

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

B.M., Appellant)	
)	
and)	Docket No. 19-1341
)	Issued: August 12, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Bolivar, NY, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On June 4, 2019 appellant filed a timely appeal from an April 9, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ 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.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a back condition causally related to the accepted January 11, 2018 employment incident.

FACTUAL HISTORY

On March 13, 2018 appellant, then a 41-year-old sales and service distribution associate, filed a traumatic injury claim (Form CA-1) alleging that on January 11, 2018 she injured her low back while in the performance of duty. She noted that she had experienced burning in her low back and pain radiating into her lower extremities sorting parcels weighing up to 70 pounds and performing repetitive bending and straightening. The employing establishment controverted the claim.³

A magnetic resonance imaging (MRI) scan dated February 22, 2018 revealed a small-to-moderate central disc herniation at L5-S1 and mild-to-moderate degenerative disc disease.

In a development letter dated March 30, 2018, OWCP informed appellant that when it had received her claim it had appeared that her injury was minor and had resulted in minimal or no lost time from work. It had administratively approved payment of a limited amount of medical expenses without formally adjudicating the merits of the claim. OWCP advised appellant that it was now formally adjudicating her claim. It requested that she submit additional factual and medical information, including a comprehensive report from a physician addressing the relationship between a diagnosed condition and the employment incident. OWCP afforded appellant 30 days to submit the necessary evidence.

Subsequently, OWCP received x-rays of appellant's lumbar spine obtained on January 23, 2018, which revealed straightening of the lumbar lordosis possibly secondary to muscle spasms.

In a report dated January 23, 2018, Dr. Dilbagh Singh, who specializes in family medicine, evaluated appellant for low back pain. He noted a mechanism of injury of heavy lifting. Dr. Singh recounted that appellant had not had back symptoms prior to the injury and diagnosed low back pain.

In a February 8, 2018 progress report, Dr. Singh again noted that appellant had sustained an injury lifting. He provided findings on examination and diagnosed a strain of the muscle, fascia, and tendon of the lower back.

On February 15, 2018 Dr. Venkateswara Rao Nadella, who specializes in family medicine, discussed appellant's history of back pain after heavy lifting. On examination he found a positive straight leg raise bilaterally with muscle spasm. Dr. Nadella diagnosed low back strain and lumbar intervertebral disc disorder with radiculopathy. In a March 1, 2018 progress report, he listed similar findings and diagnosed lumbar intervertebral disc disorder with radiculopathy.

³ Appellant provided a statement from R.B., a union representative, confirming that she had notified him on January 11, 2018 that she had injured her back at work.

In a report dated March 9, 2018, Dr. Addisu Mesfin, a Board-certified orthopedic surgeon, obtained a history of appellant experiencing pain in her low back and anterior thigh beginning in early January 2018 when she picked up items repetitively at work.⁴ He noted that a lumbar spine MRI scan demonstrated mild degenerative disc disease and a mild disc protrusion at L5-S1. Dr. Mesfin diagnosed degenerative disc disease and lumbar discogenic pain with resolved radiculopathy. He provided work restrictions.

On March 19, 2018 a nurse practitioner in Dr. Mesfin's office indicated that appellant was seen on March 9, 2018 and that she could resume modified employment effective March 10, 2018.

In a report dated April 11, 2018, Dr. Mesfin evaluated appellant for back pain from an employment injury. He indicated that the date of injury was January 2018. On examination Dr. Mesfin found intact sensation and full strength. He diagnosed a "work-related back injury L5-S1 disc herniation."

On April 13, 2018 appellant accepted an offer of modified duty at the employing establishment.

In a note dated May 9, 2018, Dr. Anthony Eidelman, a Board-certified anesthesiologist, indicated that appellant had a herniated disc and that it was medically indicated that she required ergonomically comfortable care at her workplace.

By decision dated May 14, 2018, OWCP denied appellant's traumatic injury claim. It found that she had established that the January 11, 2018 employment incident occurred as alleged and had submitted a report from a physician identifying a diagnosed condition. OWCP determined, however, that the medical evidence was insufficient to establish causal relationship between a diagnosed condition and the accepted employment incident.

Subsequently, OWCP received physical therapy reports dated from April 18, through May 10, 2018.

In a report dated May 9, 2018, Dr. Eidelman noted that appellant had developed burning and pain in her back sorting parcels at work on January 11, 2018 which had progressed to lower extremity radiculopathy over the course of the day. He found decreased sensation at L5. Dr. Eidelman opined that appellant had sustained an injury in January 2018 at work "resulting in low back pain with bilateral radicular symptoms in [the] L5 nerve distribution." He advised that a lumbar spine MRI scan had revealed an L5-S1 central disc herniation. Dr. Eidelman recommended lumbar steroid injections.

On May 23, 2018 Dr. Keith Wilkey, a Board-certified orthopedic surgeon, evaluated appellant for a "work[-]related onset of axial back pain that began while lifting at [appellant's] job in January [2018]. No trauma or injury noted." On examination he found a negative straight leg raise and normal motor strength and sensation. Dr. Wilkey diagnosed lumbar pain likely the result

⁴ The report was prepared by Dr. Steven Karnyski, an orthopedic resident, and signed by Dr. Mesfin.

of degenerative disease or facet joint arthritis. He opined that appellant could resume work without restrictions.

On May 29, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

In a June 29, 2018 progress report, Dr. Wilkey diagnosed acute low back pain and improved low back pain and noted that appellant was working without restrictions.

A telephonic hearing was held on November 15, 2018. Appellant described the January 11, 2018 employment incident. She advised that she had previously pulled a muscle in her back a couple of times, but had no prior back injury.

By decision dated April 9, 2019, OWCP's hearing representative affirmed the May 14, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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 of FECA,⁶ 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.⁷ 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.⁸

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established.⁹ Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.¹⁰ The second component is whether the employment incident caused a personal injury.¹¹

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the

⁵ *Supra* note 2.

⁶ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *R.C.*, 59 ECAB 427 (2008).

⁸ *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁹ *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388 (2008).

¹⁰ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

¹¹ *Id.*

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 incident.¹²

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a back condition causally related to the accepted January 11, 2018 employment incident.

In a report dated May 9, 2018, Dr. Eidelman provided a history of appellant experiencing pain and burning in her back with bilateral radiculopathy sorting parcels on January 11, 2018. He found that she had sustained an employment injury in January 2018 causing low back pain and radiculopathy bilaterally from L5 and noted that a lumbar spine MRI scan demonstrated a disc herniation at L5-S1. Dr. Eidelman, however, failed to provide any rationale for his conclusion that appellant had sustained an employment injury. A physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the described incident caused or contributed to a diagnosed medical condition.¹³ Without medical rationale explaining how the diagnosed condition was related to the accepted employment incident, Dr. Eidelman's opinion is of limited probative value regarding causal relationship.¹⁴

On April 11, 2018 Dr. Mesfin noted that appellant had experienced back pain from an injury at work and provided the date of injury as January 2018. He diagnosed an employment injury to the back which he identified as an L5-S1 disc herniation. While Dr. Mesfin indicated that appellant had experienced back pain while at work, he did not provide a specific history of injury or any rationale for his opinion. The Board has held that a medical opinion should reflect a correct history and offer a medically sound explanation by the physician regarding how the specific employment incident caused or aggravated the diagnosed conditions.¹⁵ Lacking these elements, Dr. Mesfin's report is insufficient to establish appellant's claim.¹⁶

On March 9, 2018 Dr. Mesfin noted that appellant had sustained low back and anterior thigh pain in January 2018 after performing repetitive lifting at work. He diagnosed degenerative disc disease and lumbar discogenic pain with resolved radiculopathy. In a report dated May 23, 2018, Dr. Wilkey noted that appellant had experienced back pain in January 2018 lifting at work. He diagnosed lumbar pain likely the result of degenerative disease or facet joint arthritis. While both physicians provided a history of the accepted employment incident, neither specifically addressed the cause of the diagnosed conditions. 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

¹² See *S.S.*, *supra* note 9; *H.B.*, Docket No. 18-0781 (issued September 5, 2018).

¹³ *K.B.*, Docket No. 19-0398 (issued December 18, 2019).

¹⁴ See *T.D.*, Docket No. 20-0044 (issued May 19, 2020).

¹⁵ *S.J.*, Docket No. 20-0157 (issued April 1, 2020); *T.M.*, Docket No. 19-1283 (issued December 2, 2019).

¹⁶ *Id.*

on the issue of causal relationship.¹⁷ These reports are therefore insufficient for appellant to meet her burden of proof to establish her claim.

The remaining evidence of record also fails to address causal relationship. In a June 29, 2018 progress report, Dr. Wilkey diagnosed acute low back pain and improved low back pain and noted that appellant was working without restrictions. In reports dated January 23 and February 8, 2018, Dr. Singh advised that she had experienced low back pain after heavy lifting. He diagnosed low back pain in his January 23, 2018 report and a low back strain on February 8, 2018. In progress reports dated February 15 and March 1, 2018, Dr. Nadella provided a history of appellant sustaining a lifting injury and diagnosed lumbar intervertebral disc disorder with radiculopathy. As these physicians failed to address causation, their opinion are of no probative value regarding the cause of the diagnosed conditions or their relationship to the accepted employment incident.¹⁸

Appellant submitted reports from a nurse practitioner dated March 19, 2018 and physical therapy reports from April and May 2018. The Board has held that medical reports signed solely by a physical therapist or nurse practitioner are of no probative value as such health care providers are not considered “physician[s]” as defined under FECA.¹⁹ Consequently, this evidence is insufficient to establish appellant’s claim.²⁰

Appellant further submitted x-rays dated January 23, 2018 and a February 22, 2018 MRI scan. The Board has explained, however, that diagnostic studies standing alone lack probative value on the issue of causal relations as they do not address whether the employment incident caused any of the diagnosed conditions.²¹

The Board finds that appellant has not submitted the necessary medical evidence to establish a medical condition caused or aggravated by the accepted employment incident. Therefore, appellant has not met her burden of proof to establish her claim.²²

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.

¹⁷ *C.S.*, Docket No. 18-1633 (issued December 30, 2019); *R.C.*, Docket No. 19-0376 (issued July 15, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

¹⁸ *Id.*

¹⁹ 5 U.S.C. § 8102(2) of FECA provides that 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). *See also S.L.*, Docket No. 19-0607 (issued January 28, 2020); *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); *M.C.*, Docket No. 19-1074 (issued June 12, 2020); (nurse practitioners are not considered physicians under FECA).

²⁰ *M.F.*, Docket No. 19-1573 (issued March 16, 2020); *N.B.*, Docket No. 19-0221 (issued July 15, 2019).

²¹ *T.S.*, Docket No. 18-0150 (issued April 12, 2019).

²² *C.T.*, Docket No. 20-0020 (issued April 29, 2020).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a back condition causally related to the accepted January 11, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the April 9, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 12, 2020
Washington, DC

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

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board