, 2015 work incident. His reports are insufficient to meet appellant's burden of proof, however, as he failed to provide any medical reasoning explaining how and why appellant's reaching incident caused or aggravated her lumbar degenerative disc disease and lumbar radiculopathy.¹³ Without medical rationale, Dr. McLean's reports are insufficient to meet appellant's 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 failed to meet her burden of proof to establish a traumatic injury causally related to a June 5, 2015 employment incident.

¹¹ See *supra* note 9.

¹² *L.B.*, Docket No. 16-0924 (issued August 1, 2016); *L.R. (E.R.)*, 58 ECAB 369 (2007); *D.D.*, 57 ECAB 734 (2006); *M.W.*, 57 ECAB 710 (2006); *Cecilia M. Corley*, 56 ECAB 662 (2005).

¹³ *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

ORDER

IT IS HEREBY ORDERED THAT the May 17, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 14, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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