

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

N.X., Appellant)	
)	
and)	Docket No. 20-0499
)	Issued: November 6, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Rockaway Park, NY, Employer)	
)	

Appearances:
Thomas S. Harkins, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 3, 2020 appellant, through counsel, filed a timely appeal from a July 22, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

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.*

³ The Board notes that following the July 22, 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 cervical or lumbar conditions causally related to the accepted August 7, 2018 employment incident.

FACTUAL HISTORY

On September 7, 2018 appellant, then a 41-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 7, 2018 she injured her lower back and legs delivering heavy mail while in the performance of duty. She explained that she had just returned to light-duty work two days prior to her injury.⁴

In a functional capacity evaluation (FCE) dated December 11, 2018, Dr. Ranga C. Krishna, a Board-certified neurologist, noted that appellant had been involved in an incident on August 7, 2018 when a box fell off a shelf over her head. Appellant had related that her complaints were exacerbated when her light-duty job was withdrawn and she returned to full-duty work. Dr. Krishna diagnosed lumbar and cervical sprains, head injury, and bilateral shoulder sprains.

In a report dated April 3, 2019, Dr. Uel Alexis, Board-certified in pain medicine, noted that appellant had been seen on that date for complaints of low back pain and neck pain. He stated that the onset of the low back pain was sudden and had continued in a persistent worsening pattern for eight months. Dr. Alexis related that appellant had sustained a neck injury at work, with onset eight months prior. He provided physical examination findings and diagnosed low back pain and cervical pain. Dr. Alexis opined with a “Yes” response to the questions that the accident described by appellant was the competent medical cause of her conditions, and that her complaints were consistent with the history of injury and objective findings. His impression was that appellant was “moderately partially disabled 50-74 percent.”

In a form progress report and a narrative report, both dated April 8, 2019, Dr. Ayman Farag, a Board-certified anesthesiologist, related that he had examined appellant for complaints of neck and back pain. He noted that appellant had been in a work-related accident on August 7, 2018. Dr. Farag summarized appellant’s physical examination findings and noted that a magnetic resonance imaging (MRI) scan demonstrated herniated discs and cervical spinal stenosis at C4-5. He diagnosed cervical spinal stenosis and cervical disc herniation. Dr. Farag checked a box marked “Yes” indicating that the incident described by appellant was the competent cause of her injury/illness.

In a development letter dated May 12, 2019, OWCP informed appellant that she had submitted insufficient medical evidence to establish her claim. It advised her of the medical evidence needed to establish her claim and afforded her 30 days to respond.

In a note dated August 10, 2018, Dr. Krishna stated that appellant had been under his care since July 24, 2017 for complaints of persistent neck and lower back pain. He diagnosed cervical and lumbar radiculopathy.

⁴ Appellant has a prior claim for a September 27, 2016 traumatic injury which OWCP accepted for left ankle sprain under OWCP File No. xxxxxx083. OWCP has not administratively combined that claim with the current claim, File No. xxxxxx400.

In a report dated August 23, 2018, Dr. Krishna noted that appellant had been seen on that date for a neurological consultation. He stated that appellant had sustained a work injury on August 7, 2018 and had not worked since August 8, 2018. Appellant had experienced persistent low back problems, which she alleged were exacerbated because the employing establishment had moved her from light duty to full duty. Dr. Krishna again related appellant's physical examination findings and diagnosed cervical and lumbar disc herniation, resulting in cervical and lumbar radiculopathy and neuropathic pain syndrome.

On May 6, 2019 Dr. Krishna diagnosed pain in the left ankle and joints of the left foot and radiculopathy of the cervical region. He explained that appellant required a compounded topical treatment for these conditions.

By decision dated June 17, 2019, OWCP denied appellant's claim, finding that she had not submitted sufficient evidence to establish that her diagnosed medical conditions were causally related to the August 7, 2018 accepted incident.

On July 15, 2019 appellant, through counsel, requested reconsideration. OWCP received an April 9, 2018 electromyogram (EMG) and nerve conduction velocity (NCV) study (EMG/NCV) interpreted by Dr. Krishna. Dr. Krishna observed that the EMG/NCV study revealed evidence of a right median nerve neuropathy at the wrist, consistent with the clinical diagnosis of carpal tunnel syndrome.

By decision dated July 22, 2019, OWCP denied modification of the prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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 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

⁵ *Id.*

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).

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).

time, place, and in the manner alleged. The 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 incident identified by the employee.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish cervical or lumbar conditions causally related to the accepted August 7, 2018 employment incident.

On April 8, 2019 Dr. Farag noted that appellant had been in a work-related accident on August 7, 2018. He diagnosed cervical spinal stenosis and cervical disc herniation. Dr. Farag checked a box marked “Yes” indicating his opinion that the incident described by appellant was the competent cause of her injury/illness. The Board has held that when a physician’s opinion on causal relationship consists only of a checkmark on a form, without further explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.¹² A physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the described incident caused or contributed to a diagnosed medical condition. Dr. Farag did not provide a description of the August 7, 2018 employment incident and did not provide medical rationale explaining how the diagnosed condition was related to the accepted employment incident. His opinion is of limited probative value regarding causal relationship.¹³

On August 10, 2018 Dr. Krishna stated that appellant had been under his care and treatment since July 24, 2017 for complaints of persistent neck and lower back pain. He diagnosed cervical and lumbar radiculopathy. On August 23, 2018 Dr. Krishna diagnosed cervical and lumbar disc herniation, resulting in cervical and lumbar radiculopathy and neuropathic pain syndrome. On May 6, 2019 he diagnosed cervical radiculopathy. In these reports, Dr. Krishna did not offer any opinion as to the cause of appellant’s diagnosed conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee’s condition is of no

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 *O.M.*, Docket No. 18-1055 (issued April 15, 2020); *Gary J. Watling*, 52 ECAB 278 (2001).

¹³ *B.M.*, Docket No. 19-1311 (issued August 17, 2020); *K.B.*, Docket No. 19-0398 (issued December 18, 2019).

probative value on the issue of causal relationship.¹⁴ Therefore, these reports from Dr. Krishna are insufficient to establish appellant's claim.

On December 11, 2018 Dr. Krishna noted that appellant had been involved in an incident on August 7, 2018 when a box fell off a shelf over her head. He diagnosed lumbar and cervical sprain, a head injury, and bilateral shoulder sprain. As this report does not provide an opinion on causal relationship between appellant's diagnosed conditions and the accepted employment incident, it is of no probative value and insufficient to establish the claim.¹⁵

In a report dated April 3, 2019, Dr. Alexis diagnosed low back pain and cervical pain. The Board has explained that pain is not considered a diagnosis, as pain merely refers to a symptom of an underlying condition.¹⁶ As such, this report is insufficient to establish appellant's claim.

OWCP also received April 9, 2018 EMG/NCV which revealed evidence of a right median nerve neuropathy at the wrist, consistent with the clinical diagnosis of carpal tunnel syndrome. The Board has held, however, that diagnostic tests, standing alone, lack probative value as they do not provide an opinion on causal relationship between the employment incident and the diagnosed condition.¹⁷

As appellant has not submitted rationalized medical evidence to establish that her diagnosed conditions were causally related to the accepted August 7, 2018 employment incident, 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish cervical or lumbar conditions causally related to the accepted August 7, 2018 employment incident.

¹⁴ *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018).

¹⁵ *Id.*

¹⁶ *M.V.*, Docket No. 18-0884 (issued December 28, 2018). 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 *See R.L.*, Docket No. 20-0284 (issued June 30, 2020); *C.T.*, Docket No. 20-0020 (issued April 29, 2020); *J.M.*, Docket No. 17-1688 (issued December 13, 2018).

ORDER

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

Issued: November 6, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board