United States Department of Labor
Employees' Compensation Appeals Board

T.K., Appellant	)	
and	)	**Docket No. 18-1813**
	)	**Issued: April 1, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Milwaukee, WI, Employer	)	

Appearances:
Alan J. Shapiro, 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 September 28, 2018 appellant, through counsel, filed a timely appeal from an August 20, 2018 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 this case.

[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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish an injury causally related to the accepted June 5, 2017 employment incident.

FACTUAL HISTORY

On June 6, 2017 appellant, then a 56-year-old carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 5, 2017 she stepped into a hole in the pavement and twisted her right ankle, knees, and back and sustained cuts on her left knee while in the performance of duty. No evidence was submitted with her claim. On the reverse side of the claim form, the employing establishment controverted the claim.

In a June 19, 2017 development letter, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of medical evidence required. OWCP afforded appellant 30 days to provide the requested information.

OWCP subsequently received a lumbar spine x-ray report dated June 15, 2017 from Dr. Sushil Sabnis, a Board-certified diagnostic radiologist, who provided an impression of interval moderate convex curvature to the left lumbar spine with sclerosis noted adjacent to the left-sided facets at L4-5 most compatible with degenerative change. Dr. Sabnis related that, if indicated, then correlation of magnetic resonance imaging could be performed. He also provided an impression that diffuse lumbar spondylitis changes were noted.

Progress notes dated June 15 and 29, 2017 from Jacob J. Finer, a certified physician assistant, were also received.

In a progress note dated July 6, 2017, Dr. Derek J. Orton, a Board-certified orthopedic surgeon, noted that appellant presented with a chief complaint of back problem and numbness in her left leg. He related a history that following a fall on June 5, 2017 she had worsening back and lower extremity symptoms. Dr. Orton noted appellant's medical, family, and social history, provided findings on physical examination, and reviewed diagnostic test results. He diagnosed lumbar stenosis at L3-4, L4-5, and L5-S1; right L3 radiculopathy; left L4 radiculopathy; sacroiliac joint dysfunction; multilevel discogenic low back pain; and lumbar degenerative scoliosis. Dr. Orton advised appellant to remain off work with activity modification until she received injections.

By decision dated July 20, 2017, OWCP denied appellant's traumatic injury claim finding that the evidence of record was insufficient to establish a medical diagnosis in connection with the accepted June 5, 2017 employment incident and, thus, she had not met the requirements for establishing an injury under FECA.

OWCP subsequently received a return to work report dated June 13, 2017 from Shannon Whitaker, a nurse practitioner.

On January 23, 2018 appellant, through counsel, requested reconsideration of the July 20, 2017 decision. Appellant submitted additional medical evidence from Ms. Whitaker and

Mr. Finer. She also submitted medical evidence from Jazmine Hernandez and Jennifer S. Valdivia, medical assistants.

A duplicate copy of Dr. Orton's July 6, 2017 progress note was resubmitted with the addition of diagnoses that included: displacement of lumbar intervertebral disc without myelopathy; primary, thoracic, and lumbosacral neuritis; and kyphoscoliosis.

Dr. Sarah E. Reimer, Board-certified in diagnostic radiology and nuclear medicine, reported on July 13, 2017 that a right ankle x-ray revealed interval progression of degenerative changes and no acute finding.

By decision dated August 20, 2018, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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.[4] 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.[5]

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 he or she actually experienced the employment incident at the time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[6]

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such causal relationship.[7] 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.[8] The weight of medical evidence is

[3] *Supra* note 2.

[4] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *John J. Carlone*, 41 ECAB 354 (1989).

[7] *See S.A.*, Docket No. 18-0399 (issued October 16, 2018).

[8] *See P.M.*, Docket No. 18-0287 (issued October 11, 2018).

determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[9]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an injury causally related to the accepted June 5, 2017 employment incident.

Appellant submitted Dr. Orton's July 6, 2017 progress notes in which he related a history of the June 5, 2017 employment incident and diagnosed lumbar stenosis at L3-4, L4-5, and L5-S1; right L3 radiculopathy; left L4 radiculopathy; sacroiliac joint dysfunction; multilevel discogenic low back pain; and lumbar degenerative scoliosis. Dr. Orton also diagnosed displacement of lumbar intervertebral disc without myelopathy; primary, thoracic, and lumbosacral neuritis, and kyphoscoliosis. He removed appellant from work with activity modifications until she received injections. The Board finds that Dr. Orton has not provided an opinion as to the cause of the diagnosed conditions. The Board has held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[10]

Appellant also submitted diagnostic test reports of Dr. Sabnis and Dr. Reimer. The Board has long held that diagnostic studies lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.[11] These reports are therefore of insufficient probative value to establish the claim.

Appellant also submitted reports from Mr. Finer, a physician assistant, Ms. Whitaker, a nurse practitioner, and Ms. Hernandez and Ms. Valdivia, medical assistants. The Board has held that medical reports signed solely by such health care providers, are of no probative value as they are not considered physicians as defined under FECA and therefore are not competent to provide a medical opinion.[12]

As the record lacks rationalized medical evidence establishing causal relationship between the June 5, 2017 employment incident and appellant's diagnosed lumbar and thoracic conditions, the Board finds that appellant has not met her burden of proof.

[9] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

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

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

[12] *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). *E.T.*, Docket No. 17-0265 (issued May 25, 2018) (physician assistants are not considered physicians under FECA); *S.J.*, Docket No. 17-0783, n.2 (issued April 9, 2018) (nurse practitioners are not considered physicians under FECA); *Y.T.*, Docket No. 17-1559 (issued March 20, 2018) (medical assistants are not considered physicians under FECA).

On appeal counsel contends that OWCP's August 20, 2018 decision is contrary to fact and law. For the reasons set forth above, the Board finds that the medical evidence of record is insufficient to establish that appellant sustained an injury causally related to the accepted June 5, 2017 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 an injury causally related to the accepted June 5, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the August 20, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 1, 2019
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