United States Department of Labor
Employees' Compensation Appeals Board

S.B., Appellant	)	
and	)	**Docket No. 17-0413**
	)	**Issued: June 27, 2018**
U.S. POSTAL SERVICE, POST OFFICE, St. Louis, MO, Employer	)	

Appearances:
Darrell Dunham, *Esq*., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 14, 2016 appellant, through counsel, timely appealed from an August 24, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of appellant's claim.

ISSUE

The issue is whether appellant has established that her claimed low back, left hip, ankles, and left leg conditions are causally related to the accepted May 20, 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 10, 2015 appellant, then a 32-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that, on May 20, 2015, she was moving a tray of mail and turned her whole body, but the tray shifted and she almost fell. She explained that she caught it and straightened up. Appellant indicated that she sustained a ruptured disc "not applicable" to the lower back, left hip, knee, ankles, and muscles of the left legs. The employing establishment checked the box for continuation of pay (COP) not to exceed 45 days and checked the box marked "yes" in response to whether the injury occurred in the performance of duty. J.H., a coworker, revealed that he remembered approximately two to three weeks prior that appellant had made a comment that she felt that her "butt is on fire." He indicated that he teased her about it by rewording a popular song titled, "Girl on Fire." J.H. also noted that she continued to complain about her pain and commented that it might be sciatica and "it got so bad she could n[o]t walk anymore."

OWCP received a June 1, 2015 work excuse, placing appellant off work from June 1 through 5, 2015 and a June 5, 2015 duty status report (Form CA-17) from an individual whose signature is illegible. The individual described the incident as lifting tubs, parcels, and mail from equipment to cases and into vehicle, causing pain in the lower back, hips and numbness in right leg. The diagnosis provided was lumbar radiculopathy and herniated lumbar discs.

In a development letter dated July 2, 2015, OWCP noted that appellant's claim initially appeared to be a minor injury that resulted in minimal or no lost time from work and appellant's claim was administratively handled to allow payment of a limited amount of medical expenses because the employing establishment did not controvert COP or challenge the merits of the case. However, appellant's claim was now being reopened on the merits. OWCP informed her of the type of evidence needed to support her claim and requested that she submit such evidence within 30 days.

OWCP received July 3, 13, and 23, 2015 notes from nurses and physician assistants.

In a July 13, 2015 report, Dr. Shannon Rider, a Board-certified internist, who noted that appellant presented with lower back pain radiating down to her legs, and numbness in both feet. He advised that appellant felt nauseated earlier secondary to pain. Dr. Rider indicated that appellant related that she had herniated discs at L4-L5 that usually caused her lower back pain and pain in her left leg. He noted that appellant "denies change in activity that could have triggered the pain." Additionally, Dr. Rider advised that appellant saw a neurosurgeon once in the past. He diagnosed chronic back pain, acute sciatica, and acute lumbar radiculopathy.

By decision dated August 6, 2015, OWCP denied appellant's claim, finding that she had not established causal relationship between the diagnosed condition and the accepted May 20, 2015 employment incident. It found that the medical evidence submitted lacked rationale sufficient to establish causal relationship. OWCP notified appellant that medical treatment was not authorized and prior authorization, if any, was terminated.

OWCP received nurses' notes dated June 13, July 13, and August 17, 2015. The nurse's intake notes revealed that appellant had a prior history of chronic back pain from a motor vehicle

accident in 2010. The nurse noted that the symptoms of pain in the left butt cheek which slowly progressed to lower back pain radiating down to the left leg into the knee began on May 20, 2015.

In a July 13, 2015 report, Dr. Christian Mannsfeld, Board-certified in emergency medicine, noted that appellant presented to the emergency room with lower back pain radiating down both of her legs and both feet were numb. She also felt nauseated earlier secondary to pain. He related that appellant reported having herniated discs at L4-L5 that usually caused her low back pain and pain in her left leg. Dr. Mannsfeld determined that her prior history was chronic back pain, asthma, lumbar herniated disc at L4 and L5, and spinal stenosis at the L4-L5 level. He diagnosed chronic back pain, acute sciatica and acute lumbar radiculopathy.

On July 1, 2016 counsel requested reconsideration and submitted additional medical evidence.

In a June 13, 2016 report, Dr. Rider noted that appellant's history of injury included that appellant was working on May 20, 2015 when she was carrying a 3 foot wide, 30-pound tray of mail when her boot caught on a floor mat, which caused her to stumble. In the process of attempting to prevent the tray from dropping to the floor, appellant pulled her lower back. Dr. Rider related that she immediately felt an acute burning, radiating pain in her lower left buttock. He advised that appellant did not work for several days, and when she went back to work, her condition did not improve. Dr. Rider advised that it worsened. He explained that she saw appellant on May 29, 2015 and she complained of unrelenting lower back pain that progressively worsened and she was off work since that date. Dr. Rider related that a magnetic resonance imaging (MRI) scan had been taken in June 2015 and that it revealed disc disease "completely consistent with her symptoms." He opined that "with a reasonable degree of medical certainty, [appellant's] pathology in her low back, was caused by and is related to her work accident on May 20, 2015. It is my opinion, within a reasonable degree of medical certainty, that all medical treatment since May 20, 2015, to the present and until appellant reaches maximum medical improvement is related to her work accident of May 20, 2015."

In a March 25, 2016 report, Dr. Rider advised that appellant was off work since June 6, 2015 due to a work-related injury to her lumbar spine and related that she was currently getting treatment through pain management and was pending an evaluation by a neurosurgeon for possible surgical intervention. He advised that he was unable to provide a return to work date due to pending evaluation.

In a February 5, 2016 operative report, Dr. Amanda Carroll, specializing in obstetrics and gynecology, performed a laparoscopic-assisted hysterectomy, bilateral salpingectomy, and cystoscopy.

OWCP also received a preadmission assessment from a nurse, an intraoperative nursing record, and a post-anesthesia record dated February 5, 2016. It also received laboratory reports and a note from a physician assistant dated September 4 and 5, 2015.

By decision dated August 24, 2016, OWCP denied modification of its August 6, 2015 decision.

LEGAL PRECEDENT

A claimant 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, 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.[4]

To determine if 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.[5] The second component is whether the employment incident caused a personal injury.[6] 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 injury.[7]

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[8] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[9]

ANALYSIS

The Board finds that the medical evidence of record contains no reasoned explanation of how the specific employment incident on May 20, 2015 caused or aggravated appellant's claimed conditions.[10]

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[3] *Id.*

[4] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[5] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). 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). *Id.*

[7] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[8] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[9] *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

[10] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified

OWCP received nurses' notes and physician assistants' notes dated June 13 to September 5, 2015. However, these providers are not considered physicians as defined under FECA.[11] Thus, their opinions on causal relationship do not constitute rationalized medical opinions and have no weight or probative value.[12]

OWCP also received laboratory reports and a post anesthesia record dated February 5, September 4 and 5, 2015. Diagnostic studies are of limited probative value as they do not address whether the employment incident caused any of the diagnosed conditions.[13]

Appellant submitted several reports from Dr. Rider. They included a July 13, 2015 report, in which Dr. Rider advised that appellant presented with lower back pain radiating down to her legs, and numbness in both feet. He indicated that appellant related that she had herniated discs at L4-L5 that usually caused her lower back pain and pain in her left leg. Dr. Rider noted that appellant "denies change in activity that could have triggered the pain." He also noted that appellant saw a neurosurgeon once in the past. Dr. Rider diagnosed chronic back pain, acute sciatica, and acute lumbar radiculopathy. However, he merely provided diagnoses and did not offer any opinion on causal relationship. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[14]

In a June 13, 2016 report, Dr. Rider noted that appellant's history of injury included that appellant was working on May 20, 2015 when she was carrying a 3 foot wide, 30-pound tray of mail when her boot caught on a floor mat, which caused her to stumble. The Board notes that the description of the incident is inconsistent with the description provided by appellant on her Form CA-1. Appellant noted that the tray of mail shifted and she turned her whole body trying to catch the shifting tray. It is well established that medical reports must be based on a complete and accurate factual and medical background, and medical opinions based on an incomplete or inaccurate history are of little probative value.[15] Therefore, Dr. Rider's opinion that the pathology in her low back was caused by and was related to her work accident on May 20, 2015 is of limited probative value.

In a March 25, 2016 report, Dr. Rider advised that appellant was off work since June 6, 2015 due to a work-related injury to her lumbar spine. However, as noted, without an accurate

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by medical rationale is of little probative value).

[11] *See M.M.,* Docket No. 17-1641 (issued February 15, 2018); *K.J.,* Docket No. 16-1805 (issued February 23, 2018); *David P. Sawchuk,* 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law).

[12] *See M.M.*, Docket No. 16-1851 (issued January 19, 2018); *see also Joe T. Williams*, 44 ECAB 518, 521 (1993).

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

[14] *K.W.*, *supra* note 9.

[15] *Douglas M. McQuaid*, 52 ECAB 382 (2001).

factual and medical background, along with a rationalized opinion on causal relationship, this report is of limited probative value.

In a July 13, 2015 report, Dr. Mannsfeld, noted that appellant presented to the emergency room with lower back pain radiating down both of her legs and both feet were numb and she felt nauseated earlier secondary to pain. He related that appellant reported having herniated discs at L4-L5 that usually caused her low back pain and pain in her left leg. Dr. Mannsfeld determined that her prior history was chronic back pain, asthma, lumbar herniated disc at L4 and L5 and spinal stenosis at the L4-5 level. He diagnosed chronic back pain, acute sciatica and acute lumbar radiculopathy. However, this report does not offer any support that the May 20, 2015 incident caused or aggravated an injury. A medical opinion should reflect a correct history and offer a medically sound explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions. The report of Dr. Mannsfeld is, therefore, insufficient for appellant to meet her burden of proof.

In a February 5, 2016 operative report, Dr. Amanda Carroll, specializing in obstetrics and gynecology, performed a laparoscopic-assisted hysterectomy, bilateral salpingectomy, and cystoscopy. This report does not offer any opinion that the accepted May 20, 2015 employment incident caused or aggravated an injury. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[16] These reports, therefore, are insufficient to establish appellant's claim.

Because the medical reports submitted do not address how the accepted May 20, 2015 work incident caused or aggravated a low back, left hip, left leg, or ankle condition, these reports are of limited probative value and are insufficient to establish appellant's claim.[17]

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.

<u>CONCLUSION</u>

The Board finds that appellant failed to establish that her claimed low back, left hip, ankles, and left leg conditions are causally related to the accepted May 20, 2015 employment incident.

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[16] *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).

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

ORDER

IT IS HEREBY ORDERED THAT the August 24, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 27, 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