

In support of her claim, appellant submitted a March 8, 2016 report on the Forthill Family Clinic, which was prepared and electronically signed by Sabrina Steele, a physician assistant. At the end of the report it was noted that Dr. Jose Azarcon, Jr., an osteopathic physician Board-certified in family medicine, an affiliated physician with the Forthill Family Clinic, had reviewed and approved the visit details and generated the report.² Under assessment, Ms. Steele noted a lower back injury was sustained at work with a recommendation that appellant be off work for the period March 2 to 22, 2016. A diagnosis of back pain due to work trauma on March 2, 2015 was noted under history of illness. Physical examination findings and injury history were provided.

In a letter dated March 21, 2016, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It noted that the only medical evidence received had been from a physician assistant. OWCP advised appellant that physician assistants are not considered physicians under FECA. It informed her of the medical and factual evidence required to support her claim and afforded her 30 days to provide the requested information.

In response to OWCP's letter, appellant submitted medical evidence dated March 8 and 15, 2016.

A March 8, 2016 duty status report (Form CA-17), bearing Ms. Steele's signature diagnosed a lower back injury. The injury was described as occurring on March 2, 2016 when appellant strained her lower/middle back while removing a stuck package from a mail collection box. Appellant was advised to be off work until March 23, 2016.

Ms. Steele completed a March 15, 2016 attending physician's report (Form CA-20) noting a diagnosis of lower back injury and a return to work date of March 22, 2016. The injury was described as occurring on March 2, 2016 when appellant felt back pain while trying to unjam a package out of a mail collection box. Physical findings included muscle spasms.

By decision dated April 25, 2016, OWCP found the incident occurred as alleged, but denied the claim as she failed to submit any medical evidence containing a diagnosis causally related to the accepted employment incident. It also found the only medical evidence appellant submitted was from a physician assistant who is not considered a physician under FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of establishing 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, that an injury was sustained while in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the

² There is no indication that the report was cosigned by Dr. Azarcon.

³ 5 U.S.C. § 8101 *et seq.*

employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.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.⁶ First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.⁷ 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.⁸

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁹ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and the compensable employment factors.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 the specific employment factors identified by the employee.¹¹

Medical opinion, in general, can only be given by a qualified physician.¹² 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.¹³ Registered nurses, licensed practical nurses, and physician assistants are not "physicians" as defined under FECA. Their opinions are of no probative value.¹⁴

⁴ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁵ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 4.

⁷ *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

⁸ *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 4.

⁹ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

¹⁰ *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

¹¹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹² *E.K.*, Docket No. 09-1827 (issued April 20, 2010); *Allen C. Hundley*, 53 ECAB 551 (2002).

¹³ 5 U.S.C. § 8101(2); *see Roy L. Humphrey*, 57 ECAB 238 (2005).

¹⁴ *Roy L. Humphrey*, *id.*

ANALYSIS

It is undisputed that the March 2, 2016 work incident occurred as alleged. In support of her claim, appellant submitted a March 8, 2016 report signed by Ms. Steele, a physician assistant, and reviewed, approved, and generated by Dr. Azarcon, an osteopathic physician Board-certified in family medicine. The report diagnosed a lower back injury due to the accepted March 2, 2016 employment incident.

OWCP denied the claim, by decision dated April 25, 2016, finding that causal relationship was not established due to a lack of medical evidence. It found that the March 8, 2016 report was of no probative value as it was signed only by a physician assistant and not countersigned by a physician. OWCP was correct in noting that a physician assistant is not considered a physician under FECA and her opinion is of no probative value.¹⁵ However, reports that are reviewed and countersigned by a physician do constitute probative medical evidence.¹⁶ The March 8, 2016 report of Ms. Steele indicates that it was reviewed, approved, and generated by Dr. Azarcon, a physician at the Forthill Clinic. While this report was not signed by Dr. Azarcon, the report states:

“Encounter submitted for review by Sabrina L. Steele, [physician assistant], on [March 8, 2016], 7:30 [p.m.]. Visit details reviewed and approved by supervising provider, Jose Azarcon, Jr., DO on [March 8, 2016].

“Electronically signed by: Sabrina Steele, [physician assistant] [March 8, 2016]
Document generated by: Jose Azarcon, Jr., [March 8, 2016] 09:46 [p.m.]”

The Board, therefore, finds that there are sufficient indicia of identification reflecting review and approval of the report by the supervising physician.¹⁷ Therefore, the Board finds that the report is competent medical evidence.

The case will be remanded to OWCP for a review of the March 8, 2016 report from Dr. Azarcon. Following this and any further development of the medical evidence deemed necessary, OWCP shall issue a *de novo* merit decision in the case.

CONCLUSION

The Board finds that the case is not in posture for a decision.

¹⁵ 5 U.S.C. § 8101(2); *E.K.*, *supra* note 12; *J.M.*, 58 ECAB 303 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).

¹⁶ *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004); *Merton J. Sills*, 39 ECAB 572 (1988).

¹⁷ *See Y.S.*, Docket No. 16-0882 (issued August 19, 2016). While the medical reports may be unsigned, if there is sufficient indicia of identification concerning its author and authorship that can be ascertained, the reports are of probative value.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 25, 2016 is set aside and the case is remanded for further proceedings consistent with the above opinion.

Issued: November 13, 2017
Washington, DC

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

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

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