

ISSUE

The issue is whether appellant has met her burden of proof to establish a traumatic injury causally related to the accepted August 17, 2015 employment incident.

FACTUAL HISTORY

On August 25, 2015 appellant, then a 62-year-old dental assistant, filed a traumatic injury claim (Form CA-1) alleging that, on August 17, 2015, she sustained an injury to her back while lifting and loading trays of instruments in red containers to weigh and load into a dirty cart. On the reverse side of the claim form, appellant's supervisor controverted the claim. He checked the box marked "yes" indicating that appellant was injured in the performance of duty, but checked the box marked "no" indicating that his knowledge of the facts about the injury disagreed with the statements of the employee. The supervisor explained that there were "discrepancies in the report and timeframe" as well as "a dispute between departments on handling instrument trays." Appellant stopped work on August 18, 2015.

An August 18, 2015 treatment note from Dr. Ahmad Bassam Shaker, a family medicine physician, revealed a diagnosis of back pain secondary to muscle spasm and a recommendation for light duty.

In an August 25, 2015 report, Dr. Elizabeth Werns, a Board-certified family practitioner, noted that appellant sustained an injury to her lower back on August 17, 2015, when she was moving an instrument tray. She diagnosed lumbar sprain, "likely disc herniation."

In an August 25, 2015 report and duty status report (Form CA-17) of the same date, Dr. Ernest C. Chisena, a Board-certified orthopedic surgeon, noted that appellant was seen for a back injury of August 17, 2015. He indicated that she had pain down the bilateral legs down to her feet. Dr. Chisena reviewed August 18, 2015 x-rays of the lumbar spine, read by Dr. Yudell Edelstein, a Board-certified diagnostic radiologist, who found: no definite acute compression fracture; generalized osseous demineralization, grade 1 anterolisthesis of L5 on S1; no spondylolysis; exaggerated lordosis of the lumbar spine; or sclerosis density overlying the left sacrum, which might represent a bone island or overlying vascular clarification. The x-rays also revealed mild degenerative spondylosis of the lumbar spine, most prominent at L1-2 and L5-S1 with disc bulge and annular fissure, no significant spinal canal or neural foraminal stenosis as well as a moderate facet arthropathy of the lower lumbar spine and a small Tarlov cyst. Dr. Chisena provided a provisional diagnosis of disc herniation and lumbar sprain. He indicated that the lower back pain was "probably related to sprain *versus* disc injury." Dr. Chisena advised that appellant was unable to work until further notice. In the duty status report, he diagnosed low back pain and indicated that she injured her back lifting instrument bins.

A September 2, 2015 magnetic resonance imaging (MRI) scan of the lumbar spine, read by Dr. Judy Wu, Board-certified in family medicine, revealed mild degenerative spondylosis of the lumbar spine, most prominent at L1-2 and L5-S1, with disc bulge and annular fissure. She also found no significant spinal canal or neural foraminal stenosis, moderate facet arthropathy of the lower lumbar spine, and small Tarlov cyst.

OWCP received September 10, 17, 22, and 24, and October 1 and 9, 2015 notes from a physical therapist.

In a September 9, 2015 report and duty status report, Dr. Chisena reviewed the September 2, 2015 MRI scan of the lumbar spine and diagnosed low back sprain. He found restricted motion of the lumbar spine and checked a box marked “yes” with regard to whether the diagnosis was due to the injury. In his treatment notes, Dr. Chisena explained that appellant indicated that she had a lower back injury on November 1, 1995 and reinjured it on July 2, 1996. He related that appellant believed she had reagravated her prior injuries. Dr. Chisena noted that appellant twisted her lower back while lifting a red container weighing 23 pounds. He reviewed an MRI scan from July 27, 1996 and found a mild bulging of the annulus fibrosis at L5-S1. Dr. Chisena reviewed the MRI scan from August 18, 2015, and diagnosed lumbar disc syndrome and low back pain. Dr. Chisena opined that appellant remained totally disabled.

In a letter dated September 15, 2015, Jane M. Jacobson, a nurse and PhD, and employing establishment workers’ compensation case manager, challenged the claim. She noted that, at most, appellant may have moved one of the three bins. Ms. Jacobson argued that the dispute arose because appellant overstated the amount of lifting that resulted in her back pain. She was concerned as appellant reported an incident in relation to a perceived hazardous condition the employing establishment was trying to resolve. Ms. Jacobson provided photo copies of the bins used to store the equipment that appellant lifted.

In a September 18, 2015 development letter, OWCP advised appellant that additional factual and medical evidence was needed to support her claim. It asked that she submit evidence to establish that she actually experienced the incident or employment factor alleged to have caused the injury. OWCP also requested a physician’s opinion explaining how the reported work incident caused or contributed to appellant’s condition.

Appellant provided an October 8, 2015 response. She indicated that, on August 17, 2015, she was injured when lifting loads of dirty trays of instruments in the dental clinic into red containers. Appellant explained that she lifted one loaded container, weighing 23 pounds and loaded it into the dirty dental cart, which caused her to twist her lower back. She indicated that at the time of the injury she was in the clinic by herself so there were no first hand witnesses. Appellant indicated that at the end of the day on August 17, 2015, she was having pain in her lower back and shortly after she left work at 4:30 p.m. the back pain worsened. She reported the incident the following day at work and then went to the emergency room. Appellant noted that she had prior back injuries on the job. She referenced November 1, 1995 under OWCP File No. xxxxxx415, and advised that she returned to light duty on July 1, 1996. Appellant explained that on July 2, 1996 she had another injury and her claim was accepted for cervical and lumbar disc syndrome under OWCP File No. xxxxxx505. She noted that the claims were administratively combined under OWCP File No. xxxxxx415. In response to the questions posed by the employing establishment, such as where she was located and what she was doing at the time her injury occurred, she responded “did this.”

In an October 9, 2015 duty status report, Dr. Chisena diagnosed lumbar disc syndrome and low back pain due to the injury. He indicated that appellant remained totally disabled from work.

OWCP also received a treatment note from July 16, 1996 from an individual whose signature is illegible and who had treated her for intervertebral disc syndrome in relation to a work-related injury. It also received an August 21, 1996 note from a chiropractor, which was related to a July 2, 1996 accident and an accident report from November 1, 1995.

Also submitted were a claim for compensation (Form CA-7) and an employee's election of physician form dated August 25 and October 6, 2015.

By decision dated October 22, 2015, OWCP denied appellant's claim. It noted that she had not provided any response to the questions provided in its September 16, 2015 development letter or a response to the employing establishment's challenge. OWCP also found that she did not submit any medical evidence to establish that a diagnosed condition was causally related to the established work-related incident.

In an October 9, 2015 report, Dr. Cathryn Ruth Turley, a Board-certified neurologist, noted that the MRI scan of the lumbar spine revealed mild degenerative spondylosis of the lumbar spine at L1-2 and L5-S1, with disc bulge and annular fissure with no significant spinal canal or neural foraminal stenosis, moderate facet arthropathy of the lower lumbar spine, and a small Tarlov cyst.

Dr. Chisena provided treatment notes and a duty status report dated January 21, 2016 recommending a return to work on January 28, 2016.

By decision dated February 25, 2016, OWCP reissued the October 22, 2015 decision, noting that it contained important information from the employing establishment that was omitted from the prior decision. It denied appellant's claim, finding that she had not established that she sustained an injury in the performance of duty as alleged. OWCP found that the evidence of record was insufficient to establish that the claimed event(s) occurred as described as appellant had not responded to the questions posed in the September 16, 2015 development letter. It also found that she had not submitted any medical evidence to establish a diagnosed condition causally related to the established employment incident.

In a letter dated March 30, 2016, the employing establishment provided OWCP with investigative surveillance reports dated December 1, 2015 and March 30, 2016.

In a November 6, 2015 report, Dr. Chisena diagnosed lumbar disc syndrome and low back pain. He recommended continued physical therapy.

On June 1, 2016 appellant, through counsel, requested reconsideration. He argued that appellant established fact of injury as she had provided a detailed response to OWCP describing the incident that occurred. Counsel also argued that the medical evidence of record supported her claim.

OWCP received copies of previously submitted reports as well as appellant's answers to the questions posed by OWCP.

By decision dated August 30, 2016, OWCP modified its February 25, 2016 decision. It found that the factual component of fact of injury was established. However, the claim remained denied because the medical evidence of record was insufficient to establish a diagnosed condition

causally related to the accepted August 17, 2015 employment incident. OWCP noted that none of the treating physicians differentiated between the preexisting conditions and the effects of the August 17, 2015 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 timely filed within the applicable time limitation period of FECA,⁴ that an injury was sustained in the performance of duty,⁵ and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁶ 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.⁷

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. 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.⁸ In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.⁹ 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.¹⁰

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.¹¹

³ *Id.*

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁷ *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *Julie B. Hawkins*, 38 ECAB 393, 396 (1987).

⁹ *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *Id.* For a definition of the term "traumatic injury," *see* 20 C.F.R. § 10.5(ee).

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

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a traumatic injury causally related to the accepted August 17, 2015 employment incident.

In August 18, 2015 treatment notes, Dr. Shaker diagnosed back pain secondary to muscle spasm and recommended light-duty work. The Board has held that a diagnosis of “pain” does not constitute the basis for the payment of compensation.¹² Without further explanation or rationale, this report is of limited probative value.

In an August 25, 2015 report, Dr. Werns, noted that appellant sustained an injury to her lower back on August 17, 2015, when she was moving an instrument tray. She diagnosed lumbar sprain, “likely disc herniation.” The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value.¹³

OWCP received several reports from Dr. Chisena dated August 25, 2015 to January 21, 2016. In the August 25, 2015 reports, Dr. Chisena noted that appellant was seen for a back injury of August 17, 2015. He reviewed August 18, 2015 x-rays of the lumbar spine and provided a provisional diagnosis of disc herniation and lumbar sprain. Dr. Chisena indicated that the lower back pain was “probably related to sprain *versus* disc injury.” He advised that appellant was unable to work until further notice. However, the Board notes that, at most, this is a speculative opinion with no explanation as to the cause of her condition or her preexisting conditions and is therefore of little probative value.¹⁴

In the duty status report dated August 25, 2015, Dr. Chisena diagnosed low back pain and indicated that she injured her back lifting instrument bins. The Board has held that a diagnosis of “pain” does not constitute the basis for the payment of compensation.¹⁵ Without further explanation or rationale, this report is of limited probative value.

In a September 9, 2015 report and duty status report, Dr. Chisena reviewed the September 2, 2015 MRI scan of the lumbar spine and diagnosed low back sprain. He found restricted motion of the lumbar spine and checked a box marked “yes” with regard to whether the diagnosis was due to the injury. However, Dr. Chisena did not explain how he determined that the diagnosis was due to the injury. The Board has held that the checking of a box marked “yes” in a form report, without additional explanation or rationale, is insufficient to establish causal relationship.¹⁶

¹² *John L. Clark*, 32 ECAB 1618 (1981).

¹³ *Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

¹⁴ *Id.*

¹⁵ *See supra* note 11.

¹⁶ *Calvin E. King*, 51 ECAB 394 (2000); *Linda Thompson*, 51 ECAB 694 (2000).

In his treatment notes, Dr. Chisena explained that appellant indicated that she had a lower back injury on November 1, 1995 and reinjured it on July 2, 1996. He related that appellant believed she had reagravated her prior injuries. Dr. Chisena noted that appellant lifted and twisted her lower back while lifting a red container weighing 23 pounds. He reviewed a lumbar spine MRI scan dated July 27, 1996 and found a mild bulging of the annulus fibrosis at L5-S1. Dr. Chisena reviewed the MRI scan from August 18, 2015, and diagnosed lumbar disc syndrome and low back pain. He opined that appellant remained totally disabled. While he related that appellant believed she aggravated her prior injuries, Dr. Chisena did not provide an opinion explaining how the diagnosis was work related. Rationalized medical opinion evidence is medical evidence, which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factor(s). The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.¹⁷ As the report of Dr. Chisena is not based on a complete factual and medical background it is entitled to little probative value.

In an October 9, 2015 duty report, Dr. Chisena diagnosed lumbar disc syndrome and low back pain due to the injury. The Board notes that the physician did not provide an explanation as to how he concluded the conditions were due to the injury. For example, Dr. Chisena did not provide any findings or explanation to support his conclusion. Medical reports not containing rationale on causal relationship are entitled to little probative value and are generally insufficient to meet an employee's burden of proof.¹⁸

In his November 6, 2015 report, Dr. Chisena diagnosed lumbar disc syndrome and low back pain. However, he did not offer any opinion regarding the cause of appellant's condition. 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.¹⁹

Dr. Chisena provided treatment notes and a duty status report dated January 21, 2016 recommending a return to work on January 28, 2016. These reports are also of limited probative value as they indicated that appellant could return to work and did not offer any opinion as to the cause of her condition.

OWCP received diagnostic reports to include: August 18, 2015 x-rays of the lumbar spine, read by Dr. Edelstein; a September 2, 2015 MRI scan of the lumbar spine, read by Dr. Wu, and an October 9, 2015 report from Dr. Turley, who reviewed the MRI scan of the lumbar spine which revealed mild degenerative spondylosis of the lumbar spine at L1-2 and L5-S1, with disc bulge and annular fissure with no significant spinal canal or neural foraminal stenosis, moderate facet arthropathy of the lower lumbar spine and a small Tarlov cyst. However, these reports merely reported findings and did not contain an opinion regarding the cause of the reported condition.

¹⁷ *Gloria J. McPherson*, 51 ECAB 441 (2000).

¹⁸ *Albert C. Brown*, 52 ECAB 152 (2000).

¹⁹ *Michael E. Smith*, 50 ECAB 313 (1999).

The Board has held that diagnostic studies are of limited probative value as they do not address whether the employment incident caused any of the diagnosed conditions.²⁰

OWCP received September 10, 17, 22, 24, October 1, and 9, 2015 notes from a physical therapist. However, lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA.²¹

OWCP also received: a treatment note from July 16, 1996 from an individual whose signature is illegible and treated her for intervertebral disc syndrome in relation to a work-related injury; an August 21, 1996 note from a chiropractor, which was related to a July 2, 1996 accident and an accident report from November 1, 1995. However, these reports were prior to the August 17, 2015 incident and would not support the present claim.

Other reports are of limited probative value on the relevant issue of the present case in that they do not contain an accurate history and an opinion on causal relationship.

Because the medical reports submitted by appellant do not address how the August 17, 2015 activities at work caused or aggravated a back condition, these reports are of limited probative value²² and are insufficient to establish that the August 17, 2015 employment incident caused or aggravated a specific injury.

On appeal counsel asserts that appellant established fact of injury as she had provided a detailed response to OWCP describing the claimed incident. He also argued that the medical evidence submitted supported her claim. However, as found above, appellant has not met her burden of proof to establish an injury causally related to the accepted August 17, 2015 employment incident.

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 a traumatic injury causally related to the accepted August 17, 2015 employment incident.

²⁰ See *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

²¹ *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).

²² See *Linda I. Sprague*, 48 ECAB 386, 389-90 (1997).

ORDER

IT IS HEREBY ORDERED THAT the August 30, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 10, 2018
Washington, DC

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

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

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