

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

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<b>H.J., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 20-0282</b>
	)	<b>Issued: July 21, 2020</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>ORLANDO VA MEDICAL CENTER,</b>	)	
<b>Orlando, FL, Employer</b>	)	
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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Deputy Chief Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On November 18, 2019 appellant filed a timely appeal from a June 25, 2019 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 June 25, 2019 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 establish a lumbar condition causally related to the accepted March 26, 2019 employment incident.

## FACTUAL HISTORY

On April 25, 2019 appellant, then a 43-year-old certified nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on March 27, 2019 she experienced back and left leg pain when caring for patients while in the performance of duty.<sup>3</sup> She explained that she slowed her pace, but kept working, thinking that she would feel better. However, the pain repeatedly returned and appellant reported that she woke up the next day still in pain. She stopped work on March 27, 2019.

In a development letter dated May 3, 2019, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Appellant subsequently submitted hospital records dated March 28, 2019 by Dr. Eddid Colon Cruz, a Board certified emergency medicine specialist, who diagnosed sciatica and provided work restrictions of no heavy lifting and no prolonged standing.

In a prescription note dated May 27, 2019, Dr. Conrado Talampas, a Board-certified internist, diagnosed left sciatica and referred appellant to physical therapy.

Appellant submitted physical therapy notes dated April 23 to May 29, 2019.

In an undated narrative statement, appellant reiterated the factual history of her claimed injury.

Appellant submitted a June 18, 2019 response to OWCP's development questionnaire indicating that her injury occurred on March 26, 2019 and the immediate effects were pain and sensation in her left leg. She noted that the pain had worsened to the point where she required emergency medical attention.

A magnetic resonance imaging (MRI) scan of the lumbar spine dated April 11, 2019 demonstrated moderate chronic spondylo-degenerative changes of the lumbar spine, a small diffuse annular disc bulge measuring 2 millimeters (mm) at L3-4, a large central and paracentral subligamentous soft disc herniation of extrusion type with caudal migration for almost 8 mm at L4-5, and a small central subligamentous soft disc extrusion measuring 3 mm at L5-S1.

In medical reports dated April 2 and 17, and May 23, 2019, Dr. Talampas diagnosed lumbosacral spondylosis with radiculopathy and indicated that appellant had excruciating pain

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<sup>3</sup> In a letter dated May 1, 2019, the employing establishment informed OWCP that appellant incorrectly identified her date of injury on the claim form and noted that the correct date of injury was March 26, 2019.

from her left buttock radiating down towards her left leg. He noted that she reported that the pain began after she tried to bend down and twisted her torso towards her left side. Appellant indicated that the pain had lasted for the past 7 to 10 days following her emergency room visit. Dr. Talampas advised appellant to stay off work until her symptoms improved. He further noted that her medical history included a cervical injury a few years ago.

By decision dated June 25, 2019, OWCP accepted that the March 26, 2019 employment incident occurred as alleged, but denied appellant's claim finding that she had not established a lumbar condition causally related to the accepted employment incident. It therefore found that the requirements had not been met for establishing an injury under FECA.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA 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 period of FECA,<sup>4</sup> 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>5</sup> 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.<sup>6</sup>

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. 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.<sup>7</sup> The second component is whether the employment incident caused a personal injury.<sup>8</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>9</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 incident identified by the claimant.<sup>10</sup>

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<sup>4</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *B.P.*, Docket No. 16-1549 (issued January 18, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>9</sup> *L.F.*, Docket No. 19-1905 (issued April 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>10</sup> *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

## ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a lumbar condition causally related to the accepted March 26, 2019 employment incident.

In medical reports dated April 2 to May 27, 2019, Dr. Talampas noted that appellant reported experiencing excruciating pain in her left buttock radiating down her left leg after she tried to bend down and twisted her torso towards her left side. He diagnosed lumbago with sciatica (left side), intervertebral disc disorders with radiculopathy (lumbar region), and lumbosacral spondylosis with radiculopathy. However, Dr. Talampas did not provide an opinion on the cause of appellant's conditions. Similarly, Dr. Cruz, in his March 28, 2019 report, diagnosed sciatica and provided work restrictions, but did not address causal relationship. Medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.<sup>11</sup> As neither physician addressed causal relationship, their reports are insufficient to meet appellant's burden of proof.<sup>12</sup>

Appellant also submitted physical therapy notes in support of her claim. Physical therapists, however, are not considered "physician[s]" as defined under FECA.<sup>13</sup> Consequently, their findings and/or opinions are of no probative value and will not suffice for purposes of establishing entitlement to compensation benefits.<sup>14</sup>

Finally, appellant submitted an April 11, 2019 MRI scan of the lumbar spine. The Board has held, however, that diagnostic studies standing alone lack probative value on the issue of causal relationship as they do not address whether the employment incident caused a diagnosed medical condition.<sup>15</sup> This evidence is, therefore, also insufficient to establish appellant's claim.

As there is no evidence of record that establishes a lumbar condition in connection with the accepted March 26, 2019 employment incident, the Board finds that appellant has not met her burden of proof.

On appeal appellant asserts that in order for her to get back to work she had to undergo multiple treatments, including physical therapy, chiropractic care, and an epidural injection. As found above, the medical evidence of record is insufficient to establish a medical condition in

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<sup>11</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>12</sup> *T.R.*, Docket No. 18-1272 (issued February 15, 2019).

<sup>13</sup> 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); 20 C.F.R. § 10.5(t). 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); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (physical therapists are not considered physicians under FECA).

<sup>14</sup> *R.L.*, *id.*

<sup>15</sup> *M.L.*, Docket No. 18-0153 (issued January 22, 2020).

connection with the accepted employment incident. Consequently, appellant has not met her burden of proof to establish her claim.

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 establish a lumbar condition causally related to the accepted March 26, 2019 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 25, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 21, 2020  
Washington, DC

Christopher J. Godfrey, Deputy 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