United States Department of Labor
Employees' Compensation Appeals Board

L.C., Appellant	)	
	)	**Docket No. 18-1134**
and	)	**Issued: January 17, 2019**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Tampa, FL, Employer	)	

Appearances:
Appellant, pro se
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 May 14, 2018 appellant filed a timely appeal from an April 12, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 has met her burden of proof to establish a diagnosed medical condition causally related to the accepted February 6, 2018 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 6, 2018 appellant, then a 38-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she injured her left lower back when loading and unloading heavy boxes in the performance of duty. She stopped work on the date of injury.

Appellant provided a February 6, 2018 form report and notes signed by Lorie Quigley, a registered nurse practitioner. The employing establishment also provided appellant with an authorization for examination and/or treatment (Form CA-16) on February 6, 2018.

In a February 12, 2018 radiology report, Dr. Cory C. Duffek, a Board-certified diagnostic radiologist, reviewed appellant's lumbar spine x-rays and diagnosed minimal degenerative disease at L3-4 and L4-5.

On March 6, 2018 appellant provided notes from Daniel A. Nalepka, a physician assistant.

In a development letter dated March 6, 2018, OWCP requested additional factual and medical evidence in support of appellant's traumatic injury claim. It informed her that she must provide medical evidence signed by a physician, not a nurse practitioner or a physician assistant, and that pain was not considered a valid medical diagnosis. OWCP afforded appellant 30 days for a response.

OWCP thereafter received additional medical evidence. Notes dated February 12 and 26 and March 5, 2018 from Mr. Nalepka include the notation, "My supervising physician for this visit is Karen Calkins, MD." The electronic signatures were provided only by Mr. Nalepka.

Dr. Paul J. Fortier, a Board-certified internist, completed a treatment note and form report on March 9, 2018 and diagnosed acute left-sided low back pain with left-sided sciatica.

Dr. Jamal Ksar, a Board-certified diagnostic radiologist, performed a magnetic resonance imaging (MRI) scan on March 10, 2018, which demonstrated no significant abnormality. Appellant also submitted progress notes from Kevina Willis and Mickey Jones, physical therapists.

By decision dated April 12, 2018, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a medical diagnosis causally related to the accepted employment incident and, thus, she had not met the requirements for establishing an injury under FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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 of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the

[2] *Id*.

employment injury. 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.[3]

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.[4] Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[5]

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 of the employee, 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.[6] The weight of the medical evidence is 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.[7]

ANALYSIS

The Board finds that the evidence of record is sufficient to establish a diagnosed medical condition, based upon Dr. Duffek's diagnosis of minimal degenerative disease at L3-4 and L4-5. Therefore, the issue pending before the Board is whether appellant has met her burden of proof to establish that the diagnosed back condition was causally related to the accepted February 6, 2018 employment incident.

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 claimed employment incident caused or aggravated the claimed condition.[8] The Board finds that no physician did so in this case.

On March 9, 2018 Dr. Fortier completed both a treatment note and form report diagnosing acute left-sided low back pain with left-sided sciatica. This finding is of no probative value as he

[3] *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *Gary J. Watling*, 52 ECAB 357 (2001).

[4] *A.L.*, Docket No. 18-0420 (issued August 21, 2018).

[5] *A.D., supra* note 3; *T.H.*, 59 ECAB 388 (2008).

[6] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

[7] *Id.; James Mack*, 43 ECAB 321 (1991).

[8] *M.C.*, Docket No. 17-1983 (issued August 17, 2018).

is describing symptoms rather than a clear diagnosis of a medical condition.[9] The Board has held that the mere diagnosis of "pain" does not constitute the basis for payment of compensation.[10]

Appellant also submitted diagnostic studies including x-rays and an MRI scan to the record from Drs. Duffek and Ksar, respectively. While Dr. Duffek's x-ray report establishes a diagnosis, these diagnostic studies are of limited probative value as appellant's MRI scan reported no findings and as the x-ray report did not address whether the employment incident caused any of the diagnosed conditions.[11] The Board has held that reports of diagnostic tests lack probative value as they do not provide an opinion on causal relationship between appellant's employment and a diagnosed condition.[12]

The remainder of the medical evidence was from physician assistants,[13] registered nurse practitioners, and physical therapists. The Board has held that treatment notes signed by such health care providers have no probative value as they are not considered physicians under FECA.[14] Thus, this evidence is insufficient to meet appellant's 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.[15]

[9] *M.M.*, Docket No. 16-1617 (issued January 24, 2017); *K.B.*, Docket No. 16-0122 (issued April 19, 2016).

[10] *Id.; Robert Broome*, 55 ECAB 339 (2004).

[11] *C.M.*, Docket No. 18-0146 (issued August 16, 2018).

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

[13] While some of Mr. Nalepka notes provided, "My supervising physician for this visit is Karen, Calkins MD." There is no evidence that these treatment notes were acknowledged and electronically countersigned by Dr. Calkins. A report from a physician assistant or certified nurse practitioner will be considered medical evidence only if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013). *C.M., supra* note 11; *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).

[14] *See David P. Sawchuk, id.* (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).

[15] The Board notes that the employing establishment issued a Form CA-16 Authorization for Medical Treatment. A properly completed CA-16 form authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608 (2003).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that her diagnosed back condition was causally related to the accepted February 6, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the April 12, 2018 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: January 17, 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