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

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| **P.S., Appellant** | ) | |
| | ) | **Docket No. 17-1278** |
| **and** | ) | **Issued: September 19, 2017** |
| **DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, Perry Point, MD, Employer** | ) | |

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

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

### ***JURISDICTION***

On May 22, 2017 appellant filed a timely appeal from an April 20, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

### ***ISSUE***

The issue is whether appellant met her burden of proof to establish a back condition causally related to a February 26, 2017 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the issuance of OWCP's April 20, 2017 decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. Thus, the Board may not consider the new evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1).

## ***FACTUAL HISTORY***

On March 8, 2017 appellant, then a 61-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on February 26, 2017 she sustained a lower back injury at work. She claimed that she felt a pull in her back while lifting a patient's legs back onto a bed. Appellant stopped work on March 4, 2017 and has not returned to work.

OWCP received correspondence between the employing establishment and Dr. Jui-Chih Hsu, appellant's attending family practitioner regarding her diagnosis and work capacity, a description of her nursing assistant position, and an incident report.

In a March 4, 2017 letter, Dr. Hsu advised that appellant could return to work on March 8, 2017 with no restrictions.

OWCP, in a March 16, 2017 letter, informed appellant of the deficiencies of her claim and allowed her 30 days to submit additional evidence and respond to its questionnaire.

OWCP received a March 15, 2017 letter in which Dr. Hsu noted that appellant was seen on March 4 and 15, 2017 for a workers' compensation injury which occurred on February 26, 2017. Dr. Hsu related that appellant had been referred for physical therapy with a diagnosis of lumbar pain. She advised that appellant was unable to work until after her reevaluation on or about April 15, 2017. In a March 20, 2017 duty status report (Form CA-17), Dr. Hsu noted a history of injury that on February 26, 2017 appellant lifted a patient's legs and developed a painful lower back. She reported examination findings and reiterated her diagnosis of lumbar pain due to the February 26, 2017 incident. Dr. Hsu indicated that appellant had not been advised to resume her regular work requirements. In a March 15, 2017 prescription, she ordered physical therapy to treat appellant's lower back pain.

In a daily note dated March 20, 2017, a physical therapist addressed appellant's lumbar pain treatment.

By letter dated April 6, 2017, the employing establishment controverted appellant's claim. It contended that she failed to return to work as instructed by her treating physician. The employing establishment further contended that appellant failed to provide a rationalized medical opinion to support her claim as her treating physician did not provide a definitive diagnosis or an opinion addressing the causal relationship between the condition and her federal employment.

OWCP received an April 14, 2017 letter in which Dr. Hsu advised that appellant could return to work on May 14, 2017 with no restrictions. It also received additional physical therapy records.

On April 20, 2017 appellant responded to OWCP's queries. She related that as she lifted a resident's legs back onto the bed on February 26, 2017 the resident grabbed a rail and appellant felt something pull in her back. Appellant related that she reported her injury to nurses on duty but she went back to work. She noted that she was examined by Dr. Hsu on March 4, 2017. Appellant had pain in her lower left back that went down to her knee.

Appellant submitted an April 18, 2017 Form CA-17 report in which Dr. Hsu reiterated his diagnosis of lumbar pain due to the February 26, 2017 incident. Dr. Hsu claimed that he had not advised appellant to resume her regular work.

In an April 20, 2017 decision, OWCP denied appellant's traumatic injury claim because the medical evidence of record did not contain a medical diagnosis in connection with the accepted February 26, 2017 employment-related incident. It found that the medical evidence submitted only diagnosed lumbar pain which was a symptom and not a medical diagnosis.

## ***LEGAL PRECEDENT***

An employee seeking benefits under FECA[3] 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[4] including that he or she sustained an injury in the performance of duty and that any specific condition or disability from work for which he or she claims compensation is causally related to that employment injury.[5]

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.[6] There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.[7]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[8] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing causal relationship between the claimed condition and the identified factors.[9] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish causal relationship.[10]

[3] *Supra* note 1.

[4] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[5] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[7] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[8] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

[9] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[10] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

## ***ANALYSIS***

The Board finds that appellant has not met her burden of proof to establish a traumatic injury caused or aggravated by the accepted February 26, 2017 employment incident. Appellant failed to submit sufficient medical evidence to establish a back condition causally related to the accepted employment incident.

Appellant submitted several reports from Dr. Hsu. In a narrative report dated March 15, 2017 and Form CA-17 reports dated March 20 and April 18, 2017, Dr. Hsu diagnosed lumbar pain due to the accepted February 26, 2017 employment incident and advised that appellant was unable to resume her regular work. Dr. Hsu, in a prescription note dated March 15, 2017, ordered physical therapy to treat appellant's lower back pain. Her diagnosis of lumbar pain, without any explanation of the back condition causing the pain, is a description of a symptom rather than a firm diagnosis of a compensable medical condition.[11] Dr. Hsu's March 4, 2017 report did not address the cause of appellant's lumbar condition or prior disability from work.[12] The Board finds, therefore, that Dr. Hsu's reports are of limited probative value.[13]

The remaining medical evidence is also insufficient to establish a causal relationship between appellant's injury and the February 26, 2017 employment incident. The records from appellant's physical therapists have no probative value as physical therapists are not considered physicians under FECA.[14]

Appellant's belief that factors of her federal employment caused or aggravated her condition is insufficient, by itself, to establish causal relationship.[15] The issue of causal relationship is a medical one and must be resolved by probative medical opinion from a physician. The Board finds that there is insufficient medical evidence of record to establish that appellant's back condition was caused or aggravated by the February 26, 2017 employment incident. Appellant, therefore, did not meet her burden of proof.

[11] The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[12] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[13] *D.M.*, Docket No. 16-1885 (issued February 15, 2017).

[14] The term 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); *J.G.*, Docket No. 15-251 (issued April 13, 2015); *A.C.*, Docket No. 08-1453 (issued November 18, 2008) (records from a physical therapist do not constitute competent medical opinion in support of causal relation, as physical therapists are not considered physicians as defined under FECA).

[15] 20 C.F.R. § 10.115(e); *Phillip L. Barnes*, 55 ECAB 426, 440 (2004).

## ***CONCLUSION***

The Board finds that appellant failed to meet her burden of proof to establish a back condition causally related to the February 26, 2017 employment incident.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the April 20, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 19, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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