

FACTUAL HISTORY

On June 24, 2019 appellant, then a 60-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she developed three bulging discs in her lower back due to factors of her federal employment, including bending, stretching, and turning. She indicated that she first became aware of her condition on April 2, 2019, and first realized its relationship to her federal employment on June 20, 2019. Appellant stopped work on April 1, 2019.

In an accompanying statement, appellant noted that she had a bulging disc on her spinal cord, which caused numbness from her thigh to knee in her left leg. She alleged that years of bending, stretching, turning, loading, and unloading caused her condition. Appellant indicated that she never had a bulging disc prior to her federal employment.

In support of her claim, appellant submitted an April 2, 2019 note from Charles McKinney, a physician assistant, who noted diagnoses of degeneration of lumbar intervertebral disc and sciatica. In an accompanying work excuse note, Mr. McKinney indicated that appellant could return to work on April 9, 2019.

In an April 12, 2019 work excuse note, Dr. Katherine Binns, an osteopathic physician specializing in family medicine, indicated that appellant could return to work on April 23, 2019. In an April 22, 2019 work excuse note, she indicated that appellant could return to work on May 24, 2019.

In a June 20, 2019 report, Dr. Ronald John Dorbish Jr., an osteopathic physician specializing in neurosurgery, noted that appellant experienced low back and right hip pain. He indicated that appellant had low back pain for many years and had right hip pain for approximately three months. Dr. Dorbish further noted that appellant suffered from severe muscle spasms in her right anterior thigh. He examined appellant and reviewed a magnetic resonance imaging (MRI) scan of her lumbar spine. Dr. Dorbish diagnosed lumbar stenosis with disc herniation.

In a development letter dated July 10, 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 needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence. No additional evidence was received.

By decision dated August 13, 2019, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish a causal relationship between her diagnosed lumbar condition and the accepted factors of her federal employment.

OWCP subsequently received an August 6, 2019 progress note from Dr. Dorbish, who noted that he suspected that appellant's federal employment contributed to her degenerative disc disease and lumbar stenosis. Dr. Dorbish indicated that appellant's conditions had worsened to the point that she developed neurogenic claudication which required surgical intervention to treat.

On August 21, 2019 appellant responded to OWCP's development questionnaire. She indicated that she believed that employment-related activities, including lifting, squatting, stretching, turning, loading, and unloading, contributed to her lumbar condition. Appellant noted that she performed these activities for approximately five hours per day for 27 years. She stated that she did not participate in any hobbies or sports outside her federal employment.

On August 27, 2019 appellant requested reconsideration.

By decision dated November 21, 2019, OWCP denied modification of the August 13, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (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 identified employment factors.⁷

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ 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 factors identified by the claimant.⁹

ANALYSIS

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

³ *Supra* note 1.

⁴ *R.M.*, Docket No. 20-0342 (issued July 30, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *V.P.*, Docket No. 20-0415 (issued July 30, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ 20 C.F.R. § 10.115; *S.A.*, Docket No. 20-0458 (issued July 23, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *See B.H.*, Docket No. 18-1693 (issued July 20, 2020); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁸ *L.S.*, Docket No. 19-1769 (issued July 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁹ *B.C.*, Docket No. 20-0221 (issued July 10, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

In support of her claim, appellant submitted work excuse notes from Dr. Binns, dated April 12 and 22, 2019. Dr. Binns did not provide a medical diagnosis or reference the accepted employment factors in these notes. The Board has held that medical reports which do not provide a firm diagnosis or fail to render an opinion on causal relationship are of no probative value and are insufficient to establish the claim.¹⁰ These notes from Dr. Binns are therefore insufficient to meet appellant's burden of proof.

Appellant also submitted a June 20, 2019 report from Dr. Dorbish, who diagnosed lumbar stenosis with disc herniation. While Dr. Dorbish provided a firm medical diagnosis, he did not offer a specific opinion as to whether the accepted employment factors caused or aggravated appellant's diagnosed lumbar condition. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹¹ As such, this report is insufficient to establish appellant's claim.

In an August 6, 2019 progress note, Dr. Dorbish opined that he "suspected" that appellant's federal employment contributed to her degenerative disc disease and lumbar stenosis. The Board has held that a medical opinion that is speculative or equivocal in nature is of diminished probative value.¹² Moreover, a medical opinion must explain how the implicated employment factors physiologically caused, contributed to, or aggravated the specific diagnosed conditions.¹³ Accordingly, Dr. Dorbish's speculative, conclusory opinion is insufficient to establish appellant's claim.

Appellant also submitted notes from Mr. McKinney, a physician assistant, dated April 2, 2019. Certain healthcare providers such as physician assistants are not considered "physician[s]" as defined under FECA.¹⁴ Consequently, these notes will not suffice for purposes of establishing appellant's claim.¹⁵

As the medical evidence of record does not contain rationalized medical evidence establishing causal relationship between appellant's diagnosed lumbar conditions and the accepted factors of her federal employment, the Board finds that appellant has not met her burden of proof.

¹⁰ *A.K.*, Docket No. 20-0003 (issued June 2, 2020).

¹¹ *L.G.*, Docket No. 20-0433 (issued August 6, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² *C.B.*, Docket No. 20-0464 (issued July 21, 2020).

¹³ *Id.*

¹⁴ 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). 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); see also *C.K.*, Docket No. 19-1549 (issued June 30, 2020) (physician assistants are not considered physicians under FECA).

¹⁵ *Id.*

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 factors of her federal employment.

ORDER

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

Issued: November 30, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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