United States Department of Labor
Employees' Compensation Appeals Board

S.F., Appellant	)	
and	)	**Docket No. 19-1835**
	)	**Issued: May 14, 2020**
U.S. POSTAL SERVICE, POST OFFICE, Nescopeck, PA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On September 3, 2019 appellant, through counsel, filed a timely appeal from a July 18, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 medical condition causally related to the accepted November 15, 2018 employment incident.

FACTUAL HISTORY

On December 7, 2018 appellant, then a 43-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on November 15, 2018 she injured her back, neck, and left shoulder when her vehicle slid off a road and hit a pole while in the performance of duty. She stopped work on the date of injury and returned to work on November 19, 2018.

In a December 18, 2018 development letter, OWCP informed appellant that additional factual and medical evidence was necessary to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

Appellant submitted reports signed by Kyle Woolfolk, a certified physician assistant. In a December 4, 2018 report, Mr. Woolfolk noted a history of a motor vehicle accident (MVA) and diagnosed a cervical sprain. He requested that appellant be excused from work on December 3 and 5, 2018. In a December 4, 2018 return to work note, Mr. Woolfolk provided restrictions due to recent MVA/cervical sprain. A December 17, 2018 x-ray report indicated that linear lucency in the superior scapula may represent a fracture. On December 11, 17 and 20, 2018 Mr. Woolfolk continued to diagnose a cervical strain. He opined that appellant could work with restrictions.

In reports dated December 11, 13, and 20, 2018, Dr. Albert J. Alley, an osteopath and Board-certified family practitioner, reported that appellant was involved in a MVA on November 15, 2018. He noted that the problem was described as an "arm injury (left shoulder, left hip, and cervical spine-post MVA)" and involved a workers' compensation claim. An assessment of cervical strain status post MVA and contusion of left scapula were provided. In a December 26, 2018 report and duty status report (Form CA-17), Dr. Alley noted the November 15, 2018 date of injury and diagnosed left neuropathy and left trapezius strain.

On December 21, 2018 appellant accepted a modified assignment.

The employing establishment controverted the claim on January 15, 2019.[3]

By decision dated January 25, 2019, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish that the employment incident occurred as alleged. Thus, it concluded that she had not established an injury as defined by FECA.

On February 6, 2019 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative. The hearing was held on May 24, 2019. Appellant testified

[3] It included statements from coworkers dated December 19 and 21, 2018 pertaining to appellant's ownership and work at a consignment store and her grievance claims.

regarding the November 15, 2018 employment incident, her medical treatment, and statements made by the employing establishment.

Evidence received prior to and after the telephonic hearing of May 4, 2019 included copies of medical records, x-rays, and treatment rendered on November 15, 2018 from an emergency room. Dr. Frank J. Giugliano, Board-certified in emergency medicine, noted that appellant presented with complaints of low back pain following a MVA during which her vehicle slid off the road. The history of injury was noted as "belted mail lady in truck/slid into telephone pole/pain in low back and neck/history of lumbar disc operated on 2003/no recent back issues." Dr. Giugliano diagnosed lumbar sprain with secondary diagnosis of car driver injured in collision with fixed or activity.

Additional reports from Mr. Woolfolk were received along with a December 27, 2018 cervical x-ray report noting degenerative changes.

In a May 9, 2019 report, Dr. Sergey Filatov, a physical medicine and rehabilitation specialist, released appellant to full-duty work on May 13, 2019 without restrictions.

In a June 20, 2019 letter, the employing establishment continued to controvert appellant's claim.[4]

By decision dated July 18, 2019, OWCP's hearing representative affirmed the denial of appellant's claim, as modified, finding that, while she had established that the November 15, 2018 employment incident occurred as alleged, the medical evidence of record was insufficient to establish that appellant's diagnosed medical conditions were causally related to the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] has the burden of proof to establish the essential elements of his or her claim, including 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,[6] 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

[4] This was based on the history of injury provided, appellant's continuation of regular-duty work, including overtime, until December 4, 2018, witness statements, and her outside activities. The employing establishment also discussed other claims filed by her.

[5] *Supra* note 2.

[6] *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

employment injury.[7] 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.[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. There are two components involved in establishing fact of injury. 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. Second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[9]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[10] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 specific employment factors identified by the employee.[11]

In a case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[12]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her diagnosed medical conditions were causally related to the accepted November 15, 2018 employment incident.

Appellant was initially seen in an emergency room by Dr. Giugliano. In his November 15, 2018 report, Dr. Giugliano provided an accurate history of injury and diagnosed lumbar sprain with secondary diagnosis of injury due to collision. While his opinion generally supports causal relationship between the accepted November 15, 2018 employment incident and appellant's

[7] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[8] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[9] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[10] *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[11] *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[12] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *see also L.S.*, Docket No. 18-0518 (issued February 19, 2020).

diagnosed lumbar sprain, he did not provide sufficient rationale explaining his opinion. Without explaining how appellant's diagnosed lumbar sprain was caused or contributed to the accepted November 15, 2018 employment incident, Dr. Giugliano's opinion is of limited probative value.[13] Such rationale is especially important in this case as he noted her preexisting lumbar condition.[14] As such, the Board finds that this report is insufficient to establish the claim.[15]

Appellant submitted medical reports from Dr. Alley, dated December 11, 13, 20, and 26, 2018, which diagnosed cervical strain status post MVA, left scapula contusion, left trapezius strain, and neuropathy of left upper extremity. Dr. Alley, however, failed to provide a detailed history of injury pertaining to the accepted November 15, 2018 employment incident. He generally noted that appellant had been in a November 15, 2018 MVA involving a workers' compensation claim. Without a proper understanding of the employment incident, an opinion on causal relationship is of limited probative value as the physician is unable to describe how the incident caused the diagnosed conditions.[16] Furthermore, Dr. Alley's generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how the November 15, 2018 employment MVA incident actually caused the diagnosed conditions.[17] As his reports lack the specificity and detail needed to establish a November 15, 2018 employment-related traumatic injury, they are of limited probative value.[18]

The record also contains several reports from Mr. Woolfolk, a physician assistant. The Board has held notes signed solely by a physician assistant are not considered medical evidence as these providers are not considered "physician[s]" as defined under FECA and are not competent to render a medical opinion under FECA.[19] Thus, these reports do not constitute medical evidence and have no weight or probative value.[20]

[13] *See A.P.*, Docket No. 19-0224 (issued July 11, 2019).

[14] *Supra* note 12.

[15] *See C.F.*, Docket No. 19-1748 (issued March 27, 2020); *D.B.*, Docket No. 17-1845 (issued February 16, 2018); *T.H.*, Docket No. 14-0326 (issued February 5, 2015).

[16] *See J.C.*, Docket No. 19-0310 (issued June 18, 2019); *L.M.*, Docket No. 14-0973 (issued August 25, 2014); *R.G.*, Docket No. 14-0113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-0548 (issued November 16, 2012).

[17] *T.W.*, Docket No. 18-1436 (issued April 10, 2019).

[18] *J.C.*, *supra* note 16; *P.O.*, Docket No. 14-1675 (issued December 3, 2015); *S.R.*, Docket No. 12-1098 (issued September 19, 2012).

[19] Section 8101(2) of FECA provides that medical opinions can only be given by a qualified physician. This section defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *H.K.*, Docket No. 19-0429 (issued September 18, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant will be considered medical evidence if countersigned by a qualified physician. *Supra* note 12 at Chapter 2.805.3a(1) (January 2013).

[20] *A.A.*, Docket No. 19-0957 (issued October 22, 2019); *K.H.*, Docket No. 18-0036 (issued September 16, 2016).

Appellant also submitted diagnostic imaging studies in the form of x-rays. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to whether there is a relationship between an employment incident and a claimant's diagnosed conditions.[21] This evidence is therefore insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence explaining how her diagnosed medical conditions are causally related to the accepted November 15, 2018 employment incident, the Board finds that she has not met her burden of proof to establish her claim.[22]

On appeal counsel contends that OWCP's July 18, 2019 decision is contrary to fact and law. He has not, however, provided evidence to support his generalized contention. As explained above, appellant has not submitted rationalized medical evidence to establish causal relationship between her diagnosed conditions and the accepted November 15, 2018 employment incident. As such, 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted November 15, 2018 employment incident.

[21] *See I.C.*, Docket No. 19-0804 (issued August 23, 2019).

[22] *J.J.*, Docket No. 19-1783 (issued March 30, 2020); *E.G.*, Docket No. 19-0914 (issued October 18, 2019).

ORDER

IT IS HEREBY ORDERED THAT the July 18, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 14, 2020
Washington, DC

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

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

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