

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

D.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Haughton, LA, Employer**

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**Docket No. 17-1566
Issued: December 31, 2018**

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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 11, 2017 appellant filed a timely appeal from a January 25, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the January 25, 2017 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 her burden of proof to establish that her back, right foot, and left hand conditions are causally related to the accepted May 11, 2016 employment incident.

FACTUAL HISTORY

On May 11, 2016 appellant, then a 49-year-old rural carrier, filed a traumatic injury claim (Form CA-1), alleging that, while in the performance of duty, she “was stepping down out of [her] case step and tripped and grabbed case wing and it swung open and [she] fell on hand and backside.” She alleged that she sustained injuries that day and had “pain in left shoulder, left lower side, down left leg, right foot, and have a bad headache. Hands keeps shaking.” Appellant stopped work the next day on May 12, 2016 and has not returned.

An OWCP authorization for examination and/or treatment (Form CA-16), was issued by the employing establishment on May 11, 2016.

By development letter dated May 19, 2016, OWCP advised appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence and respond to its inquiries.

In response, appellant submitted an x-ray of the cervical spine dated May 11, 2016 which demonstrated degenerative disc disease and spondylosis at C3-4.

In a May 16, 2016 report, Dr. Aaron Lirette, a Board-certified family medicine specialist, diagnosed sprain of ligaments of cervical and lumbar spine. He asserted that, on May 11, 2016, appellant reported that she was tagging parcels and went to turn around to get a package when she tripped. Appellant stated that she grabbed the wing case, which was not secured to the floor. It swung around and she fell to the floor. Dr. Lirette opined that appellant’s conditions were causally related to her work activities.

By brief notes dated May 13, 18, and 27, 2016, Dr. Gregory Scott Phillips, a Board-certified family medicine specialist, advised that appellant was not capable of working from May 12 to June 3, 2016 due to illness or injury.

On June 3, 2016 Dr. Phillips diagnosed cervicgia and indicated that appellant had “cervical neck pain after fall, history of c[ervical]-spine surgery.”

In a May 12, 2016 report, Dr. Phillips asserted that appellant fell at work and stated that the fall was on the “same level from slipping, tripping[,] and stumbling with subsequent striking against other object.” He diagnosed pain in right ankle and joints of right foot, pain in unspecified joint, cervicgia, and low back pain.

On May 18, 2016 Dr. Phillips diagnosed other injury of unspecified body region and reiterated that appellant fell at work on May 11, 2016.

In a duty status report (Form CA-17) dated June 13, 2016, Dr. Phillips diagnosed musculoskeletal pain and released appellant to work on June 13, 2016.

An OWCP authorization for examination and/or treatment (Form CA-16), was issued by the employing establishment on May 12, 2016. Appellant was authorized to visit Dr. Phillips. In an attached attending physician's report, dated May 26, 2016, Dr. Phillips continued to diagnose injury of unspecified body region and checked a box marked "Yes" indicating his opinion that appellant's condition was caused or aggravated by an employment activity.

Appellant submitted a June 10, 2016 narrative statement reiterating the factual history of her claim.

Appellant submitted a series of x-rays dated May 18, 2016. An x-ray of the right foot revealed calcaneal enthesopathy. An x-ray of the thoracic spine showed multilevel degenerative disc disease. An x-ray of the left shoulder revealed osteoarthritis of the acromioclavicular (AC) joint. An x-ray of the right ankle demonstrated old nonunited avulsion fracture of the lateral malleolus versus accessory ossicle. An x-ray of the cervical spine showed degenerative disc disease at C3-4, multilevel bilateral neuroforaminal stenosis secondary to facet joint and uncovertebral joint hypertrophy, and status postsurgical fusion from the level of C4 down to the level of C7.

On May 27, 2016 Dr. Phillips reiterated his diagnoses and medical opinions.

In a duty status report (Form CA-17) dated June 8, 2016, Dr. Phillips diagnosed musculoskeletal pain and advised that appellant was not able to return to work.

In an August 26, 2015 report, Dr. John G. Noles, a Board-certified anesthesiologist and pain medicine specialist, diagnosed neck pain, lumbago, thoracic or lumbar radiculitis, sacroiliac (SI) joint arthritis, sciatica due to displacement of lumbar disc, radiculopathy of arm, obesity, high risk medications, bilateral hand numbness, and degenerative disc disease. He indicated that appellant worked at a post office and delivered mail, and he stated that the pain radiated into both shoulders and into all fingers of her right hand. Appellant also reported persistent lower back pain radiating to the left ankle, left calf, right calf, left foot, and left thigh.

On November 10, 2015 Dr. Noles reported that appellant's low back and leg pain was worsening and diagnosed other cervical disc degeneration, mid-cervical region, chronic pain syndrome, and myofascial pain.

In progress reports dated August 18, 2015 through January 19, 2016, two physician assistants diagnosed neck pain, cervical stenosis of spinal canal, and cervical degenerative disc disease and noted that appellant's left shoulder condition began over five years ago and had worsened since December 2014.

In reports dated January 12 and March 8, 2016, Dr. Noles diagnosed spondylosis of lumbosacral region without myelopathy or radiculopathy and osteoarthritis of spine with radiculopathy, lumbar region.

On May 25, 2016 Dr. Noles asserted that appellant fell at work on May 11, 2016 and landed on her left hip, but used her left arm to try and catch her fall. Appellant felt that she had aggravated her neck and had a constant headache since the fall. Dr. Noles reiterated his diagnoses and noted that appellant had a history of neck surgery, which she underwent on October 17, 2015.

In a June 22, 2016 report, Dr. Michael T. Acurio, a Board-certified orthopedic surgeon, diagnosed cervical and lumbar radiculopathy, cervical and lumbar disc disease, nonunion right distal fibula, and degenerative joint disease (DJD) of the basilar joint, left hand. He asserted that appellant was casing mail when she went to stop and she fell, landing with her left upper extremity injuring her cervical spine, lumbar spine, and left arm. Dr. Acurio noted that appellant had undergone a fusion surgery in October, had been unable to work since, and had continued pain.

By decision dated June 29, 2016, OWCP accepted that the May 11, 2016 employment incident occurred as alleged, but denied the claim because the medical evidence of record failed to establish a causal relationship between appellant's diagnosed conditions and the accepted May 11, 2016 work incident.

In notes dated June 13, 21, and 22, 2016, Dr. Phillips advised that appellant was not capable of working from June 3 to 10, 2016 and June 13 to July 8, 2016 due to illness or injury.

In a duty status report (Form CA-17) dated June 22, 2016, Dr. Acurio diagnosed cervical and lumbar disc radiculopathy and advised that appellant was not capable of working.

In duty status reports (CA-17 forms) dated June 21 and July 8, 2016, Dr. Phillips diagnosed multiple areas of musculoskeletal pain "p[ost] fall" and advised that appellant was not capable of working.

In a July 8, 2016 report, Dr. Phillips advised that appellant was not capable of working from July 8 to 20, 2016 due to illness or injury.

On July 27, 2016 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

In a July 13, 2016 report, Dr. Acurio reiterated his diagnoses and opined that appellant's conditions were related to her accident at work. He asserted that appellant had preexisting cervical and lumbar disc disease, but her accident had caused an exacerbation of her preexisting condition.

In a July 20, 2016 report, Dr. Phillips advised that appellant was not capable of working from July 20 to August 22, 2016 due to illness or injury. On August 22, 2016 he reiterated his diagnoses and reported that appellant's "right foot was better until she twisted it last week and now it hurts." In a September 20, 2016 report, Dr. Phillips indicated that appellant's right foot had been hurting and "she ha[d] fallen twice since the last visit." In a duty status report (Form CA-17) dated December 19, 2016, he continued to diagnose multiple areas of musculoskeletal pain after fall and advised that appellant was not capable of working.

By decision dated January 25, 2017, an OWCP hearing representative conducted a review of the written record and affirmed the June 29, 2016 decision denying appellant's claim for lack of causal relationship.

LEGAL PRECEDENT

A claimant 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 that an injury was sustained in the performance of duty as alleged, and that any specific condition or disability claimed is causally related to the employment injury.³

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁴ The second component is whether the employment incident caused a personal injury.⁵ An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the alleged incident.⁶

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.⁷ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.⁸ 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 appellant's specific employment factor(s).⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her back, right foot, and left hand conditions are causally related to the accepted May 11, 2016 employment incident.

An x-ray dated May 11, 2016 demonstrated degenerative disc disease and spondylosis at C3-4 and x-rays dated May 18, 2016 revealed calcaneal enthesopathy, multilevel degenerative disc disease, osteoarthritis of the AC joint, old nonunited avulsion fracture, and degenerative disc disease at C3-4; however, that these diagnostic studies do not address the etiology of appellant's medical conditions. The Board has held, however, that diagnostic studies lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.¹⁰

³ 20 C.F.R. § 10.115(e), (f); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁴ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁷ *Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁹ *Id.*

¹⁰ See *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

Appellant submitted evidence from physician assistants. These reports do not constitute competent medical evidence because a physician assistant is not a “physician” as defined under FECA.¹¹ Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered “physician[s]” as defined under FECA.¹² Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to compensation benefits.¹³ For these reasons, the above-noted evidence is insufficient to satisfy appellant’s burden of proof with respect to causal relationship.¹⁴

In his May 16, 2016 report, Dr. Lirette diagnosed sprain of ligaments of cervical and lumbar spine and asserted that on May 11, 2016 appellant reported that she was tagging parcels and went to turn around to get a package when she tripped and fell to the floor. He opined that appellant’s conditions were causally related to her work activities. The Board finds, however, that such generalized statements do not establish causal relationship because they merely repeat appellant’s allegations and are unsupported by adequate medical rationale explaining how her physical activity actually caused the diagnosed condition.¹⁵ Thus, Dr. Lirette’s report is of limited probative value and insufficient to establish that appellant sustained an employment-related injury on May 11, 2016.

Appellant also submitted reports from Dr. Noles who diagnosed multiple conditions, including lumbago, thoracic or lumbar radiculitis, SI joint arthritis, sciatica due to displacement of lumbar disc, radiculopathy of arm, bilateral hand numbness, degenerative disc disease, other cervical disc degeneration, chronic pain syndrome, myofascial pain, spondylosis of lumbosacral region, and osteoarthritis of the lumbar spine with radiculopathy in several reports that predate the May 11, 2016 work incident. On May 25, 2016 Dr. Noles asserted that appellant fell at work on May 11, 2016 and landed on her left hip, but used her left arm to try and catch her fall. He reiterated his diagnoses and noted that appellant had a history of neck surgery, which she underwent on October 17, 2015. The Board finds that Dr. Noles did not provide sufficient medical rationale explaining how appellant’s new or preexisting conditions were caused or aggravated by falling at work on May 11, 2016. The need for rationale is particularly important as the evidence indicates that appellant had a number of preexisting medical conditions, including a history of neck surgery in 2015.¹⁶ Therefore, the Board finds that the reports from Dr. Noles are insufficient to establish causal relationship.

¹¹ 5 U.S.C. § 8101(2); *Sean O’Connell*, 56 ECAB 195 (2004) (physician assistants); *Jennifer L. Sharp*, 48 ECAB 209 (1996) (physical therapists). *See also Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

¹² 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

¹³ *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).

¹⁴ *See supra* notes 3-6.

¹⁵ *See K.W.*, *supra* note 13.

¹⁶ *See P.M.*, Docket No. 18-0543 (issued November 7, 2018); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

In his reports, Dr. Phillips diagnosed pain in right ankle and joints of right foot, pain in unspecified joint, cervicalgia, low back pain, and other injury of unspecified body region. He further indicated that appellant had “cervical neck pain after fall, history of c[ervical]-spine surgery.” In a May 12, 2016 report, Dr. Phillips asserted that appellant fell at work and stated that the fall was on the “same level from slipping, tripping[,] and stumbling with subsequent striking against other object.” In his May 26, 2016 attending physician’s report (Form CA-20), he continued to diagnose injury of unspecified body region and checked a box marked “Yes” indicating his opinion that appellant’s condition was caused or aggravated by an employment activity. The Board has held that, without further explanation or rationale, a checked box is not sufficient to establish causation.¹⁷ Dr. Phillips also diagnosed multiple areas of musculoskeletal pain “p[ost] fall” and advised that appellant was totally disabled for work. The Board finds that the diagnosis of “pain” is a description of a symptom rather than a clear diagnosis of the medical condition.¹⁸ Moreover, Dr. Phillips’ diagnosis of “other injury of unspecified body region” is not a firm diagnosis. Although he presented a diagnosis of appellant’s cervical condition, he did not adequately address how this condition and objective findings were causally related to the May 11, 2016 employment incident. Dr. Phillips failed to provide a rationalized opinion explaining how falling May 11, 2016 caused or aggravated appellant’s cervical condition. Again, the need for rationale is particularly important as the evidence indicates that appellant had a number of preexisting medical conditions, including a history of cervical spine surgery. Furthermore, the May 26, 2016 form report of Dr. Phillips which supports causal relationship with a check mark is insufficient to establish the claim.¹⁹ Thus, the Board finds that the reports from Dr. Phillips are insufficient to establish that appellant sustained an employment-related injury.

Dr. Acurio diagnosed cervical and lumbar radiculopathy, cervical and lumbar disc disease, nonunion right distal fibula, and DJD of the basilar joint, left hand. He asserted that appellant was casing mail when she went to stop and she fell, landing with her left upper extremity injuring her cervical spine, lumbar spine, and left arm. Dr. Acurio also noted that appellant had undergone a fusion surgery in October and advised that appellant was totally disabled for work. In a July 13, 2016 report, he reiterated his diagnoses and opined that appellant’s conditions were related to her accident at work. Dr. Acurio asserted that appellant had preexisting cervical and lumbar disc disease, but her accident had caused an exacerbation of her preexisting condition. He noted that appellant sustained an injury on May 11, 2016 during work-related activities. However, such generalized statements do not establish causal relationship because they merely repeat her allegations and are unsupported by adequate medical rationale explaining how her physical activity actually caused the diagnosed conditions.²⁰ The Board finds that Dr. Acurio’s opinion regarding

¹⁷ See *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

¹⁸ See *P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

¹⁹ See *C.W.*, Docket No. 14-1114 (issued August 25, 2014) (where the claimant, a correctional officer alleging that he injured his lower back while responding to a call for assistance, submitted medical evidence and the Board found that a Form CA-20 duty status report from the his treating physician which supported causal relationship with a check mark was insufficient to establish the claim without further explanation or rationale).

²⁰ See *K.W.*, *supra* note 13.

the cause of appellant's medical conditions are speculative and equivocal in nature.²¹ Dr. Acurio did not sufficiently explain the reasons why diagnostic testing and examination findings led him to conclude that the accepted May 11, 2016 work incident caused or contributed to the diagnosed conditions. As noted, the need for rationale is particularly important as Dr. Acurio indicates that appellant had a preexisting back condition. The fact that a condition manifests itself during a period of employment is not sufficient to establish causal relationship.²² Temporal relationship alone will not suffice.²³ A physician's opinion must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment exposure.²⁴ For these reasons, Dr. Acurio's reports are insufficient to meet appellant's burden of proof with respect to causal relationship.²⁵

As appellant has not submitted any rationalized medical evidence to support her claim that she sustained a back, right foot, or left hand injury causally related to the May 11, 2016 employment incident, she has not met her burden of proof to establish entitlement to compensation benefits.²⁶

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 her burden of proof to establish that her back, right foot, and left hand conditions are causally related to the accepted May 11, 2016 employment incident.

²¹ Medical opinions that are speculative or equivocal in character are of little probative value. See *Kathy A. Kelley*, 55 ECAB 206 (2004).

²² 20 C.F.R. § 10.115(e).

²³ See *D.I.*, 59 ECAB 158, 162 (2007).

²⁴ *Victor J. Woodhams*, *supra* note 8.

²⁵ See *supra* notes 3-6.

²⁶ The Board also notes that the employing establishment issued appellant a Form CA-16 on May 11 and 12, 2016 authorizing medical treatment. The Board has held that where an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim. See *D.M.*, Docket No. 13-0535 (issued June 6, 2013); see also 20 C.F.R. §§ 10.300, 10.304.

ORDER

IT IS HEREBY ORDERED THAT the January 25, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 31, 2018
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