



## **FACTUAL HISTORY**

On November 3, 2016 appellant, then a 55-year-old practical nurse, filed a traumatic injury claim (Form CA-1) alleging that on August 1, 2016 she sustained a back injury due to repetitive lifting, bending, and transferring patients while in the performance of duty. She stopped work on August 1, 2016, but returned to sedentary work involving minimal patient care in September 2016.

In a November 14, 2016 development letter, OWCP requested that appellant submit additional evidence in support of her claim, including a physician's opinion supported by a medical explanation as to how the reported August 1, 2016 employment incident caused or aggravated a medical condition. It provided a questionnaire for her completion which asked her to clarify whether she was claiming a traumatic injury or an occupational disease.<sup>2</sup> OWCP afforded appellant 30 days to respond.

In response, appellant submitted a statement in which she advised that she experienced pain and numbness in her back and legs after bending, stooping, pulling, and lifting patients during more than one workday. OWCP then advised her that it was converting her claim as a claim for an occupational injury to her back and legs.

Appellant submitted an October 19, 2016 report from Dr. Kevin A. Vaught, a Board-certified neurosurgeon, who indicated that she presented with complaints of lumbar back pain and radicular pain in her legs (left greater than right) which began six months prior. Dr. Vaught noted that she did not identify any inciting factors for her symptoms, but that she had an active career as a nurse. He advised that appellant had undergone surgery in 2006 and 2007 at the L5-S1 level. Dr. Vaught diagnosed lumbar spondylosis with radiculopathy, lumbosacral radiculopathy, and chronic low back pain, and noted that she had a significant history of lumbar back pain with radiculopathy for which she was experiencing a great deal of pain.<sup>3</sup>

In October 21 and November 6, 2016 reports, Dr. Christopher L. Reis, a Board-certified anesthesiologist and osteopath, discussed his application of intra-articular facet injections at L3-4. On November 7, 2016 Daniel S. Johnstone, a physician assistant, discussed her back and leg symptoms and recommended work restrictions. In an undated attending physician's report (Form CA-20), a provider with an illegible signature diagnosed disc protrusion at L3-4 and spinal fusion.<sup>4</sup>

By decision dated February 8, 2017, OWCP accepted that appellant had established employment factors in the form of bending, stooping, pulling, and lifting patients. However, it denied her claim, finding that she had not submitted sufficient medical evidence to establish a

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<sup>2</sup> OWCP explained that a traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment over a period longer than a single workday or work shift. See 20 C.F.R. §§ 10.5(q), (ee), respectively.

<sup>3</sup> Dr. Vaught indicated that diagnostic testing showed a solid fusion at L5-S1 and he recommended medial branch blocks at L3-4 and L4-5.

<sup>4</sup> Appellant also submitted reports detailing the findings of diagnostic testing of her lumbar spine, including a June 29, 2012 computerized tomography (CT) scan, October 10, 2016 magnetic resonance imaging scan, and October 20, 2016 x-ray testing.

medical condition casually related to the accepted factors of her federal employment. OWCP concluded, therefore, that appellant had not met the requirements to establish “an injury and/or medical condition causally related to the accepted work factors.”

On February 16, 2017 appellant, through her then-counsel, requested a telephonic hearing with a representative of OWCP’s Branch of Hearings and Review.

Appellant subsequently submitted a Form CA-20 dated January 5, 2017, in which a provider with an illegible signature diagnosed disc protrusion at L3-4 and spinal fusion. In a January 11, 2017 report, Dr. Sonjay Fonn, a Board-certified neurosurgeon and osteopath, indicated that she presented on that date with the chief complaint of low back pain radiating into her legs which had a sudden onset in August 2016. He provided examination findings, discussed diagnostic testing of the low back, and diagnosed lumbago, lumbar postlaminectomy syndrome, lumbar radiculopathy, and sciatica. In an April 5, 2017 Form CA-20 report, Dr. Fonn listed the date of injury as August 1, 2016 and the history of employment injury as “low back pain, left worse than right, paresthesia in feet and weakness.” He indicated that the diagnoses of lumbar radiculopathy, lumbago, and facet arthropathy were due to the employment activity. Appellant could return to light work on March 16, 2017 with restrictions including no lifting more than 20 pounds.<sup>5</sup>

During the hearing held on August 11, 2017 counsel acknowledged appellant’s prior back problems, but argued that her work duties caused a herniated disc at L3-4. Appellant testified that, a week prior to the hearing, Dr. Fonn performed back surgery which had not been authorized by OWCP.

Post hearing, appellant submitted several reports dated between March 16 and May 30, 2017 in which Dr. Fonn discussed her medical condition and diagnosed such conditions as lumbago, lumbar herniated nucleus pulposus without myelopathy, lumbar radiculopathy, sciatica, lumbar stenosis, discogenic pain, and facet arthropathy. Within his reports, Dr. Fonn indicated that appellant could either continue with light-duty work or that she had no current work restrictions.

By decision dated September 28, 2017, OWCP’s hearing representative set aside the February 8, 2017 decision and found that Dr. Fonn’s April 5, 2017 report necessitated further development of the medical evidence, to be followed by the issuance of a *de novo* decision. She directed that, upon remand, OWCP was to request a supplemental report from Dr. Fonn regarding a possible employment-related cause for appellant’s back and leg conditions.

On April 5, 2018 OWCP requested that Dr. Fonn provide a report addressing whether appellant sustained a back or leg condition due to performing her work duties. Dr. Fonn did not respond to OWCP’s request for a supplemental report.

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<sup>5</sup> Appellant submitted notes, dated March 22 and April 18, 2017, in which Dr. Fonn recommended work restrictions. She also submitted the results of additional diagnostic studies, including March 16, 2017 CT scan/x-ray testing of the low back, April 27, 2017 x-ray testing of the low back, May 4, 2017 echocardiogram testing, and May 30, 2017 CT scan/x-ray testing of the chest.

Appellant submitted reports, dated between August 14 and 31, 2017, in which Dr. Fonn discussed his follow-up treatment after performing surgery at L3-4 on August 4, 2017.<sup>6</sup> She submitted a portion of a September 27, 2017 report which does not contain a page with a signature.<sup>7</sup>

By decision dated May 18, 2018, OWCP denied appellant's claim, finding that she had not submitted sufficient medical evidence to establish a medical condition casually related to the accepted factors of her federal employment.

On February 12, 2019 appellant requested reconsideration of the May 18, 2018 decision.

Appellant submitted an April 9, 2018 report from Dr. Jeroen Coppens, a Board-certified neurosurgeon, who indicated that he discussed upcoming scheduled diagnostic testing. In an April 10, 2018 report, Dr. Michael Prim, a Board-certified neurosurgeon, summarized recent diagnostic testing of her low back. On May 1, 2018 Dr. Jorge Urquiaga, a Board-certified neurosurgeon, also discussed appellant's recent diagnostic testing.

By decision dated May 22, 2019, OWCP denied appellant's claim for an employment-related back condition, noting that she did not submit sufficient medical evidence to establish such a condition causally related to the accepted factors of her federal employment.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>8</sup> 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, 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, 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.<sup>9</sup> These are the essential elements of every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>10</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or

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<sup>6</sup> The case record does not contain a report of the August 4, 2017 surgery.

<sup>7</sup> Appellant also submitted November 3 and 9, 2017 notes in which Dr. Fonn recommended work restrictions and reports of diagnostic testing of the low back from April 2018.

<sup>8</sup> *Supra* note 1.

<sup>9</sup> *K.V.*, Docket No. 18-0947 (issued March 4, 2019); *M.E.*, Docket No. 18-1135 (issued January 4, 2019); *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

<sup>10</sup> *K.V.*, and *M.E.*, *id.*; *Elaine Pendleton*, 40 ECAB 1143 (1989).

condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.<sup>11</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>12</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>13</sup> 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 specific employment factor(s).<sup>14</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a back or leg injury causally related to the accepted factors of her federal employment.

Appellant submitted an April 5, 2017 Form CA-20 report from Dr. Fonn who listed the date of injury as August 1, 2016 and the history of employment injury as "low back pain, left worse than right, paresthesia in feet and weakness." Dr. Fonn indicated that the diagnoses of lumbar radiculopathy, lumbago, and facet arthropathy were due to the employment activity. The Board finds that this report is of limited probative value with respect to appellant's claim of an occupational injury to her back and legs because it does not contain adequate medical rationale on the causal relationship between her diagnosed conditions and the accepted factors of her employment, *i.e.*, bending, stooping, pulling, and lifting patients. Dr. Fonn did not discuss the implicated factors of her employment, which occurred over more than a single day, or otherwise describe the medical mechanism through which they could have caused injury or aggravated a preexisting condition. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.<sup>15</sup> Therefore, the April 5, 2017 report is insufficient to establish appellant's claim.

Appellant submitted additional reports of Dr. Fonn, dated between March and November 2017, but these reports did not contain an opinion on the cause of the back/leg conditions diagnosed in the reports. The Board has held that medical evidence that does not offer an opinion

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<sup>11</sup> *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>12</sup> *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>13</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

<sup>14</sup> *Id.*; *Victor J. Woodhams*, *supra* note 11.

<sup>15</sup> *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>16</sup> Therefore, these reports are insufficient to establish appellant's claim.<sup>17</sup>

Appellant submitted an October 19, 2016 report from Dr. Vaught, who diagnosed lumbar spondylosis with radiculopathy, lumbosacral radiculopathy, and chronic low back pain, and October 21 and November 6, 2016 reports from Dr. Reis, who discussed his application of intra-articular facet injections at L3-4. She also submitted an April 9, 2018 report from Dr. Coppens, an April 10, 2018 report from Dr. Prim, and a May 1, 2018 report from Dr. Urquiaga. However, these reports do not contain an opinion that appellant had a diagnosed medical condition causally related to the accepted employment factors. Therefore, these reports also are insufficient to establish her claim.<sup>18</sup>

Appellant also submitted a November 7, 2016 report from Mr. Johnstone, a physician assistant. The Board notes that this report has no probative value regarding her occupational disease claim because, under FECA, the report of a nonphysician, including a physician assistant, does not constitute probative medical evidence.<sup>19</sup> Appellant submitted two Form CA-20 reports, one undated and another dated January 5, 2017, which were completed by a provider with an illegible signature. She also submitted a portion of a September 27, 2017 report which does not contain a page with a signature. However, the Board has held that a document may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8101(2) and these reports, which lack proper identification, do not constitute probative medical evidence.<sup>20</sup> In addition, appellant submitted several diagnostic studies, but these reports lack probative value regarding the underlying issue of this case as they do not address whether employment factors caused the diagnosed conditions.<sup>21</sup>

As the medical evidence of record does not contain a rationalized opinion establishing causal relationship between appellant's diagnosed conditions and the accepted factors of her federal employment, the Board finds that she has not met her burden of proof.

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.

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<sup>16</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

<sup>17</sup> *Id.*

<sup>18</sup> See *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>19</sup> *R.S.*, Docket No. 16-1303 (issued December 2, 2016); *L.L.*, Docket No. 13-0829 (issued August 20, 2013). See 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

<sup>20</sup> *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

<sup>21</sup> *C.S.*, Docket No. 19-1279 (issued December 30, 2019).

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish a back or leg injury causally related to the accepted factors of her federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 22, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 14, 2020  
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