

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

M.W., Appellant	)	
	)	
and	)	<b>Docket No. 18-1555</b>
	)	<b>Issued: March 20, 2019</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>JESSE BROWN VETERANS</b>	)	
<b>ADMINISTRATION MEDICAL CENTER,</b>	)	
<b>Chicago, IL, Employer</b>	)	
	)	

*Appearances:*  
Stephanie N. Leet, Esq., for the appellant<sup>1</sup>  
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 August 10, 2018 appellant, through counsel, filed a timely appeal from a June 13, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has met her burden of proof to establish an occupational disease causally related to the accepted factors of her federal employment.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On July 23, 2015 appellant then a 61-year-old health technician, filed an occupational disease claim (Form CA-2) alleging that she experienced a recurrence of a February 2012 back injury, causing injury to both sides of her back and numbness in her left leg and foot.<sup>3</sup> She noted that she became aware of her condition and realized its relationship to her federal employment on July 9, 2015. Appellant stopped work on July 9, 2015 and returned to work on July 10, 2015.

In a development letter dated August 11, 2015, OWCP advised appellant of the type of factual and medical evidence needed to establish her claim, including a detailed description and factual corroboration of the identified work factors, and a report from her physician explaining how and why those tasks would cause the claimed injuries. It also requested that she respond to a questionnaire to substantiate the factual elements of her claim. OWCP afforded 30 days for submission of the necessary evidence.

In a statement dated September 29, 2015, appellant indicated that her employment duties required her to sit for approximately six hours a day in a prone position making telephone calls and filling out charts. She reported that she performed these duties five days a week since 2009, which caused pain in her back and pain, numbness, and weakness in her legs. As a hobby appellant indicated that she did water aerobics two to three days a week for the prior three years. She reported initially injuring her back in 2012 when her chair slid out from beneath her causing her to fall on the floor. Appellant was diagnosed with vertebral compression fracture and was treated with physical therapy and chiropractor treatments. She was eventually asymptomatic.

In a November 13, 2015 decision, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the diagnosed medical condition was causally related to the accepted employment factors.

On December 11, 2015 appellant, through counsel, requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. Counsel asserted that the July 9, 2015 injury was a separate injury effecting her back, which was previously injured on February 6, 2012. She indicated that the aggravation of a preexisting condition was causally related to factors of appellant's employment and therefore compensable.

Appellant was treated in the employing establishment medical clinic by a registered nurse on July 9, 2015 for left-sided lower back pain, radiating down her left leg, with numbness, and difficulty ambulating. She reported that her back pain was related to an employment injury that occurred a few years prior. Appellant was diagnosed at that time with spinal stenosis.

In an incident report dated July 25, 2015, M.Z., appellant's supervisor, noted that appellant reported going to the employing establishment health clinic on July 9, 2015 for back and leg pain. Appellant reported that the back and leg pain was a recurrence of pain from a February 2012 fall. She submitted a position description for a health technician.

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<sup>3</sup> Appellant has a prior claim for a traumatic injury, assigned OWCP File No. xxxxxx157, wherein she alleged that on February 6, 2012, she slipped on a plastic mat under her desk chair and fell, landing on her buttocks. OWCP denied the claim, finding that she had not established causal relationship between her diagnosed condition and the accepted employment factors. OWCP File No. xxxxxx157 has not been combined with the present claim.

Appellant came under the treatment of Dr. Kristopher K. Carpenter, a Board-certified internist, on August 25, 2015, who excused appellant from work from August 10 to 12, 2015 because of intractable back pain. She was released to regular work duties on August 13, 2015. On September 27 and November 24, 2015 Dr. Carpenter saw appellant in follow-up for severe lumbar spinal stenosis and chronic lumbar compression fractures. Appellant recounted to him that on February 6, 2012 she sustained a fall at work when her chair slid out from beneath her causing her to fall on the floor, landing on her buttocks and low back. A magnetic resonance imaging (MRI) scan revealed severe lumbar spinal stenosis. Appellant was seen in consultation by a neurosurgeon who recommended surgery, but she declined. Dr. Carpenter opined that, based on his review of the medical records, imaging, and physical examination, appellant's lumbar spinal stenosis was aggravated by her July 9, 2015 employment injury. He explained that prolonged sitting in a prone position for four-to-five hours at her desk aggravated her preexisting lumbar spinal stenosis, causing severe pain with standing and ambulation. On July 17, 2015 Dr. Carpenter performed intramuscular injection.

By decision dated May 19, 2016, an OWCP hearing representative affirmed the November 13, 2015 decision.

On February 23, 2017 appellant, through counsel, requested reconsideration.

In support thereof, appellant submitted a June 14, 2016 report wherein Dr. Carpenter reiterated the findings in his prior reports and noted that prolonged sitting caused decreased circulation to spinal muscles, muscle tightening, and loss of flexibility in a patient with spinal stenosis.

Also submitted was medical literature regarding relieving spinal canal stenosis pain in the workplace.

By decision dated May 8, 2017, OWCP denied modification of the May 19, 2016 decision.

On April 25, 2018 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

In a September 19, 2017 report, Dr. Charles M. Slack, a Board-certified orthopedist, noted treating appellant for back pain radiating into her left leg. Appellant reported that she fell at work in 2012, landing on her buttocks, when attempting to sit in her chair. In 2015, she reached to the side while sitting at her desk and felt a "pop in her back" and low back pain. Appellant was treated by a chiropractor and participated in water therapy. Findings revealed that she ambulated with a slow and deliberate gait pattern, severe low back pain with extension, negative straight leg raises bilaterally, absent ankle and knee reflexes, intact muscle strength bilaterally, and no sensory deficit. Dr. Slack noted that a July 25, 2017 MRI scan revealed moderate degenerative facet joint changes with diffuse disc protrusion and moderate canal narrowing at L2-3, L3-4, L4-5 and L5-S1. He diagnosed persistent low back derangement, radiculopathy, severe lumbar spinal stenosis at the L3-4 level, and degenerative lumbar disc and facet disease at other levels. Dr. Slack recommended that appellant be treated by a pain management specialist and opined that she was temporarily disabled from work. On October 17, 2017 he treated her for ongoing pain associated with severe lumbar spinal stenosis at L3-4, degenerative lumbar disc, and facet disease. Appellant reported sustaining an injury on February 6, 2012 when her chair at work slid out from underneath her, causing her to fall. She was diagnosed with spinal stenosis. Appellant reported that in 2015

she was sitting at her desk for four or five hours and twisted to the side as she attempted to get up, which caused increased pain in her back and legs. She reported working in that position for six-to-eight hours a day without an ergonomic chair. Appellant indicated that she experienced ongoing pain since July 2015. Dr. Slack diagnosed aggravation of lumbar spinal stenosis on July 9, 2015. He noted that appellant was off work due to pain from August to December 2017. Dr. Slack noted that orthopedic spinal literature supported that sitting creates higher intradiscal pressure than standing and walking. He opined that working in a sedentary position for several hours was the competent cause of the aggravation of appellant's underlying severe lumbar spinal stenosis condition. Dr. Slack further opined that the diagnosed aggravation of spinal stenosis was due to her July 9, 2015 work injury.

By decision dated June 13, 2018, OWCP denied modification of the May 8, 2017 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> has the burden of proof to establish the essential elements of his 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 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.<sup>5</sup>

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.<sup>6</sup> To establish fact of injury in an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.<sup>7</sup>

The medical evidence required to establish causal relationship is rationalized medical opinion evidence, which includes a physician's opinion as to whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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.<sup>8</sup>

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<sup>4</sup> *Id.*

<sup>5</sup> *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *Gary J. Watling*, 52 ECAB 357 (2001).

<sup>6</sup> *S.P.*, 59 ECAB 184, 188 (2007).

<sup>7</sup> *R.R.*, Docket No. 08-2010 (issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

<sup>8</sup> *Solomon Polen*, 51 ECAB 341 (2000).

In cases where a claimant has a preexisting condition, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury and the preexisting condition.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an occupational disease causally related to the accepted factors of her federal employment.

Appellant was treated in the employing establishment medical clinic by a registered nurse on July 9, 2015 who diagnosed spinal stenosis. The Board has held that treatment notes signed by a registered nurse are not considered medical evidence as these providers are not a physician under FECA and, thus, this evidence is of no probative value.<sup>10</sup>

On August 25, 2015 appellant was treated by Dr. Carpenter, who noted that she was totally disabled from August 10 to 12, 2015 due to intractable back pain. Dr. Carpenter's notes, however, are of no probative value as he did not provide an opinion on whether her employment factors were sufficient to have caused or aggravated a diagnosed medical condition.<sup>11</sup>

On September 27 and November 24, 2015 Dr. Carpenter saw appellant in follow-up for severe lumbar spinal stenosis and chronic lumbar compression fractures. Appellant reported that on February 6, 2012 she sustained a fall at work when her chair slipped out from beneath her and she fell to the floor, landing on her buttocks and low back. Dr. Carpenter opined that her chronic lumbar compression fracture and chronic spinal stenosis was aggravated by her fall at work on February 6, 2012. He further noted that appellant sustained another work-related injury on July 9, 2015 after sitting in prone position for four to five hours, which aggravated her lumbar spinal stenosis and caused severe pain with standing and ambulation. Dr. Carpenter opined that, based on his review of the medical records, imaging, and physical examination the lumbar spinal stenosis was aggravated by her work injury on July 9, 2015. These reports are insufficient to meet appellant's burden of proof as Dr. Carpenter did not provide sufficient rationale explaining how her underlying condition was aggravated by the claimed employment duties of sitting on July 9, 2015.

In a June 14, 2016 report, Dr. Carpenter explained that prolonged sitting caused decreased circulation to spinal muscles, muscle tightening, and loss of flexibility in a patient with spinal stenosis. However, he did not provide sufficient rationale explaining the pathophysiological process by which the accepted employment factors aggravated appellant's preexisting lumbar spinal stenosis. The need for medical rationale is particularly important given that Dr. Carpenter

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<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

<sup>10</sup> *B.B.*, Docket No. 09-1858 (issued April 16, 2010) (nurse's reports are of no probative medical value as nurses are not physicians under FECA). 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).

<sup>11</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

indicated that appellant had a preexisting condition.<sup>12</sup> In cases where a claimant has a preexisting condition, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury and the preexisting condition.<sup>13</sup> This report is thus insufficient to establish appellant's claim.

Appellant submitted medical literature regarding relieving pain of the spinal canal stenosis in the workplace. The Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing causal relationship between a claimed condition and an employee's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee.<sup>14</sup> Dr. Slack did not provide medical rationale explaining how the medical text applied to appellant's particular situation, nor did he explain the basis of his conclusory opinion regarding the causal relationship between her lumbar condition and the factors of employment.<sup>15</sup>

Appellant was treated by Dr. Slack on September 19, 2017 for back pain radiating into her left leg. She reported that, in 2015, while sitting at her desk, she reached to the side and felt a "pop in her back" and had increased pain in her back. Dr. Slack diagnosed persistent low back derangement with radiculopathy with severe lumbar spinal stenosis at the L3-4 level, degenerative lumbar disc and facet disease at other levels. However, the history of injury he reported of appellant feeling a "pop" in her back in 2015 is not consistent with the work factors accepted by OWCP. According to appellant's September 29, 2015 statement describing the work factors that she believed contributed to her condition she stated that she sat for approximately six hours a day in a prone position making telephone calls and filling out charts. Therefore, Dr. Slack's opinion is of diminished probative value.<sup>16</sup> Similarly, in an October 17, 2017 report, he treated appellant for ongoing pain associated with severe lumbar spinal stenosis at L3-4 and degenerative lumbar disc and facet disease. Appellant reported sustaining an injury on February 6, 2012 and was diagnosed with spinal stenosis. In 2015 she reported sitting for four or five hours at her desk working and then twisted to the side and developed increased pain in her back and legs. Dr. Slack opined that the July 9, 2015 incident caused an aggravation of lumbar spinal stenosis. He opined that working in a sedentary position for several hours was the competent cause of the aggravation of her underlying severe lumbar spinal stenosis condition. The Board finds that the history provided by Dr. Slack of appellant sitting for four or five hours at her desk working and then twisting to the side, causing pain in her back and legs is not consistent with the history appellant reported. The Board has held that medical opinions based on an inconsistent or incomplete history are of diminished probative value.

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<sup>12</sup> *K.R.*, Docket No. 18-1388 (issued January 9, 2019); *see C.D.*, Docket No. 17-2011 (issued November 6, 2018).

<sup>13</sup> *Supra* note 10.

<sup>14</sup> *William C. Bush*, 40 ECAB 1064, 1075 (1989).

<sup>15</sup> *See T.M.*, Docket No. 08-0975 (issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is supported by medical rationale).

<sup>16</sup> *Supra* note 9.

As appellant has not provided medical evidence sufficient to establish causal relationship between her diagnosed condition and the accepted factors of her federal employment, the Board finds that she has not met her burden of proof.

On appeal appellant, through counsel, asserts that she submitted sufficient evidence to establish her claim. As explained above, the medical evidence of record is insufficient to establish that appellant's diagnosed conditions are causally related to the accepted factors of her federal employment.

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 occupational disease causally related to the accepted factors of her federal employment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 13, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 20, 2019  
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