United States Department of Labor
Employees' Compensation Appeals Board

T.T., Appellant	)	
and	)	**Docket No. 20-0687**
	)	**Issued: December 11, 2020**
U.S. POSTAL SERVICE, POST OFFICE, Indianapolis, IN, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 9, 2020 appellant filed a timely appeal from a January 16, 2020 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]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the January 16, 2020 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.*

ISSUE

The issue is whether appellant has met her burden of proof to expand acceptance of her claim to include an additional lumbar condition causally related to her accepted December 14, 2018 employment injury.

FACTUAL HISTORY

On January 8, 2019 appellant, then a 50-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on December 14, 2018 she sprained the thoracic region of her spine when she lifted mail out of an automated postal container while in the performance of duty. She was off work from December 15 through 20, 2018, due to a nonwork-related injury and returned to modified duty on December 21, 2018. Appellant worked intermittently until she stopped work completely on January 20, 2019. OWCP accepted her claim for lumbar spine sprain, sprain of the sacroiliac joint, lumbar intervertebral disc disorders with myelopathy, and intervertebral disc disorders with radiculopathy of the lumbosacral region. It paid wage-loss compensation on the supplemental rolls, effective March 30, 2019.

Appellant continued to receive medical treatment.

A February 23, 2019 lumbar spine magnetic resonance imaging (MRI) scan report revealed epidural lipomatosis from L2-3 to L5-S1 narrowing the thecal sac space, but without evidence of soft tissue impingement, a L5-S1 desiccation with small dorsal annular tear and bulge without clear impingement, and abnormal signal without the left lateral canal immediately posterior to the T12 vertebral body of uncertain etiology.

In a March 20, 2019 examination report, Dr. Jerry Powell, a family medicine specialist, indicated that appellant was seen for reevaluation of lumbar pain. Upon physical examination of the lumbar spine, he observed restricted range of motion due to pain and positive straight leg raise testing bilaterally. Dr. Powell assessed lumbar spine sprain, sacroiliac joint sprain, lumbar intervertebral disc disorders with radiculopathy, lumbar intervertebral disc disorders with myelopathy, and lumbar intervertebral disc degeneration. He completed a duty status form (Form CA-17) report indicating that appellant could work full time with restrictions.

On May 6, 2019 appellant underwent a spinal angiogram.

On April 15, 2019 OWCP referred appellant, along with a statement of accepted facts, a copy of the case record, and a series of questions, to Dr. Norman Mindrebo, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding the status of her accepted December 14, 2018 employment injury. In a May 10, 2019 report, Dr. Mindrebo reviewed her history and reported physical examination findings of tenderness at the low back, but no palpable paravertebral muscle spasm. Straight leg raise testing was negative. Dr. Mindrebo opined that appellant sustained a lumbar strain on December 14, 2018 that had resolved. He indicated that she could return to work with restrictions, but explained that the limitations were primarily due to appellant's underlying condition of cirrhosis of the liver.

In a June 3, 2019 addendum report, Dr. Mindrebo opined that appellant's conditions of intervertebral disc disorder with myelopathy of the lumbar region and intervertebral disc disorder with radiculopathy of the lumbosacral region were not caused by or contributed to as a result of the December 14, 2018 employment injury. He indicated that she sustained only a mild lumbar sprain. Dr. Mindrebo reported that these conditions had resolved and did not preclude appellant from performing her employment duties as a clerk.

In a June 6, 2019 visit summary report, Dr. Jeffrey Cooke, a Board-certified vascular surgeon, indicated that appellant was treated for complaints of lower leg swelling, cirrhosis of the liver, and low back pain. He related that she had complained of disabling back pain for the last six months. Dr. Cooke noted that an L5-S1 disc may be the source of some of the pain. Upon physical examination, he observed swelling in the back down to the feet, neck pain, and numbness and tingling to her feet. Dr. Cooke also provided laboratory results, an abdomen and pelvis computerized tomography scan report, and a lower extremity arterial examination report.

In an April 22, 2019 report by Dr. Shannon McCanna, a Board-certified neurosurgeon, she recounted that appellant worked as a mail carrier and began to complain of back pain at work in December 2018. Dr. McCanna noted that appellant also had a history of cord signal change in the thoracic spinal cord and portal venous thrombosis, which caused a liver dysfunction. Upon examination of appellant's back, she observed no significant tenderness to palpation in the thoracic or lumbar spine. Straight leg raise testing was negative bilaterally. Dr. McCanna indicated that an MRI scan showed cord signal change in the thoracic spinal cord with serpiginous flow voids and a small annular tear at L5-S1. She opined that appellant's back pain may be related to spinal cord swelling or it may be related to a small annular tear at the L5-S1 level.

OWCP also received hospital records dated September 15 and 16, 2019; an application for a vehicle disability parking placard; a letter from the employing establishment informing her that she was being assigned to a different work schedule; an October 8, 2019 letter from a home care service; and chiropractor reports dated November 8 and 22, 2019.

In a September 20, 2019 letter, Dr. Sunita N. Premkumar, a Board-certified family practitioner, indicated that appellant was incapacitated to perform her job duties.

Dr. Phillip Kingma, a Board-certified family physician, recounted in a November 19, 2019 treatment record and referral note that appellant developed low back and neck pain after a December 14, 2018 injury at work. He conducted an examination and referred her to physical medicine and rehabilitation for her chronic pain syndrome and low back pain.

In a December 10, 2019 development letter, OWCP informed appellant that it had received medical evidence, which indicated that she sustained a small annular tear at L5-S1 causally related to the accepted December 14, 2018 employment injury. It advised her of the factual and medical evidence necessary to establish her claim and afforded her 30 days to provide the requested medical evidence.

Appellant submitted a December 11, 2019 physical therapy initial evaluation report and a February 7, 2019 after-visit summary from the emergency department, which noted a diagnosis of chronic low back pain.

By decision dated January 16, 2020, OWCP denied expansion of the acceptance of appellant's claim to include small annular tear at L5-S1, finding that the medical evidence of record was insufficient to establish that the additional condition was caused or aggravated by her December 14, 2018 employment injury.

LEGAL PRECEDENT

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[3]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[4] Aphysician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[5] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's employment injury.[6]

When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to a claimant's own intentional misconduct.[7] Thus, a subsequent injury, be it an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural consequence of a compensable primary injury.[8]

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include an additional lumbar condition causally related to her accepted December 14, 2018 employment injury.

In support of her claim, appellant submitted an April 22, 2019 report by Dr. McCanna who reviewed appellant's history and conducted an examination. She indicated that an MRI scan showed a small annular tear at L5-S1. Dr. McCanna opined that appellant's back pain may be related to spinal cord swelling or it may be related to a small annular tear at the L5-S1 level. She

[3] *R.J.*, Docket No. 17-1365 (issued May 8, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

[4] *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[5] *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[6] *Id.*

[7] *See S.M.*, Docket No. 19-0397 (issued August 7, 2019); *Mary Poller*, 55 ECAB 483, 487 (2004); Arthur Larson & Lex K. Larson, *The Law of Workers' Compensation* 10-1 (2006).

[8] *A.T.*, Docket No. 18-1717 (issued May 10, 2019); *Susanne W. Underwood* (*Randall L. Underwood*), 53 ECAB 139 (2001).

did not, however, provide an opinion on the cause of appellant's L5-S1 annular tear. Appellant was also treated by Dr. Cooke who likewise did not specifically address how her L5-S1 condition may have resulted from the accepted December 14, 2018 employment injury. 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.[9] These reports, therefore, are insufficient to establish appellant's claim.[10]

In a March 20, 2019 report, Dr. Powell reevaluated appellant for complaints of lumbar pain and provided examination findings. He assessed lumbar spine sprain, sacroiliac joint sprain, lumbar intervertebral disc disorders with radiculopathy, lumbar intervertebral disc disorders with myelopathy, and lumbar intervertebral disc degeneration. Dr. Powell, however, did not provide a diagnosis for an additional L5-S1 lumbar injury. Likewise, Dr. Premkumar's September 20, 2019 work status note also failed to mention an additional lumbar injury. The Board has held that a medical report lacking a firm diagnosis and a rationalized medical opinion regarding causal relationship is of no probative value.[11] These reports, therefore, are insufficient to establish any additional lumbar condition as employment related.[12]

OWCP also received a February 24, 2019 diagnostic report. However, diagnostic studies, standing alone, lack probative value as they do not address whether an employment incident caused the diagnosed condition.[13]

In response to the development letter, OWCP received a December 11, 2019 physical therapy initial evaluation report. Certain healthcare providers such as physical therapists are not considered physician[s] as defined under FECA[14] Therefore, the report is of no probative value.

Also received was a February 7, 2019 after-visit summary from the emergency department, which noted a diagnosis of chronic low back pain but it did not contain an opinion on causal relationship, therefore it is of no probative value.[15] The Board finds that the medical evidence of record is insufficient to establish causal relationship between the additional lumbar condition and

[9] *See B.P.*, Docket No. 19-0777 (issued October 8, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

[10] *See G.V.*, Docket No. 20-0055 (issued April 21, 2020).

[11] *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *M.B.*, Docket No. 19-0828 (issued September 17, 2019); *P.C.*, Docket No. 18-0167 (issued May 7, 2019); *see C.T.*, Docket No. 10-2354 (issued April 21, 2011); *see Brad Bolton*, Docket No. 94-2298 (issued August 26, 1996).

[12] *See Y.C.*, Docket No. 17-1938 (issued January 7, 2019).

[13] *F.S.*, Docket No. 19-0205 (issued June 19, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

[14] Section 8101(2) of FECA provides that 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* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *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); *see also C.K.*, Docket No. 19-1549 (issued June 30, 2020) (physician assistants are not considered physicians under FECA).

[15] *See L.B., supra* 9*D.K.*, Docket No. 17-1549 (issued July 6, 2018).

the accepted December 14, 2018 employment injury, and thus appellant has not met her burden of proof to establish her claim.[16]

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 expand acceptance of her claim to include an additional lumbar condition causally related to her accepted December 14, 2018 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the January 16, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 11, 2020
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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

[16] *See S.J.*, Docket No. 19-0489 (issued January 13, 2020); *E.B.*, Docket No. 17-1497 (issued March 19, 2019).