

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

P.B., Appellant	)	
	)	
and	)	Docket No. 18-0631
	)	Issued: October 17, 2018
DEPARTMENT OF JUSTICE, DRUG	)	
ENFORCEMENT AGENCY, San Diego, CA,	)	
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  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On January 30, 2018 appellant filed a timely appeal from a January 2, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

**ISSUE**

The issue is whether appellant met her burden of proof to establish a low back condition causally related to the accepted February 13, 2017 employment incident.

**FACTUAL HISTORY**

On February 15, 2017 appellant, then a 55-year-old evidence custodian, filed a traumatic injury claim (Form CA-1) alleging that, on February 13, 2017, she developed left low back pain

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

while moving boxes of copier paper while in the performance of duty. She stopped work on February 13, 2017.

In support of her claim, appellant submitted disability notes dated February 21, 23, 25, and March 6 and 15, 2017 signed by Dr. Mary Chau, a treating Board-certified family medicine physician, requesting that appellant be excused from work.

By development letter dated March 16, 2017, OWCP advised appellant that when her claim was received, it appeared to be a minor injury that resulted in minimal or no lost time from work and, since the employing establishment did not controvert continuation of pay or challenge the case, a limited amount of medical expenses were administratively approved and paid. It noted that it had reopened her claim because the medical bills had exceeded \$1,500.00. OWCP informed appellant of the type of factual and medical evidence necessary to establish her claim and afforded her 30 days to submit the necessary evidence.

OWCP thereafter received a May 20, 2016 magnetic resonance imaging (MRI) scan. This scan was interpreted by Dr. Bradley Griffeth, a diagnostic radiologist, as revealing abnormal T1/T2 bone marrow signal, mild multilevel degenerative disc disease with multilevel facet osteophyte arthritis, and moderate canal narrowing at L4/L5.

Dr. Chau, in the February 21, 2017 report, related that appellant was seen for right hand and back pain. Appellant related that “she twisted her back when lifting some boxes last Monday.” Dr. Chau reviewed appellant’s MRI scan, and provided examination findings. Diagnoses included back ache, bronchitis, right hand bursal cyst, and anxiety.

In a supplemental statement dated March 28, 2017, appellant explained that she had a prior work-related back injury in May 2016, for which she received treatment from Dr. Chau.<sup>2</sup>

By decision dated April 20, 2017, OWCP denied appellant’s claim finding that the record did not establish a diagnosed medical condition due to the accepted February 13, 2017 employment incident.

On May 1, 2017 OWCP received appellant’s request for a telephonic hearing before an OWCP hearing representative, which was held on October 16, 2017.

OWCP received notes from Stephen Sexton, a physical therapist dated March 14, 2017. Mr. Sexton noted that on February 13, 2017 appellant was lifting heavy boxes at work when she experienced pain in her lumbosacral spine. He diagnosed unspecified dorsalgia.

On November 10, 2017 OWCP also received an unsigned report noting that appellant was seen on February 15, 2017 for low back pain. Appellant attributed the pain to lifting too many boxes at work on February 13, 2017. The report noted that appellant had a preexisting back condition which made her prone to back pain, which the February 15, 2017 lifting aggravated.

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<sup>2</sup> Appellant identified the prior claim as OWCP File No. xxxxxx400.

By decision dated January 2, 2018, OWCP's hearing representative affirmed the April 20, 2017 denial of appellant's traumatic injury claim. She found that the record was devoid of any medical evidence diagnosing a medical condition causally related to the accepted February 13, 2017 employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>5</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

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 incident identified by the claimant.<sup>9</sup>

### **ANALYSIS**

The Board finds that appellant has not met her burden of proof to establish a low back condition causally related to the accepted February 13, 2017 employment incident.

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>5</sup> *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 4.

<sup>7</sup> *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

<sup>8</sup> *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 4.

<sup>9</sup> *M.L.*, Docket No. 17-1026 (issued April 20, 2018).

In a report dated February 21, 2017, Dr. Chau noted that appellant was seen for back and right hand pain and that appellant related twisting her back the prior Monday while lifting boxes at work. She diagnosed back ache. However, pain and/or discomfort is only considered a symptom, not a medical diagnosis.<sup>10</sup> Dr. Chau also diagnosed bronchitis, right hand bursal cyst and anxiety. Appellant, however, has not alleged that her right hand condition, bronchitis, or anxiety were employment related and Dr. Chau offered no opinion as to the cause of the diagnosed conditions.<sup>11</sup> As such, her report lacks probative value as she did not address causal relationship.<sup>12</sup>

Physical therapy notes were also submitted. The Board has held that physical therapists are not considered physicians as defined under FECA.<sup>13</sup> Therefore, these notes are insufficient to establish appellant's claim.<sup>14</sup>

OWCP also received an unsigned report relating that appellant aggravated her low back condition by lifting boxes at work on February 13, 2017. The Board has held that unsigned reports, or ones that bear illegible signatures, cannot be considered as probative medical evidence because they lack proper identification.<sup>15</sup>

The remaining medical evidence of record, including diagnostic test reports and disability notes from Dr. Chau, are of limited probative value and insufficient to establish the claim as this evidence does not provide an opinion regarding causal relationship.<sup>16</sup>

The record before the Board is without rationalized medical evidence establishing that appellant sustained a diagnosed low back condition causally related to the accepted February 13, 2017 work incident. OWCP advised appellant that it was her responsibility to provide a comprehensive medical report, which described her symptoms, test results, diagnosis, history of treatment, and the physician's opinion, with medical reasons, on the cause of her conditions. Appellant failed to submit appropriate medical documentation in response to OWCP's request.

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<sup>10</sup> See *E.R.*, Docket No. 18-0391 (issued August 24, 2018).

<sup>11</sup> See *M.J.*, Docket No. 17-0725 (issued May 17, 2018); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>12</sup> See *F.H.*, Docket No. 16-0204 (issued April 8, 2016); *G.M.*, Docket No. 14-2057 (issued May 12, 2015).

<sup>13</sup> *A.C.*, Docket No. 08-1453 (issued November 18, 2008). Section 8101(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. The term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulations by the secretary. See *Merton J. Sills*, 39 ECAB 572, 575 (1988). 5 U.S.C. § 8101(2); *Sean O'Connell*, 56 ECAB 195 (2004) (nurse practitioners are not physicians under FECA); *Jennifer L. Sharp*, 48 ECAB 209 (1996) (physical therapists are not physicians under FECA).

<sup>14</sup> *Allen C. Hundley*, 53 ECAB 551 (2002).

<sup>15</sup> See *L.A.*, Docket No. 17-1762 (issued August 9, 2018).

<sup>16</sup> See *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Linda I. Sprague*, 48 ECAB 386 (1997) (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).

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relationship.<sup>17</sup> Thus, the Board finds that appellant has not met her burden of proof.

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 low back condition causally related to the accepted February 13, 2017 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 2, 2018 is affirmed.

Issued: October 17, 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

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<sup>17</sup> See *B.A.*, Docket No. 17-1130 (issued November 24, 2017); *S.S.*, 59 ECAB 315 (2008); *J.M.*, 58 ECAB 303 (2007); *Donald W. Long*, 41 ECAB 142 (1989).