United States Department of Labor
Employees' Compensation Appeals Board

C.G., Appellant	)	
and	)	**Docket No. 19-0480**
	)	**Issued: July 18, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Gansevoort, NY, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 2, 2019 appellant filed a timely appeal from an August 28, 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 over the merits of this case.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish that her back and neck conditions were causally related to the accepted July 2, 2018 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the August 28, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On July 17, 2018 appellant, then a 50-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that, on July 2, 2018, she sustained back and neck injuries during a vehicular accident which occurred while in the performance of duty. On the reverse side of the claim form, the employing establishment indicated that appellant stopped work on July 3, 2018 and had not yet returned.

In an authorization for examination and/or treatment (Form CA-16) dated July 17, 2018, S.A., an HRM specialist at the employing establishment, authorized medical treatment at a health facility. S.A. checked the form indicating doubt that appellant's condition was caused by an injury sustained in the performance of duty.

In a development letter dated July 19, 2018, OWCP informed appellant regarding the deficiencies of her claim. It advised her of the medical evidence needed to establish her claim and afforded her 30 days to submit the necessary evidence.

In an x-ray report dated July 3, 2018, Dr. Damon Deteso, a Board-certified diagnostic radiologist, related that x-ray of appellant's lumbosacral spine showed small endplate osteophytes in the lower lumbar spine from L3 to L5, bilateral facet arthropathy at L5-S1, and degenerative changes.

In a report dated July 3, 2018, Leo Caamano, a physician assistant, diagnosed lower back muscle spasm. He noted that x-rays showed no acute injury.

In a report dated July 13, 2018, Dr. Carol S. Fisher, a Board-certified orthopedic surgeon, diagnosed lumbar radiculopathy secondary to her motor vehicle accident at work. She indicated that, based on x-rays, she exhibited some mild facet arthropathy at L5-S1. Dr. Fisher related that appellant complained of neck and back pain after being in a motor vehicle accident while at work.

On August 21, 2018 OWCP received an undated report from Dr. Timothy Brooks, Board-certified in emergency medicine, indicating that appellant was seen on July 3, 2018 following a July 2, 2018 vehicular accident. Appellant's diagnoses were listed as neck/back injury and low back spasm.

By decision dated August 28, 2018, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish that appellant's conditions were causally related to her accepted July 2, 2018 employment incident.

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 timely filed within the applicable

[3] *Supra* note 1.

time limitation period of FECA,[4] 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.[5] 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.[6]

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. 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.[7] Second, the employee must submit evidence to establish that the employment incident caused a personal injury.[8]

Rationalized medical opinion evidence is 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.[9]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her back and neck conditions were causally related to the accepted July 2, 2018 employment incident.

In her July 13, 2018 report, Dr. Fisher diagnosed lumbar radiculopathy secondary to appellant's motor vehicle accident at work. She indicated that, based on x-rays, appellant exhibited some mild facet arthropathy at L5-S1. Dr. Fisher noted appellant's history of injury, however, she did not opine as to the cause of her condition. 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.[10] Dr. Fisher's report, therefore, is insufficient to establish appellant's claim.

OWCP received an undated report from Dr. Brooks. Dr. Brooks related appellant's history of injury and noted appellant's diagnosis as neck/back injury, low back spasm. He did not offer any opinion regarding causal relationship. The Board has previously explained that a purported

[4] *D.B.*, Docket No. 18-1359 (issued May 14, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

[6] *D.B.*, *supra* note 4; *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).

[7] *J.P.*, Docket No. 19-0197 (issued June 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[8] *J.P.*, *id.*; *John J. Carlone*, 41 ECAB 354 (1989).

[9] *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

[10] *D.B.*, *supra* note 4.

diagnosis of "injury" is not a firm diagnosis,[11] likewise a spasm is a symptom, but not a firm diagnosis.[12] Medical reports which lack a firm diagnosis and rationalized medical opinion regarding causal relationship, are of no probative value.[13] Therefore this report from Dr. Brooks is of no probative medical value.

Appellant also submitted a report from Mr. Caamano, a physician assistant. However, the Board has held that medical reports signed solely by a physician assistant are of no probative value, as physician assistants are not considered physicians as defined under FECA, and therefore are not competent to provide a medical opinion.[14] As this report was not countersigned by a qualified physician, it is of no probative value to establish appellant's claim.[15]

OWCP received a diagnostic report dated July 3, 2018 from Dr. Deteso. The Board has held that diagnostic studies lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.[16] Therefore, this diagnostic report is insufficient to establish causal relationship as it does not provide an opinion on causal relationship.

As appellant has not submitted rationalized medical evidence establishing that her diagnosed medical conditions were causally related to the accepted employment incident, the Board finds that she has not met her burden of proof to establish her claim.[17]

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.

---

[11] *See J.L.*, Docket No. 18-1804 (issued April 12, 2019).

[12] *D.L.*, Docket No. 18-1640 (issued May 3, 2019).

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

[14] *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *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). *S.J.*, Docket No. 17-0783, n.2 (issued April 9, 2018) (nurse practitioners are not considered physicians under FECA).

[15] *K.C.*, Docket No. 18-1330 (issued March 11, 2019); *see K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk, id*. 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).

[16] *T.S.*, Docket No. 18-0150 (issued April 12, 2019); *see J.S.*, Docket No. 17-1039 (issued October 6, 2017).

[17] 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. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c); *P.R.*, Docket No. 18-0737 (issued November 2, 2018); *N.M.*, Docket No. 17-1655 (issued January 24, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that her back and neck conditions were causally related to the accepted July 2, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the August 28, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 18, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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