

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

M.C., Appellant)	
)	
and)	Docket No. 19-0744
)	Issued: September 23, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Clearwater, FL, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 11, 2019 appellant filed a timely appeal from a December 3, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish an injury causally related to the accepted October 5, 2018 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the December 3, 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 October 5, 2018 appellant, then a 51-year-old customer service supervisor, filed a traumatic injury claim (Form CA-1) alleging that on that day she was involved in a motor vehicle accident, which injured her lower back, shoulder, neck, and right arm while in the performance of duty. On the reverse side of the claim form the employing establishment noted that she was injured while in the performance of duty, and she had stopped working on October 5, 2018.

An October 5, 2018 emergency department note indicated that appellant could return to work on October 8, 2018 without restrictions.³ This document contained an illegible signature.

An October 11, 2018 duty status report (Form CA-17) also contained an illegible signature and stated that on October 5, 2018 appellant was involved in a motor vehicle accident, which injured her shoulder, right arm, back, and neck, and diagnosed lumbar radiculopathy and cervicgia. Clinical findings included loss of motion and muscle spasm, and the form noted that appellant could not perform her regular work duties.

An October 11, 2018 state workers' compensation uniform medical treatment/status reporting form by Dr. Richard Wallace, a family medicine specialist, related that appellant's October 5, 2018 injury was work related and diagnosed neck and back pain. He also noted that she had no preexisting conditions that contributed to her injury, and that the injury was the major contributing cause for the diagnoses. Dr. Wallace requested diagnostic testing and indicated that appellant could return to work with restrictions relative to bending, carrying, climbing, grasping, lifting, pulling, pushing, squatting, and twisting.

An October 18, 2018 state workers' compensation uniform medical treatment/status form containing an illegible signature indicated that appellant's right arm and right leg required functional limitations such as bending, carrying, climbing, kneeling, lifting, pulling, pushing, and reaching overhead with a load less than 7.5 pounds. Additionally, the provider noted that she should not sit, squat, stand, or walk for longer than a half hour at a time and should only engage in sedentary work.

A duty status report (Form CA-17) dated October 18, 2018, which contained an illegible signature, indicated that appellant was examined and that she had loss of range of motion, pain, and muscle spasm. The date of injury was listed as October 5, 2018 and the provider noted that the injury occurred due to a motor vehicle accident, which affected her neck, mid-back, shoulder and arm and caused her diagnoses of cervical and lumbar cervicgia and radiculopathy. The provider listed all of the physical activities that appellant's work requires and specified the various restrictions necessary for her.

October 18, 2018 urgent care center records noted that appellant was seen by Laura Khawaja a certified physician assistant for a follow-up appointment for her back pain. The records noted that she prescribed appellant medication and restricted her work activity to sedentary work. The records also mentioned that Ms. Khawaja diagnosed cervicgia, radiculopathy of the cervical

³ OWCP also received March 12, 2018 emergency room treatment records for an unrelated left lower extremity condition (thrombophlebitis).

region, and radiculopathy of the lumbosacral region, and that an x-ray of the lumbosacral region was taken during a previous appointment which displayed normal results.

In an October 25, 2018 development letter, OWCP advised appellant that additional evidence was required in support of her claim for compensation benefits. It explained that the medical evidence thus far only referenced pain, which is a symptom, not a valid medical diagnosis. OWCP requested that appellant submit a comprehensive narrative medical report from a qualified physician that included a diagnosis and an opinion, supported by medical rationale, addressing how the claimed employment incident caused or aggravated a medical condition. It afforded her 30 days to submit the requested medical evidence.

An October 19, 2018 magnetic resonance imaging (MRI) scan of appellant's cervical spine was interpreted by Dr. Charles L. Domson, a Board-certified radiologist, who related that her clinical history included neck pain with radiculopathy into both arms. He compared it with a previous MRI scan of her cervical spine from March 2, 2018. The MRI scan revealed a mild disc bulge at C3-4, a budging disc and facet atrophy at C4-5, a C5-6 disc bulge with 2 millimeter disc protrusion, osteophyte and stenosis, and a C6-7 bulging disc with small osteophyte, but no stenosis. The report found that there had been no changes since the prior MRI scan and no lesions or fractures were identified.

An October 23, 2018 MRI scan report of appellant's lumber spine by Dr. Jayson M. Lord, a Board-certified radiologist, noted that her medical history included lower back pain, right lower extremity pain, and a motor vehicle accident two weeks prior. His findings included disc desiccation at L4-5, mild curvature of the lumbar spine, and no fractures. Additionally, Dr. Lord found that at L4-5 there was a disc bulge loosely associated with mild canal stenosis and moderate bilateral narrowing of the neural foramina. He also mentioned that at L5-S1 there was a disc bulge associated with disc herniation with mild canal stenosis and mild leftward narrowing of the neural foramina. Dr. Lord's impression included scoliosis of the lumbar spine, a disc bulge and apparent neural foramina at L3-4, and a reiteration of the report's findings at L5-S1 and L4-5.

An October 25, 2018 duty status report (Form CA-17) containing an illegible signature noted that appellant was injured in a motor vehicle accident, which resulted in neck, lower back, and arm injuries and diagnosed neck and back pain. The provider noted work restrictions including being limited to sedentary work.

Dr. Nabil Gerges, a pain management specialist, indicated in November 2, 2018 medical records that appellant presented with neck pain in her midline, left lateral, and right lateral neck and in her mid and lower back radiating into her right arm, shoulder, and leg. Appellant stated that the pain was tingling, aching, dull, moderate, and numb and worsened with daily activities. Nothing relieved appellant's pain and everyday activities such as walking and sitting aggravated it. Self-care activities were painful and she used a cane. Appellant had not previously had spine surgery.

A March 3, 2010 MRI scan of appellant's cervical spine was reviewed by Dr. Gerges, who noted that it revealed disc herniation and thecal sac compression at C4-5, thecal sac compression and bulging annulus at C5-6, and cervical lordosis straightening. He also reviewed an August 12, 2011 MRI scan of her cervical spine, which revealed central canal stenosis, thecal sac flattening,

impingement of the cord, and protruding annulus at C4-5. Protruding annulus, central canal stenosis, and thecal sac flattening were identified at C5-6. The report also indicated that at C6-7 there was central canal stenosis, reversal of cervical lordosis, and protruding annulus. A physical examination of appellant revealed that her lumbosacral spine was tender and experienced spasms in addition to painful flexion and extension. Her cervical spine also was tender and experienced spasms in addition to painful flexion and extension. Dr. Gerges diagnosed spinal enthesopathy of the lumbar region, cervical facet joint syndrome, muscle spasm, muscle weakness of upper extremity, risk for falls, lumbar radiculitis, and cervical radiculitis. He prescribed medication and gave appellant an ultrasound guided right iliolumbar ligament injection, a left trapezius trigger point injection, and a right trapezius trigger point injection.

A November 16, 2018 duty status report (Form CA-17) containing an illegible signature indicated that appellant was injured on October 5, 2018 in a motor vehicle accident where she was rear ended, which caused cervical radiculitis and lumbar radiculitis. The provider noted that appellant's cervical and lumbar MRI scans revealed C5, C6, and L5 disc herniations and lumbar stenosis, and appellant's MRI scan of her cervical spine indicated that at C5 and C6 she had disc herniation. Appellant's employment duties were listed and the provider specified particular limitations for appellant.

By decision dated December 3, 2018, OWCP denied appellant's claim because the medical evidence of record did not include a specific diagnosis in connection with the October 5, 2018 accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 of FECA,⁵ 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.⁶ 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.⁷

⁴ *Supra* note 1.

⁵ *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.⁸ 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.⁹ Second, the employee must submit sufficient evidence, generally in the form of medical evidence, to establish that the employment incident caused a personal injury.¹⁰

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.¹¹ 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.¹² 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.¹³

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an injury causally related to the accepted October 5, 2018 employment incident.

Appellant submitted a series of documents that did not contain a legible signature. The Board has held that reports that bear illegible signatures cannot be considered probative medical evidence because they lack proper identification that the author is a physician.¹⁴ Therefore, this evidence is of no probative value.

The October 11, 2018 state workers' compensation uniform medical treatment/status reporting form by Dr. Wallace noted that appellant's injury was work related and diagnosed neck and back pain. Dr. Wallace noted that she had no preexisting conditions that contributed to her injury, and that the injury was the major contributing cause for the diagnoses. However, the Board has held that pain is a symptom, not a valid medical diagnosis.¹⁵ As Dr. Wallace's report does not

⁸ *R.B.*, Docket No. 17-2014 (issued February 14, 2019); *B.F.*, Docket No. 09-0060 (issued March 17, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁹ *S.F.*, Docket No. 18-0296 (issued July 26, 2018); *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

¹⁰ *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 8.

¹¹ *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹² *L.D.*, *id.*; *see also Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹³ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁴ *J.P.*, Docket No. 19-0197 (issued June 21, 2019).

¹⁵ *R.C.*, Docket No. 19-0376 (issued July 15, 2019).

contain a valid medical diagnosis, his report is of diminished probative value and, thus, insufficient to establish appellant's claim.

The October 18, 2018 urgent care documents indicate that appellant was seen by Ms. Khawaja, a certified physician assistant. Reports from physician assistants have no probative medical value in establishing her claim. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.¹⁶ Consequently, Ms. Khawaja's medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹⁷

The November 2, 2018 medical records by Dr. Gerges indicate that, after a physical examination and reviewing appellant's 2010 and 2011 MRI scans of her cervical spine, he diagnosed spinal enthesopathy of the lumbar region, cervical facet joint syndrome, muscle spasm, muscle weakness of upper extremity, risk for falls, lumbar radiculitis, and cervical radiculitis. While these medical documents do provide medical diagnoses, they do not mention her accepted October 5, 2018 employment incident. As stated above, an employee must submit sufficient evidence, generally in the form of medical evidence, to establish that the employment incident caused a personal injury.¹⁸ As this report does not mention appellant's October 5, 2018 accepted employment incident of a motor vehicle accident, it does not establish that the October 5, 2018 accepted employment incident caused a personal injury and is therefore insufficient to establish her claim.¹⁹

Appellant submitted an October 19, 2018 MRI scan report of her cervical spine and the October 23, 2018 MRI scan report of her lumbar spine. The Board has explained that diagnostic studies lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.²⁰ Thus, these reports are also insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence establishing an injury causally related to the accepted October 5, 2018 employment incident, she has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration 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.

¹⁶ 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

¹⁷ See *M.F.*, Docket No. 17-1973 (issued December 31, 2018); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

¹⁸ *Supra* note 10.

¹⁹ See *id.*

²⁰ *N.B.*, Docket No. 19-0221 (issued July 15, 2019).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an injury causally related to the accepted October 5, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the December 3, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 23, 2019
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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