

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

R.C., Appellant)
and) Docket No. 19-1770
U.S. POSTAL SERVICE, POST OFFICE,) Issued: March 27, 2020
St. Louis, MO, 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
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 26, 2019 appellant filed a timely appeal from a June 21, 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

ISSUE

The issue is whether appellant has met her burden of proof to establish a lower back injury causally related to the accepted February 6, 2019 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² The record provided to the Board includes evidence received after OWCP issued its June 21, 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.*

FACTUAL HISTORY

On February 11, 2019 appellant, then a 56-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on February 6, 2019 she injured the right side of her lower back, right hip, and right knee while in the performance of duty. She explained that, as she was pulling down and loading the mail, she pulled a muscle in her back side. Appellant stopped work on February 11, 2019.

In a February 11, 2019 medical report, Dr. Wendy MacLean, Board-certified in family medicine, noted that appellant presented with progressively worsening right lower back pain over the past five days since she had been working continuous nights.³ Appellant explained that her pain worsened with repetitive movement and turning. Upon evaluation, Dr. MacLean opined that appellant's musculoskeletal symptoms were likely from repetitive movements. She recorded impressions of muscle spasms and a low back strain and recommended that appellant return to work after two days. In an attending physician's report (Form CA-20) of even date, Dr. MacLean diagnosed acute low back pain and checked a box marked "yes" indicating that appellant's condition was caused or aggravated by her repetitive movements at work.

In a February 13, 2019 medical report, Dr. Antoine Chami, Board-certified in pain medicine, reported that appellant presented with right low back pain that began after pulling mail down off of a rack and putting it on a truck at work on February 6, 2019. He diagnosed myofascial pain and referred her to physical therapy and chiropractic care. In a duty status (Form CA-17) report of even date, Dr. Chami diagnosed myalgia lumbar radiculopathy and checked a box marked "yes" indicating that pulling down mail off the top of a rack and loading it onto a truck caused appellant's injury.

In a February 26, 2019 medical report, Dr. Ghazala Hayat, a Board-certified neurologist, noted that appellant presented with right lower extremity pain and tightness in her lower back that she had experienced since February 6, 2019. She diagnosed acute right-sided low back pain with an unspecified sciatica presence and referred appellant to physical therapy. In an accompanying Form CA-20, Dr. Hayat diagnosed musculoskeletal pain and checked a box marked "yes" to indicate her belief that appellant's condition was caused or aggravated by the claimed February 6, 2019 employment incident.

OWCP also received physical therapy notes dated from April 8 to 29, 2019 from Karyle Penelton, a physical therapist.

In a development letter dated May 15, 2019, OWCP informed appellant that her claim initially appeared to be a minor injury that resulted in minimal or no lost time from work and that continuation of pay was not controverted by the employing establishment and, thus, limited expenses had therefore been authorized. However, a formal decision was now required. OWCP advised appellant of the type of factual and medical evidence required to establish her traumatic injury claim and asked her to complete a questionnaire and provide further details regarding the circumstances of the claimed February 6, 2019 employment incident. It also requested a narrative

³ In a diagnostic report dated February 11, 2019, Dr. Aaron Gould, a Board-certified diagnostic radiologist, performed an x-ray of appellant's lumbar spine and found no evidence of an acute osseous abnormality.

medical report from appellant's physician which provided the physician's rationalized medical explanation as to how the alleged employment incident caused her diagnosed condition. OWCP afforded appellant 30 days to respond.

In response to OWCP's questionnaire, appellant explained, in a May 21, 2019 statement, that at the time of her injury, mail weighing approximately 25 pounds was stacked high above the rack and she was required to pull down the trays of mail to place them in the truck. Afterwards, she felt tightness in her lower back and right side, but continued to work until her shift ended. When appellant returned to work on February 11, 2019 she had pain while walking and informed her supervisor who sent her to the hospital. She indicated that she had never been treated for any other similar disability or symptom prior to her injury.

Appellant submitted additional physical therapy notes dated from April 29 to June 10, 2019 from Ms. Penelton.

By decision dated June 21, 2019, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish that her medical condition was causally related to the accepted February 6, 2019 employment incident. It explained that she had not provided a well-rationalized medical opinion from her physician explaining how her work duties caused or aggravated her medical condition.

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,⁴ 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.⁵ 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.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.⁷ First, the employee must submit sufficient evidence to establish that she actually experienced the

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

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

⁶ *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).

⁷ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

employment incident at the time, place, and in the manner alleged.⁸ Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁹

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence sufficient to establish such causal relationship.¹⁰ The opinion of the physician must be based on a complete factual and medical background, 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 factors identified by the claimant.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a lower back injury causally related to the accepted February 6, 2019 employment incident.

In her February 11, 2019 medical report and Form CA-20, Dr. MacLean noted that appellant injured her right lower back due to a February 6, 2019 employment incident. Upon evaluation, she opined that appellant's symptoms were "likely" musculoskeletal and from repetitive movements. Dr. MacLean diagnosed a low back strain and acute low back pain. She checked a box marked "yes" indicating that appellant's condition was caused or aggravated by her repetitive movements at work. While her medical evidence generally supports causal relationship, Dr. MacLean did not offer medical rationale sufficient to explain how and why she believes the February 6, 2019 employment incident could have resulted in or contributed to the diagnosed condition. The Board has held that a physician's opinion on causal relationship which consists of checking "yes" to a form question, without explanation or rationale, is of diminished probative value and is insufficient to establish a claim.¹² Without explaining how pulling mail or repetitive movements caused or contributed to appellant's injuries, Dr. MacLean's February 11, 2019 medical evidence is of limited probative value.¹³ Therefore, her medical reports are insufficient to meet appellant's burden of proof.

In his February 13, 2019 report, Dr. Chami noted that appellant presented with right low back pain that began after pulling mail down off of a rack and putting it on a truck at work on February 6, 2019. He diagnosed myofascial pain and myalgia lumbar radiculopathy and checked a box marked "yes" indicating that pulling down mail off the top of a rack and loading it onto a truck caused appellant's injury. As explained above, a physician's opinion on causal relationship which consists of checking "yes" to a form question, without explanation or rationale, is of

⁸ D.S., Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ B.M., Docket No. 17-0796 (issued July 5, 2018); *John J. Carbone*, 41 ECAB 354 (1989).

¹⁰ K.V., Docket No. 18-0723 (issued November 9, 2018).

¹¹ I.J., 59 ECAB 408 (2008).

¹² See *J.R.*, Docket No. 18-1679 (issued May 6, 2019); *M.C.*, Docket No. 18-0361 (issued August 15, 2018); *Calvin E. King, Jr.*, 51 ECAB 394 (2000); see also *Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

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

diminished probative value and is insufficient to establish a claim.¹⁴ Without explaining how pulling mail down off of a rack and putting it on a truck caused or contributed to appellant's injuries, Dr. Chami's February 13, 2019 medical report is also of limited probative value.¹⁵

In her February 26, 2019 medical note, Dr. Hayat diagnosed acute right-sided low back pain with an unspecified sciatica presence, as well as musculoskeletal pain. The Board has held that pain is not considered a diagnosis, as pain merely refers to a symptom of an underlying condition.¹⁶ Accordingly, Dr. Hayat's February 26, 2019 medical evidence is insufficient to establish appellant's burden of proof.

The remaining medical evidence consists of physical therapy notes from Ms. Penelton, a physical therapist. Certain healthcare providers such as physical therapists, nurses, physician assistants, and social workers are not considered physicians (it is not a quote) as defined under FECA.¹⁷ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹⁸

On appeal appellant asserts that her Form CA-20s were sufficient to establish her burden of proof. However, as stated previously, a physician's statement that an appellant's condition is causally related to their work duties, without sufficient explanation or rationale, is of diminished probative value and is insufficient to establish a claim.¹⁹

As appellant has not submitted rationalized medical evidence establishing that her injury is causally related to the accepted February 6, 2019 employment incident, the Board finds that she 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.

¹⁴ See J.R., *supra* note 12; M.C., *supra* note 12; Calvin E. King, Jr., *supra* note 12394 (2000); see also Frederick E. Howard, Jr., *supra* note 1241 ECAB 843 (1990).

¹⁵ See A.P., Docket No. 19-0224 (issued July 11, 2019).

¹⁶ S.H., Docket No. 19-0916 (issued October 4, 2019). The Board has consistently held that pain is a symptom, not a compensable medical diagnosis. See P.S., Docket No. 12-1601 (issued January 2, 2013); C.F., Docket No. 08-1102 (issued October 10, 2008).

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

¹⁸ See M.F., Docket No. 17-1973 (issued December 31, 2018); K.W., 59 ECAB 271, 279 (2007); David P. Sawchuk, 57 ECAB 316, 320 n.11 (2006); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

¹⁹ *Supra* note 14.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a lower back injury causally related to the accepted February 6, 2019 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the June 21, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 27, 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