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

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| **M.B., Appellant** | ) | |
| **and** | ) | **Docket No. 18-1589** |
| | ) | **Issued: March 4, 2019** |
| **U.S. POSTAL SERVICE, POST OFFICE, Kennett, MO, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

### ***JURISDICTION***

On August 16, 2018 appellant filed a timely appeal from a June 11, 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 condition was causally related to an accepted January 24, 2018 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that following the June 11, 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 January 24, 2018 appellant, then a 63-year-old rural mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on that day she sprained her lower back when she pulled on a package while in the performance of duty. She stopped work on January 25, 2018 and received continuation of pay.

On January 24, 2018 Z.V., a supervisor of customer service for the employing establishment, completed an authorization for examination and/or treatment (Form CA-16) with respect to appellant's claimed lower back strain.

OWCP received duty status form reports (CA-17 forms) by an unknown provider with an illegible signature dated March 1 to April 16, 2018, which noted a diagnosis of subacute compression fracture of the L1 and strain of the L4-5 region. The reports indicated a date of injury of January 24, 2018 and described that the injury occurred when she was lifting a package at work.

In a letter dated March 29, 2018, B.P., an injury compensation specialist for the employing establishment, controverted appellant's claim. He described that on January 24, 2018 appellant was retrieving a package, which weighed less than 10 pounds, from the back seat of her car when the package got caught between the seat and floor. B.P. indicated that she felt a pop in her lower back. He noted that appellant was diagnosed with fracture of the lumbar spine. B.P. asserted that it was highly improbable that this alleged injury was sustained by her while she performed her rural carrier duties.

By development letter dated April 24, 2018, OWCP noted that when appellant's claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work and was therefore administratively approved for a payment of a limited amount of medical expenses. It reported that the medical evidence addressing her claim had not been formally considered and that additional factual and medical evidence was necessary to establish her claim. OWCP requested that appellant provide additional factual and medical evidence to establish her claim and also provided a questionnaire for completion. It afforded her 30 days to provide the necessary information.

On May 18, 2018 OWCP received appellant's completed questionnaire describing that on January 24, 2018 she pulled on a package that was stuck between the seat and floorboard of her vehicle when she felt a pop and pain in her back. Appellant noted that she felt sick to her stomach, but she finished her route and telephoned her supervisor submit a report. She also indicated that she did not sustain any other injuries and did not have any similar disabilities or symptoms before the injury.

Appellant submitted additional medical reports. In a January 25, 2018 examination report, Elizabeth A. Watson, a family nurse practitioner, reviewed appellant's history and provided examination findings of full range of motion and normal curvature of the spine. She diagnosed low back pain and low back strain. In a January 29, 2018 examination report, Connie Gurley, a family nurse practitioner, provided physical examination findings and diagnosed compression fracture of the lumbar spine.

OWCP received several diagnostic reports. A January 25, 2018 lumbar spine x-ray examination report showed an L1 compression fracture, scoliosis, and spondylosis. A January 31, 2018 lumbar spine magnetic resonance imaging (MRI) scan showed compression fracture of the L1, mild levoscoliosis, and multilevel neural foraminal narrowing and narrowing of the lateral recesses of the L5 nerve roots. An April 24, 2018 lumbar spine x-ray scan report demonstrated compression fracture of T12 without change noted between the flexion and extension views and degenerative changes of the intervertebral discs.

Appellant received medical treatment from Dr. Gregory F. Ricca, a Board-certified neurosurgeon. In a February 2, 2018 report, Dr. Ricca related appellant's complaints of pain across the lumbosacral area. He described that on January 24, 2018 appellant was working as a mail carrier when she heard a pop and felt pain in her lower back when she pulled to lift a package that was stuck in the seats. Dr. Ricca discussed appellant's history and conducted an examination. He observed moderate diffuse spasms in her lumbar spine and poor range of motion. Straight leg raise testing was negative bilaterally. Dr. Ricca diagnosed severe to excruciating lumbosacral pain, which he believed was a low back strain, and subacute compression fracture at L1. He concluded: "[appellant] suffered a low back injury at work on [January 24, 2018] when she was standing and lifted up a 10-pound box that was 'caught in between the seat and the floorboard.' I suspect that she suffered the L1 compression fracture at the same time, but I cannot say this for sure at this time as she does not have pain in this area." Dr. Ricca continued to treat appellant and provided examination reports dated March 1 and 12, 2018. He reiterated his opinion that appellant suffered a low back injury at work on January 24, 2018.

In a February 26, 2018 examination report, Dr. Timothy W. McPherson, a family practitioner, related that appellant was experiencing low back pain following an L1 compression fracture on January 24, 2018. Examination of appellant's lumbar spine showed limited range of motion, pain with motion, and tenderness across the low back. Dr. McPherson diagnosed compression fracture of the lumbar spine and other nonwork-related conditions. He related that appellant was disabled from work due to her compression fracture. Dr. McPherson continued to provide medical treatment and submit examination reports dated March 26 to April 16, 2018.

In an April 24, 2018 report, Dr. Ricca related appellant's complaints of increased back pain after she underwent kyphoplasty to L1 on March 12, 2018. Examination of the lumbar spine showed mild loss of range of motion and no spasms. Sensory examination showed intact sensation to pinprick over her abdomen and intact sensation to light touch throughout her lower extremities. Dr. Ricca related that a lumbar spine x-ray showed a wedge compression fracture of L1. He reported an impression of peculiar pain at the thoracolumbar junction that radiated around into the front of her abdomen as soreness in the T11 and T12 distributions with negative physical examination, neurologically intact lower extremities, and history of lung and colon cancer. Dr. Ricca concluded: "I am not sure about the etiology of the symptoms [appellant] reports … sometimes a wedge compression fracture can result in chronic lower back pain. I cannot explain why such an injury would cause the symptoms she reports."

OWCP received duty status reports dated April 24 and May 21, 2018 from an unknown provider with an illegible signature. They noted a diagnosis of L1 compression fracture and indicated that appellant could not work.

By decision dated June 11, 2018, OWCP denied appellant's claim. It accepted that the January 24, 2018 incident occurred as alleged and that a medical condition had been diagnosed. However, OWCP found that appellant failed to establish causal relationship. It explained that the medical evidence of record did not include a well-reasoned medical opinion explaining how the claimed January 24, 2018 work incident either directly caused or aggravated the diagnosed conditions of low back pain/strain and compression fracture at L1.

## ***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] In order to determine whether a federal employee has sustained a traumatic injury in the performance of duty, OWCP must first determine whether fact of injury has been established.[6] 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.[7] Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[8] An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability or condition relates to the employment incident.[9]

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.[10] 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

[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] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[7] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[8] *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

[9] *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

[10] *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

the employee.[11] 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.[12]

## ***ANALYSIS***

The Board finds that appellant has not met her burden of proof to establish that her back condition was causally related to an accepted January 24, 2018 employment incident.

Appellant submitted several medical reports dated February 2 to April 24, 2018 by Dr. Ricca. In an initial February 2, 2018 report, Dr. Ricca accurately described that on January 24, 2018 appellant heard a pop and felt pain in her low back when she pulled on a package that was stuck between the seats of her jeep. Upon physical examination of appellant's lumbar spine, he observed moderate diffuse spasms and poor range of motion. Dr. Ricca indicated that a lumbar spine MRI scan showed a subacute compression fracture of L1, mild canal stenosis at L4-5, and mild bilateral facet arthropathy at L4-5 and L5-S1. He diagnosed low back strain and subacute compression fracture of L1. Dr. Ricca opined that appellant suffered a low back injury at work on January 24, 2018. He further reported: "I suspect that she suffered the L1 compression fracture at the same time, but I cannot say this for sure at this time as she does not have pain in this area." In an April 24, 2018 report, Dr. Ricca further related: "sometimes a wedge compression fracture can result in chronic lower back pain. I cannot explain why such an injury would cause the symptoms she reports."

The Board finds that Dr. Ricca's opinion that he "suspect[s]" appellant suffered an L1 compression fracture at work on January 24, 2018 is speculative and failed to explain causal relationship between appellant's condition and the January 24, 2018 employment incident.[13] He did not definitively opine that appellant's employment caused or contributed to her lumbar conditions. On the contrary, Dr. Ricca explicitly reported that he could not say for sure if such an injury resulted in appellant's low back conditions. The Board has held that medical opinions that are speculative or equivocal in character are of diminished probative value.[14] An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between his claimed condition and his employment.[15] Dr. Ricca's reports, therefore, are insufficient to establish appellant's claim.

In a February 26, 2018 examination report, Dr. McPherson, also discussed appellant's history of injury and noted examination findings of limited range of motion, pain with motion, and tenderness across the low back. He diagnosed compression fracture of the lumbar spine along with other personal health conditions. Dr. McPherson, however, did not provide an opinion on the

[11] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[12] *James Mack*, 43 ECAB 321 (1991).

[13] *Roy L. Humphrey*, 57 ECAB 238, 242 (2005); *Michael E. Smith*, 50 ECAB 313 (1999).

[14] *D.D.*, 57 ECAB 734, 738 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004).

[15] *Robert A. Boyle*, 54 ECAB 381 (2003); *Patricia J. Glenn*, 53 ECAB 159 (2001).

cause of appellant's compression fracture of the lumbar spine. 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.[16] This report, therefore, fails to establish causal relationship.

Likewise, the diagnostic examination reports, including the January 25, 2018 lumbar spine x-ray, January 31, 2018 lumbar spine MRI scan, and April 24, 2018 lumbar spine x-ray scan reports also fail to establish appellant's claim. The Board has held that reports of diagnostic tests are of limited probative value as they fail to provide an opinion on the causal relationship between appellant's employment duties and the diagnosed conditions.[17]

OWCP also received a January 25, 2018 report by Ms. Watson, a family nurse practitioner, and a January 29, 2018 report by Ms. Gurley, a family nurse practitioner. These reports are of no probative value, however, because a nurse practitioner is not considered a physician as defined under FECA.[18] Likewise, the CA-17 forms dated March 1 to April 16, 2018 by an unknown provider are of no probative value. The Board has previously held that reports that are unsigned or that bear illegible signatures cannot be considered as probative medical evidence because they lack proper identification.[19]

In order to obtain benefits under FECA an employee has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence.[20] Because appellant has failed to provide such evidence demonstrating that her lumbar conditions were causally related to the accepted January 24, 2018 employment incident, she has not met her burden of proof to establish her traumatic injury claim.

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.[21]

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

[17] *See A.B.*, Docket No. 17-0301 (issued May 19, 2017).

[18] The term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.404; *Roy L. Humphrey*, *supra* note 13.

[19] *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

[20] *Supra* note 5.

[21] On January 24, 2018 the employing establishment issued a Form CA-16, authorization for examination and/or treatment. When the employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 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); *N.M.*, Docket No. 17-1655 (issued January 24, 2018), *Tracy P. Spillane*, 54 ECAB 608 (2003). The record is silent as to whether OWCP paid for the cost of appellant's examination or treatment for the period noted on the form.

## ***CONCLUSION***

The Board finds that appellant has not met her burden of proof to establish that her back condition was causally related to an accepted January 24, 2018 employment incident.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the June 11, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 4, 2019
Washington, DC

Christopher J. Godfrey, 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