

FACTUAL HISTORY

On November 14, 2018 appellant, then a 28-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on November 8, 2018 she sustained a lower and upper back injury due to apparent strain on her back from constant reaching for parcels and changing from sitting and standing positions while in the performance of duty. OWCP assigned this claim OWCP File No. xxxxxx373. Appellant stopped work on November 13, 2018. On the reverse side of the claim form Postmaster A.K. challenged the claim contending that appellant's claimed injury was due to a "reoccurring injury from October 1, 2018."

In support of her claim, appellant submitted medical evidence from Dr. Ali Nourbakhsh, an attending orthopedic surgeon. In a duty status report (Form CA-17) and an attending physician's report (Form CA-20) dated November 14, 2018, Dr. Nourbakhsh noted a date of injury of September 2018. Appellant reported experiencing lower back pain after lifting heavy packages at work. Dr. Nourbakhsh discussed examination findings, diagnosed back pain, and addressed her treatment plan. He advised that appellant was totally disabled from work from the date of his examination through December 23, 2018. Appellant could resume regular work on December 24, 2018. In the Form CA-17 report, Dr. Nourbakhsh indicated that the diagnosed condition was due to appellant's September 2018 injury. In the Form CA-20 report, he checked a box marked "yes" indicating that the diagnosed condition was caused or aggravated by an employment activity.

In a report also dated November 14, 2018, Dr. Nourbakhsh diagnosed back pain, unspecified back location, unspecified back pain, laterality, and unspecified chronicity. He referred appellant for physical therapy, two times a week for eight weeks. Dr. Nourbakhsh, in a letter dated November 14, 2018, reiterated appellant's physical therapy treatment plan and related that she should return for a follow-up evaluation in five to seven weeks. He advised that she remain off work until her next office visit.

In a separate letter dated November 14, 2018, Dr. Nourbakhsh addressed appellant's scheduled appointment on that day. His letter also contained a note by Janice Delamar, a registered nurse, who indicated that appellant had been discharged from Dr. Nourbakhsh's office on November 14, 2018.

In a report dated November 14, 2018, Dr. Zachary S. Rogozinski, a resident physician, examined appellant and provided an assessment of low back pain.

In a progress note dated November 14, 2018, Dr. Nourbakhsh noted appellant's chief complaint of low back pain. He also noted that she reported a history that her pain started two months prior following a work-related injury that occurred while lifting heavy packages at the employing establishment. Dr. Nourbakhsh restated his prior diagnoses of back pain, unspecified back location, unspecified back pain laterality, and unspecified chronicity.

In a letter dated November 19, 2018, M.T., a health and resource management employee, challenged appellant's claim. She contended that appellant had not established fact of injury and that her claim should be denied. M.T. noted that she had filed a prior traumatic injury claim for a low back injury which she sustained on September 15, 2018, and had been assigned OWCP File

No. xxxxxx306. She also noted that OWCP, in a development letter dated October 9, 2018, had informed appellant of the deficiencies of that claim.

In a development letter dated December 6, 2018, OWCP informed appellant of the deficiencies of her claim. It requested that she submit a narrative medical report from her physician which contained a detailed description of findings and diagnoses, explaining how the reported incident caused or aggravated her medical condition. OWCP also provided a questionnaire for appellant's completion. It afforded her 30 days to respond.

In a narrative statement dated December 20, 2018, appellant responded to OWCP's questionnaire and described the circumstances surrounding the claimed November 8, 2018 employment incident. She noted that as she reached from a sitting position to retrieve a package weighing 8 to 10 pounds from a customer at her counter, she felt a pull and burning sensation in her upper and lower back. When appellant retrieved the package from the customer and stood up to place it on a scale, the muscles in her back tightened and felt strained. She related that she sustained a previous back injury at work on September 18, 2018 due to continuous bending and lifting to sort heavy parcels. Appellant claimed that she reinjured and aggravated her back injury on November 8, 2018.

OWCP thereafter received additional medical evidence from Dr. Nourbakhsh. In a duty status report (Form CA-17) dated December 19, 2018, Dr. Nourbakhsh noted a date of injury of November 8, 2018 and diagnosed back muscle strain. He found that appellant was totally disabled from the date of his examination through December 25, 2018 and that she could resume work on December 26, 2018. In a Form CA-20 report, Dr. Nourbakhsh noted that she reported that she reinjured/aggravated a prior September 2018 back injury. He checked a box marked "yes" indicating that the diagnosed condition was caused or aggravated by an employment activity. Dr. Nourbakhsh advised that appellant had a 15-pound lifting work restriction. In the Form CA-17 report, he indicated that she reported reinjuring her back and developing lower and upper back pain while reaching for parcels from a sitting position to a standing position. Dr. Nourbakhsh advised that the diagnosed back condition was due to appellant's November 8, 2018 injury. In a letter dated December 19, 2018, he reiterated his opinion that appellant could return to work on December 26, 2018 with a 15-pound lifting restriction.

OWCP also received reports and daily notes dated December 6, 10, 11, 17, and 18, 2018 from appellant's physical therapists.

By decision dated January 8, 2019, OWCP accepted that the November 8, 2018 employment incident occurred as alleged and that there was a diagnosed back condition. However, it denied appellant's traumatic injury claim finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed condition and the accepted November 8, 2018 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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,³ that an injury was sustained in the performance of duty as alleged, and that any disability or medical 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 upon 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

The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁷ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.⁸

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 sufficient to establish such causal relationship.⁹ 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.¹⁰

³ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

⁷ *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

⁸ See *M.J.*, Docket No. 17-0725 (issued May 17, 2018); see also *Lee R. Haywood*, 48 ECAB 145 (1996); *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

⁹ *K.V.*, Docket No. 18-0723 (issued November 9, 2018).

¹⁰ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 45 ECAB 345 (1989).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a back condition causally related to the accepted November 8, 2018 employment incident.

In support of her claim, appellant submitted a series of reports from her physician, Dr. Nourbakhsh. In Form CA-20 and Form CA-17 reports dated December 19, 2018, Dr. Nourbakhsh noted a history of the accepted November 8, 2018 employment incident and diagnosed back muscle strain. He advised that appellant was totally disabled from work through December 25, 2018 and that she could return to work with a 15-pound lifting restriction on December 26, 2018. While in the Form CA-20 report, Dr. Nourbakhsh checked a box marked “yes,” that appellant’s diagnosed back condition was caused or aggravated by employment activity, the Board has held that an opinion consisting only of a checkmark notation supporting causation, without supporting medical rationale, is of diminished probative value and insufficient to establish causal relationship.¹¹ He has not provided the necessary medical rationale explaining how the accepted work incident caused or aggravated appellant’s back muscle strain and resulted in her total disability from work and work restriction.¹² Similarly, in the Form CA-17 report, Dr. Nourbakhsh advised that the diagnosed back condition was due to appellant’s injury on November 8, 2018, but again failed to offer medical rationale in support of his opinion on causal relationship between the diagnosed condition and resultant disability.¹³ He did not explain how the mechanism of injury would have physiologically caused the diagnosed condition and disability.¹⁴ For these reasons, the Board finds that Dr. Nourbakhsh’s reports are insufficient to establish appellant’s burden of proof.

In Form CA-20 and Form CA-17 reports dated November 14, 2018, Dr. Nourbakhsh attributed appellant’s back pain to a September 2018 injury, which was not accepted by OWCP as work related.¹⁵ Further, the Board notes that the assessment of pain is not considered a diagnosis as it merely refers to symptoms of the underlying condition.¹⁶ Thus, the Board finds that these reports are insufficient to establish appellant’s claim.

Dr. Nourbakhsh’s remaining order, reports, and progress note are of diminished probative value with regard to establishing causal relationship as they continued to provide a diagnosis of

¹¹ *Y.L.*, Docket No. 19-0018 (issued April 16, 2019); *K.R.*, Docket No. 18-1388 (issued January 9, 2019); *J.R.*, Docket No. 18-1609 (issued March 7, 2019).

¹² *S.O.*, Docket No. 19-0307 (issued June 18, 2019).

¹³ *Id.*; *P.J.*, Docket No. 17-0570 (issued October 26, 2017).

¹⁴ *See Y.L.*, *supra* note 11; *C.F.*, Docket No. 18-1156 (issued January 22, 2019); *R.R.*, Docket No. 16-1901 (issued April 17, 2017) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

¹⁵ *D.T.*, Docket No. 15-0023 (issued July 28, 2015).

¹⁶ *T.A.*, Docket No. 19-0289 (issued June 21, 2019); *T.J.*, Docket No. 18-1500 (issued May 1, 2019); *M.V.*, Docket No. 18-0884 (issued December 28, 2018). The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. *See P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

back pain¹⁷ and also did not include a medical opinion as to the causal relationship between appellant's diagnosed condition, disability, and work restriction and the accepted employment incident.¹⁸ The Board has held that 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.¹⁹ For these reasons, the Board finds that Dr. Nourbakhsh's reports are insufficient to establish appellant's burden of proof.

Dr. Rogozinski's November 14, 2018 report is similarly of diminished probative value because he also diagnosed back pain. As previously noted, pain is a symptom, not a compensable medical diagnosis.²⁰

The November 14, 2018 note signed by Nurse Delamar and December 6, 10, 11, 17, and 18, 2018 reports and daily notes signed by appellant's physical therapists have no probative medical value. Neither a nurse nor a physical therapist is considered a "physician" as defined under FECA. As such, this evidence is also insufficient to meet appellant's burden of proof.²¹

As there is no well-reasoned medical opinion establishing appellant's claim for compensation the Board finds that she has not met her burden of proof.²²

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 back condition causally related to the accepted November 8, 2018 employment incident.

¹⁷ *Id.*

¹⁸ *See S.Y.*, Docket No. 18-1814 (issued April 18, 2019); *S.W.*, Docket No. 18-0721 (issued November 6, 2018).

¹⁹ *See S.Y., id.; L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

²⁰ *Supra* note 16.

²¹ 5 U.S.C. § 8101(2) provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *See* 5 U.S.C. § 8102(2); *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *M.M.*, Docket No. 16-1617 (issued January 24, 2017); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants and physical therapists are not competent to render a medical opinion under FECA). *See also Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

²² On return of the case record OWCP should consider administratively combining the current claim, OWCP File No. xxxxxx373 with a contemporaneous claim filed for a back injury in OWCP File No. xxxxxx306.

ORDER

IT IS HEREBY ORDERED THAT the January 8, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 20, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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