

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

S.T., Appellant	)	
	)	
and	)	Docket No. 19-0140
	)	Issued: May 23, 2019
DEPARTMENT OF THE NAVY, MARINE	)	
CORPS INSTALLATIONS EAST,	)	
Camp Lejeune, NC, 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  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On October 24, 2018 appellant filed a timely appeal from a May 8, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the May 8, 2018 decision, OWCP received additional evidence and appellant submitted evidence on appeal. 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.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish that her lumbar and hip conditions were causally related to the accepted September 20, 2017 employment incident.

## FACTUAL HISTORY

On October 20, 2017 appellant, then a 51-year-old motor vehicle operator, filed a traumatic injury claim (Form CA-1) alleging that, on September 20, 2017, she sustained a back injury when she lifted tires of all sizes out of a truck and rolled them to a contractor's trailer while in the performance of duty.

By development letter dated October 23, 2017, OWCP advised appellant of the deficiencies of her claim and requested additional medical evidence. It afforded her 30 days to submit the necessary evidence.

In a report dated October 5, 2017, Dr. Raymond Bradley, a Board-certified orthopedic surgeon, diagnosed sciatica, lumbar intervertebral disc degeneration, and right hip trochanteric bursitis based on lumbar spine and sacrum x-rays. He ordered injections for appellant's lumbar spine and right hip.

An unsigned report dated October 12, 2017, received by OWCP on October 30, 2017, generated by Sean Carroll, a physician assistant, diagnosed lumbar intervertebral disc degeneration based on lumbar spine x-rays.

By decision dated November 29, 2017, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish that her diagnosed conditions were causally related to the accepted September 20, 2017 employment incident.

On December 12, 2017 appellant requested a review of the written record by an OWCP hearing representative.

In a magnetic resonance imaging (MRI) scan report dated December 4, 2017, Dr. James C. Lorentzen, a Board-certified diagnostic radiologist, indicated impressions of asymmetric right-sided disc bulge at L4-5 resulting in moderate right lateral recess stenosis and impingement of the right L5 nerve root.

In a letter dated January 11, 2018, Dr. Mark C. Held, a Board-certified neurosurgeon, indicated that while lifting a tire appellant experienced an acute onset of pain. Based on the MRI scan of her lumbar spine, he diagnosed right-sided paracentral disc protrusion at L4-5, minus the right L5 nerve root. Dr. Held recommended appellant undergo L4-5 lumbar discectomy. In a letter dated February 22, 2018, he indicated that she could return to work with restrictions.

By decision dated May 8, 2018, a hearing representative affirmed OWCP's November 29, 2017 decision, finding that appellant had not established that her diagnosed medical conditions were causally related to the accepted September 20, 2017 employment incident.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>3</sup> 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, that an injury was sustained while 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.<sup>4</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>5</sup>

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>6</sup> 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 employee.<sup>7</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>8</sup>

## ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her diagnosed lumbar and hip conditions were causally related to the accepted September 20, 2017 employment incident.

Appellant submitted a report dated October 5, 2017 from Dr. Bradley who diagnosed sciatica, lumbar intervertebral disc degeneration, and right hip trochanteric bursitis based on lumbar spine and sacrum x-rays. However, Dr. Bradley did not opine as to the cause of appellant's conditions. Similarly, OWCP received a letter dated January 11, 2018 from Dr. Held who diagnosed right-sided paracentral disc protrusion at L4-5, minus the right L5 nerve root. Dr. Held also noted that while lifting a tire appellant experienced an acute onset of pain.<sup>9</sup> Medical evidence that does not offer an opinion regarding the cause of the employee's condition is of no probative

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *J.P.*, Docket No. 18-1165 (issued January 15, 2019); *see Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

<sup>5</sup> *C.P.*, Docket No. 18-1645 (issued March 8, 2019); *see Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>6</sup> *G.N.*, Docket No. 18-0403 (issued September 13, 2018); *see Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>7</sup> *K.V.*, Docket No. 18-0723 (issued November 9, 2018); *see Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>8</sup> *J.P.*, *supra* note 4; *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>9</sup> The Board has held that pain is a symptom and not a diagnosed medical condition. *See W.M.*, Docket No. 19-0013 (issued April 1, 2019).

value on the issue of causal relationship.<sup>10</sup> A medical opinion should reflect a correct history and offer a medically sound explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed condition.<sup>11</sup> As these reports were deficient in this regard, the reports are of limited probative value.<sup>12</sup>

Appellant also submitted a report dated October 12, 2017 from a physician assistant. He diagnosed lumbar intervertebral disc degeneration based on lumbar spine x-rays. However, the Board has held that medical reports from physician assistants are of no probative value as a physician assistant is not considered a physician as defined under FECA and therefore is not competent to provide a medical opinion.<sup>13</sup> Thus, this report is of no probative value.

Dr. Lorentzen's diagnostic test report dated December 4, 2017 diagnosed asymmetric right-sided disc bulge at L4-5 resulting in moderate right lateral recess stenosis and impingement of the right L5 nerve root. The Board has held that reports of diagnostic tests lack probative value as they do not provide an opinion on causal relationship between the accepted employment incident and a diagnosed condition.<sup>14</sup> Therefore, this report is insufficient to meet appellant's burden of proof.

As appellant has not submitted sufficient medical evidence setting forth a rationalized opinion on the issue of causal relationship, she has not met her burden of proof to establish that her back condition was causally related to the accepted September 20, 2017 employment incident.

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 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 that her lumbar and hip conditions were causally related to the accepted September 20, 2017 employment incident.

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<sup>10</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>11</sup> *R.K.*, Docket No. 17-0151 (issued December 12, 2018); *J.M.*, Docket No. 17-1002 (issued August 22, 2017).

<sup>12</sup> See *supra* note 10.

<sup>13</sup> *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).

<sup>14</sup> *E.S.*, Docket No. 18-1750 (issued March 11, 2019); see *D.H.*, Docket No. 17-1146 (issued October 20, 2017); *S.G.*, Docket No. 17-1054 (issued September 14, 2017); *E.V.*, Docket No. 17-0417 (issued September 13, 2017).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 8, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 23, 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