

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

_____)	
K.W., Appellant)	
)	
and)	Docket No. 19-1966
)	Issued: May 1, 2020
DEPARTMENT OF THE AIR FORCE,)	
JBSA-RANDOLPH AIR FORCE BASE,)	
San Antonio, TX, Employer)	
_____)	

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
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On September 26, 2019 appellant filed a timely appeal from an April 8, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 record provided to the Board includes evidence received after OWCP issued its April 8, 2019 decision. 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 back condition causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On February 14, 2019 appellant, then a 51-year-old electronic mechanic, filed an occupational disease claim (Form CA-2) alleging that she aggravated her preexisting lower back condition due to factors of her federal employment. She noted that she experienced pain in the lower back and right leg and suspected a pinched sciatic nerve. Appellant explained that she had back surgery in 2016 and, due to repetitive lifting related to connecting and testing cables at work, she had reinjured her back. She noted that she first became aware of her condition and realized its relationship to her federal employment on December 1, 2018. Appellant did not stop work.

In support of her claim, appellant submitted a position description for an electronic integrated systems mechanic and a notification of personnel action (Form SF-50) approved on August 19, 2018 by the employing establishment, which advised that she was employed in that position effective that same date. She also submitted an undated list of future medical appointments scheduled for March 6 and 8, 2019.

In an undated statement, appellant noted that on May 7, 2018 the employing establishment placed her on a different workload despite her complaint that it would violate her modified duties of no lifting greater than 30 pounds which were in place after her 2016 back surgery. She asserted that the repetitive lifting of units that weighed more than 30 pounds, sometimes even 80 pounds, over a period of time reinjured her lower back. Appellant noted that the employing establishment provided no reasonable accommodations for her and that she had to return to see her neurologist. She indicated that she now experienced pain in the lower back down the right leg and the sciatic nerve.

In a February 12, 2019 prescription slip, Dr. Kim. W. Johnston, a Board-certified neurosurgeon, opined that appellant had exacerbated her right sciatica and advised that she should not lift more than 30 pounds.

In a February 13, 2019 work status report, Jay A. Miller, a certified physician assistant (PA-C), noted that appellant sustained a nonoccupational illness or injury and recommended that she return to work with temporary medical restrictions.

In a statement dated February 14, 2019, appellant again noted that repetitive lifting of units and test station cables weighing over 30 pounds caused a reinjury to her back. She noted that the sciatic nerve in her back felt pinched and she had pain radiating down her right leg. Appellant provided a December 1, 2018 date of injury. Mr. Miller diagnosed sciatica and recommended that she return to limited-duty work for 30 days.

In a February 26, 2019 development letter, OWCP advised appellant of the deficiencies in her claim and afforded her 30 days to submit appropriate medical evidence. No further evidence was received.³

By decision dated April 8, 2019, OWCP denied appellant's claim, finding that the medical evidence submitted was insufficient to establish a causal relationship between her diagnosed sciatica and the accepted factors of her federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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,⁵ 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.⁶ 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.⁷

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (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 condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁸

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.⁹ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical

³ In response to the February 26, 2019 development letter, appellant submitted copies of documents already of record.

⁴ *Supra* note 1.

⁵ *J.W.*, Docket No. 18-0678 (issued March 3, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *J.S.*, Docket No.18-0657 (issued February 26, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *L.J.*, Docket No. 19-1343 (issued February 26, 2020); *R.R.*, Docket No.18-0914 (issued February 24, 2020); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

⁹ *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

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.¹⁰

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.¹¹

ANALYSIS

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

In support of her claim, appellant submitted a February 13, 2019 work status report providing temporary work restrictions, a February 12, 2019 prescription slip by Mr. Miller, and an occupational injury and illness report dated February 14, 2019 diagnosing sciatica by Mr. Miller. Certain healthcare providers such as physician assistants are not considered “physician[s]” as defined under FECA.¹² Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹³

As there is no rationalized medical evidence of record explaining how appellant’s employment duties caused or aggravated her conditions, the Board finds that she has not met her burden of proof.

On appeal appellant explains that she could not provide further medical evidence because she needed to go through several processes such as setting schedules for appointments with her neurologist and undergoing diagnostic studies. As set forth above, appellant failed to submit sufficient evidence 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.

¹⁰ *R.G.*, Docket No. 18-0792 (issued March 11, 2020); *D.J.*, Docket No. 19-1301 (issued January 29, 2020); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *N.C.*, Docket No. 19-1191 (issued December 19, 2019); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

¹² 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

¹³ 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.” *Id.* at § 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); *K.W.*, 59 ECAB 271, 279 (2007).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the April 8, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 1, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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