United States Department of Labor
Employees' Compensation Appeals Board

A.M., Appellant	)	
and	)	**Docket No. 18-0542**
	)	**Issued: November 1, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Staten Island, NY, Employer	)	

Appearances:
Thomas R. Uliase, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 19, 2018 appellant, through counsel, filed a timely appeal from a September 21, 2017 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 the claim.[3]

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[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.*

[3] The record provided to the Board includes evidence received after OWCP issued its September 21, 2017 decision. The Board's jurisdiction is limited to the evidence that was before OWCP at the time of its final decision. 20 C.F.R. § 501.2(c)(1). Therefore, the Board is precluded from considering this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant met her burden of proof to establish a lumbar condition causally related to the accepted July 16, 2015 employment incident.

FACTUAL HISTORY

On August 4, 2015 appellant, then a 29-year-old city carrier assistant filed a recurrence claim (Form CA-2a) under OWCP File No. xxxxxx208, alleging due to a change/worsening of her accepted work-related lumbar condition.[4] She stated that on July 16, 2015 she felt excruciating pain in her lower back when she attempted to lift a package to place it in a bucket while in the performance of her federal employment duties. Appellant did not stop work.

By letter dated August 17, 2015, OWCP informed appellant that it had administratively converted the claim for recurrence to a claim for a new traumatic injury. It noted that the circumstances described on her claim form indicated that she had experienced a new injury, rather than a spontaneous worsening of her work-related condition without new injury or exposure to work factors. The new claim was assigned OWCP File No. xxxxxx965.[5]

Evidence provided with the claim included a July 20, 2015 physical therapy note and a July 20, 2015 report from Lindsay Martino, certified physician assistant. In her July 20, 2015 progress note, she noted the history of appellant's January 18, 2015 employment injury and that appellant had returned to work in a lighter-duty position. Appellant indicated that her back pain had intensified with no new injuries reported. Ms. Martino noted that appellant should reduce her lifting in order to alleviate her current pain and promote continued healing. In a July 20, 2015 attending physician's report (Form CA-20), she noted the date of injury as January 18, 2015 and diagnosed lumbar facet arthrosis and radiculitis. Ms. Martino indicated that appellant could return to light-duty work with restrictions on lifting and carrying. She also completed a July 20, 2015 duty status report (Form CA-17), which indicated the date of injury as January 18, 2015.

By development letter dated August 31, 2015, OWCP informed appellant of the type of factual and medical evidence needed to establish her claim. It also provided her a questionnaire to complete regarding the factual description of her claim. OWCP afforded appellant 30 days to submit the necessary evidence. No additional evidence was received.

By decision dated October 2, 2015, OWCP denied the claim, finding that the evidence of record was insufficient to establish that the claimed event(s) occurred as alleged.

On July 27, 2016 appellant, through counsel, requested reconsideration. Evidence received in support of the reconsideration request included appellant's completed questionnaire and a November 7, 2016 statement from the employing establishment, which indicated that on July 16,

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[4] Under OWCP File No. xxxxxx208, the master file, OWCP accepted a January 18, 2015 traumatic injury for lumbar radiculitis and cervical radiculitis.

[5] OWCP File Nos. xxxxxx208 and xxxxxx965 have been administratively combined, with File No. xxxxxx208 serving as the master file.

2015 she was working within the restrictions provided by her treating physician when she lifted a package that weighed between 20 to 25 pounds. A copy of her June 23, 2015 modified assignment was also provided.

In medical reports dated March 4 and 9, 2016, Dr. Nakul Gupta, a Board-certified anesthesiologist, reported that on July 15, 2015 appellant injured her back when she picked up a heavy package. He indicated that she had a "mild partial disability" and was working part time. Dr. Gupta provided examination findings and diagnosed lumbar degenerative disc disease. He noted that a new magnetic resonance imaging (MRI) scan showed degenerative disc disease at L5-S1.

In a March 24, 2016 report, Dr. Anthony J. Alastra, a Board-certified neurologist, reported that appellant was involved in a work-related accident on July 16, 2015 when she picked up a heavy package and felt a twinge in her back. He indicated that she had no significant past medical or surgical history and that she continued to work on a part time basis with a mild partial disability. Dr. Alastra reviewed the February 20, 2016 MRI scan, reported examination findings and diagnosed lumbar spondylosis, lumbar traumatic disc disease, lower back pain, and left L5-S1 radiculopathy. He opined that appellant appeared to have a work-related injury with findings of L5-S1 traumatic spondylosis, which caused lumbar sacral pain and concordant L5-S1 radicular symptomatology into the buttocks and left lower extremity. Dr. Alastra also opined that she was a surgical candidate.

In an April 1, 2016 report, Dr. Nilay Shah, a neurologist, noted appellant's date of injury as January 18, 2016. He diagnosed spondylosis without myelopathy or radiculopathy, lumbar region.

In medical reports dated April 8 and May 6, 2016, Dr. Nakul Mahajan, a Board-certified anesthesiologist, reported that on July 15, 2015 appellant injured her back when she picked up a heavy package. He indicated that she had a mild partial disability and was working part time. Dr. Mahajan provided examination findings and diagnosed lumbar degenerative disc disease.

In a July 19, 2016 report, Dr. Alastra noted that appellant's MRI scan and flexion-extension studies indicated a traumatic injury at L5-S1 in the form of severe arthrosis, which caused disc injury, facet injury, and foraminal narrowing, and resulted in the S1 radiculopathy seen on examination. He opined that her traumatic-induced spondylosis was related to her July 16, 2015 employment incident.[6] Dr. Alastra noted that appellant was an excellent candidate for a lumbar fusion and that she continued to have a temporary total disability and was unable to return to work.

By decision dated November 29, 2016, OWCP modified the October 2, 2015 decision to reflect that appellant has established that the claimed incident occurred. However, it continued to deny the claim as appellant failed to establish causal relationship between her diagnosed lumbar conditions and the accepted employment incident of July 16, 2015.

[6] In the undated letter, Dr. Alastra provided an injury date of July 26, 2015.

On December 13, 2016 appellant, through counsel, requested reconsideration. He indicated that OWCP did not evaluate Dr. Alastra's August 25, 2016 letter, which was previously submitted. Counsel resubmitted a copy of the letter.

In his August 25, 2016 letter, Dr. Alastra indicated that appellant was injured on the job on July 26, 2015 when she picked up a heavy package and felt an immense pain in her back with radiation into the left side and left lower extremity consistent with a S1 radiculopathy. He noted that workup, which included a lumbar spine MRI scan and flexion-extension x-rays, showed that she has traumatic spondylosis of L5-S1 with findings consistent with a traumatic injury to that spinal segment. The findings were documented as loss of disc height, disc bulging, left greater than right formaminal narrowing, interfacet fluid, and the movement at the L5-S1 space. Dr. Alastra discussed appropriate surgical treatment and indicated that surgical intervention was secondary to the segmental injury of the spine caused from the on-the-job accident. He opined that appellant continued to have a temporary total disability and was unable to return to work.

By decision dated September 21, 2017, OWCP denied modification of its previous decision. It found that the medical evidence of record was insufficient to establish that the accepted employment incident caused or aggravated her diagnosed back conditions as it failed to differentiate between the effects of the work-related injury and any preexisting conditions.

LEGAL PRECEDENT

An employee seeking compensation under FECA[7] has the burden of proof to establish the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,[8] including that he or she is an employee within the meaning of FECA, and that the claim was filed within the applicable time limitation.[9] The employee must also establish that he or she sustained an injury in the performance of duty as alleged, and that disability from work, if any, was causally related to the employment injury.[10]

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. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that the employment incident occurred at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[11]

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[7] *Supra* note 2.

[8] *J.P.,* 59 ECAB 178 (2007).

[9] *R.C.,* 59 ECAB 427 (2008).

[10] *Id.*; *Elaine Pendleton,* 40 ECAB 1143, 1145 (1989). OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift. 20 C.F.R. § 10.5(ee). OWCP regulations define the term occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

[11] *T.H.*, 59 ECAB 388 (2008).

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[12] 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 employee.[13] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[14]

In any case where a preexisting condition involving the same part of the body is present, the issue of causal relationship therefore involves aggravation, acceleration, or precipitation and the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[15]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish causal relationship between her diagnosed lumbar conditions and the accepted employment incident of July 16, 2015.

Medical evidence submitted to support a claim for compensation should reflect a correct history, and the physician should offer a medically sound explanation of how the accepted employment incident caused or aggravated the claimed condition.[16] The Board finds that no physician did so in this case.

Dr. Shah's April 1, 2016 report incorrectly identified January 18, 2016 as the date of injury, and did not include an opinion regarding the cause of the diagnosed spondylosis without myelopathy or radiculopathy, lumbar region. Medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[17]

Similarly, the reports from Dr. Gupta, Dr. Mahajan, and Dr. Alastra also failed to offer a rationalized explanation of the causal relationship, if any, between appellant's diagnosed

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[12] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[13] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler,* 45 ECAB 365 (1994).

[14] *Dennis M. Mascarenas,* 49 ECAB 215 (1997).

[15] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship,* Chapter 2.805.3e (January 2013).

[16] *D.D.,* Docket No. 13-1517 (issued April 14, 2014).

[17] *See L.B.,* Docket No. 18-0533 (issued August 27, 2018); *D.K.,* Docket No. 17-1549 (issued July 6, 2018).

conditions and the accepted July 16, 2015 employment incident. As such, these reports are insufficient to establish causal relationship.[18]

Dr. Gupta, in medical reports dated March 4 and 9, 2016, and Dr. Mahajan, in medical reports dated April 8 and May 6, 2016, diagnosed lumbar degenerative disc disease. He indicated that a new MRI scan showed degenerative disc disease at L5-S1. Both physicians reported an incorrect date of injury of July 15, 2015, but included a specific history of injury of appellant injuring her back when she picked up a heavy package. However, neither physician provided a medical explanation of how the diagnosed conditions physiologically resulted from the accepted July 16, 2015 work incident. Absent an explanation, the reports from Dr. Gupta and Dr. Mahajan are insufficient to establish causal relationship.[19] The need for rationalized medical opinion evidence is particularly important in this case since appellant had a preexisting back injury approximately seven months prior.[20]

Dr. Alastra's reports are similarly insufficient to establish causal relationship. In his March 24, 2016 report, he diagnosed lumbar spondylosis, lumbar traumatic disc disease, lower back pain, and left L5-S1 radiculopathy. Dr. Alastra reported a correct date of injury of July 16, 2015 and included a specific history of the injury. He indicated, however, that appellant had no significant past medical or surgical history. The Board has held that medical reports must be based on a complete and accurate factual and medical background. Medical opinions based on an incomplete or inaccurate history are of limited probative value.[21] Furthermore, while Dr. Alastra opined that appellant "appeared to have a work-related injury" with consistent findings of L5-S1 traumatic spondylosis, this opinion is equivocal[22] and lacks a well-reasoned explanation of how the event of picking up a heavy package caused a change in her disability status or caused or aggravated the diagnosed conditions.[23] Thus, his reports are insufficient to establish appellant's claim.

In a July 19, 2016 report and an August 25, 2016 letter, Dr. Alastra discussed findings and opined, without explanation, that appellant's traumatic-induced spondylosis was related to her July 16, 2015 accident.[24] However, such generalized statements do not establish causal

[18] *Supra* note 16.

[19] *See J.M.,* Docket No. 17-1002 (issued August 22, 2017).

[20] *See supra* note 15.

[21] *C.L.,* Docket No. 14-1585 (issued December 16, 2014); *J.R.,* Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid,* 52 ECAB 382 (2001).

[22] *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).

[23] *J.I.,* Docket No. 15-0516 (issued September 21, 2015).

[24] In the undated letter of medical necessity, Dr. Alastra provided an incorrect date of injury of July 26, 2015.

relationship because it is unsupported by adequate medical rationale.[25] Medical opinions which contain no supporting rationale are of little probative value.

The record also includes a physical therapy note and July 20, 2015 reports from Ms. Martino, a certified physician assistant. The Board has held that reports from a physical therapist and a physician assistant lack probative value as those health care providers are not considered physicians under FECA.[26]

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated, or aggravated by her employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence.[27] The case record does not contain such evidence, and therefore has not met her burden of proof.

On appeal, counsel contended that Dr. Alastra's August 25, 2016 report is sufficient to establish *prima facie* evidence of the traumatic injury as he explained findings consistent with traumatic arthrosis and injury to the lumbar segment and opined that surgical intervention was "secondary to a segmental injury of the spine caused from an on-the-job accident." However, as previously noted, Dr. Alastra failed to provide medical rationale explaining how the employment incident would have physiologically caused or aggravated the diagnosed conditions. It is appellant's burden of proof to provide rationalized medical opinion evidence explaining how or why the accepted July 16, 2015 employment incident either caused or contributed to her diagnosed lumbar conditions.

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 lumbar condition causally related to the accepted July 16, 2015 employment incident.

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[25] *See G.O.,* Docket No. 16-0311 (issued June 14, 2016); *K.W.,* Docket No. 10-0098 (issued September 10, 2010).

[26] *See 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).

[27] *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ORDER

IT IS HEREBY ORDERED THAT the September 21, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 1, 2018
Washington, DC

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

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

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