United States Department of Labor
Employees' Compensation Appeals Board

D.H., Appellant	)	
and	)	**Docket No. 19-1956**
	)	**Issued: September 4, 2020**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, Saint Louis, MO, 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
JANICE B. ASKIN, Judge

JURISDICTION

On September 24, 2019 appellant, through counsel, filed a timely appeal from an August 23, 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 April 23, 2018 employment incident.

FACTUAL HISTORY

On April 23, 2018 appellant, then a 65-year-old health technician, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained injuries to her low back, both elbows, left shoulder, right hip, and right wrist when she attempted to sit in a chair and fell out of the chair onto the floor while in the performance of duty. She voluntarily retired from federal employment effective May 31, 2018.

In an April 23, 2018 report, Dr. Donna R. Coffman, a Board-certified emergency medicine physician, noted that appellant presented with reports of mild-to-moderate pain in the low back, buttocks, neck, left shoulder, right wrist, and bilateral knees. Appellant reported that she attempted to sit on a wheeled chair, the chair slipped back, and she hit the ground. Dr. Coffman diagnosed diffuse achiness status post fall. She indicated that appellant had a medical history of chronic low back pain, underwent a right knee replacement in January 2015 and a left knee replacement in January 2016, and had a service-connected injury when she fell from a chair two years prior.

In an April 24, 2018 report, Allyn H. Kratzer, a family nurse practitioner, diagnosed a soft tissue muscle strain due to a fall incident on April 23, 2018 while attempting to sit on a lab chair that had wheels, with no arm rests, when it went out from under her and she fell on her right buttocks.

Diagnostic testing results dated April 24, 2018 demonstrated previous surgical resection of the neck of the radius, arthritic change at the elbow joint, degenerative disc change at all levels of the cervical spine from the C3 through C7, mild arthritic change at the first carpometacarpal joint, and degenerative disc change at the multiple levels more pronounced at L4-5, suggestive of grade 1 spondylolisthesis of L4 over L5.

An April 25, 2018 computerized tomography of the head revealed postsurgical changes in the right anterior temporal lobe and no definite acute intracranial hemorrhage.

On April 25, 2018 Dr. Navin Choudhary, a Board-certified internist, noted that appellant had fallen two days prior from a chair at work and diagnosed paresthesias.

In an April 28, 2018 return to work statement, an unidentified healthcare provider released appellant to return to work on May 1, 2018 without restrictions.

On May 7, 2018 Dr. David Shaw, a Board-certified internist, diagnosed spondylosis of cervical region without myelopathy or radiculopathy, lumbar spondylosis, chronic midline low back pain with right-sided sciatica, and acute midline low back pain with left-sided sciatica.

In a patient status report dated May 7, 2018, Heidi Roeder, a certified physician assistant, diagnosed low back pain and released appellant to work with restrictions.

In a patient status form dated May 7, 2018, Dr. Lisa Cannada, a Board-certified orthopedic surgeon, diagnosed osteoarthritis of the right wrist, right elbow, and bilateral shoulders and released appellant to work without restrictions.

On May 11, 2018 Dr. Walter Lemann, a Board-certified neurologist and psychiatrist, diagnosed multiple complaints without obvious clinical correlates and severe claustrophobia. He indicated that appellant had fallen off of a rolling chair at work on April 23, 2018 and her symptoms "started on April 25, 2018" while at work.

Appellant also submitted physical therapy notes dated May 10 through June 14, 2018.

In a July 20, 2018 development letter, OWCP indicated that when appellant's claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work and, based on these criteria and because the employing establishment did not controvert continuation of pay or challenge the case, payment of a limited amount of medical expenses was administratively approved. It stated that it had reopened the claim for formal consideration of the merits because her medical bills had now exceeded $1,500.00. OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional medical evidence needed and afforded her 30 days to respond.

In a progress report dated June 18, 2018, Dr. Shaw continued to diagnose chronic midline low back pain with right-sided sciatica, acute midline low back pain with left-sided sciatica, and cervical spondylosis with radiculopathy.

On June 18, 2019 Ms. Roeder diagnosed acute chronic neck pain, cervical spondylosis with radiculopathy, chronic low back pain with right-sided sciatica, acute low back pain with left-sided sciatica, and lumbar spondylosis.

May 7, 2018 shoulder x-rays revealed moderate arthritis bilaterally.

Appellant submitted additional physical therapy notes dated from July 12 through 26, 2018.

By decision dated August 24, 2018, OWCP denied the claim finding that the evidence of record was insufficient to establish causal relationship between the diagnosed conditions and the accepted April 23, 2018 employment incident.

Appellant subsequently submitted additional evidence. A May 7, 2018 hospital record from Christine Nguyen, a certified physician assistant, noted that appellant presented with numerous complaints related to her April 23, 2018 fall at work. Appellant reported ongoing pain that was aggravated by raising her arms above shoulder level and with weight bearing. She was referred to physical therapy.

In an August 29, 2018 hospital record, which included results for a cervical spine magnetic resonance imaging (MRI) scan demonstrating multilevel degenerative disc disease changes creating varying degrees of central canal and neuroforaminal encroachment and an unremarkable MRI scan of the brain.

Appellant also submitted physical therapy notes dated from May 2 through June 20, 2019.

In a September 6, 2018 report, Dr. Pooria Salari, a Board-certified orthopedic surgeon, diagnosed cervical spondylosis with radiculopathy and lumbar spondylosis.

Appellant resubmitted the May 7 and June 18, 2018 reports of Ms. Roeder, countersigned by Dr. Salari on January 30, 2019.

In a report dated November 20, 2018, Dr. Adam R. Streit, an orthopedic surgeon, diagnosed bilateral cubital tunnel syndrome and mild bilateral carpal tunnel syndrome. He indicated that appellant reported that her small and ring finger numbness began after a fall at work on April 23, 2018 when a chair rolled out from underneath her and she fell backwards onto her elbows. Appellant denied any numbness/tingling symptoms in ring/small fingers prior to the fall, but did admit to prior numbness in fingers one to three and that she underwent bilateral carpal tunnel release surgery in 2004 and 2006, and had been doing well since that time.

On July 11, 2019 appellant, through counsel, requested reconsideration and resubmitted the first page of Dr. Streit's November 20, 2018 report and physical therapy notes dated May 2, 8, and 15, 2019.

By decision dated August 23, 2019, OWCP denied modification of its prior August 24, 2018 decision.

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,[3] 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.[4] 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.[5]

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first

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

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

[5] *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).

component is whether the employee actually experienced the employment incident that allegedly occurred.[6] The second component is whether the employment incident caused a personal injury.[7]

Rationalized medical opinion evidence is required to establish causal relationship. 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 incident.[8] Neither the mere fact that, a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[9]

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.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted April 23, 2018 employment incident.

In support of her claim, appellant submitted a November 20, 2018 report by Dr. Streit who diagnosed bilateral cubital tunnel syndrome and mild bilateral carpal tunnel syndrome. Dr. Streit noted that she had reported that her small and ring finger numbness began after a fall at work on April 23, 2018 when a chair rolled out from underneath her and she fell backwards, falling backwards onto her bilateral elbows. The Board has held that the mere recitation of a patient history does not suffice for purposes of establishing causal relationship between a diagnosed condition and the employment incident.[11] Without explaining physiologically how the accepted employment incident caused or contributed to the diagnosed conditions, the physician's reports are of limited probative value.[12] As this report merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how the accepted April 23, 2018 employment incident caused a diagnosed medical condition they are insufficient. Therefore, this report is insufficient to establish appellant's claim.

[6] *T.M.*, Docket No. 19-0380 (issued June 26, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

[9] *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

[10] *M.O.*, Docket No. 18-0229 (issued September 23, 2019); *J.F.*, Docket No. 19-0456 (issued July 12, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

[11] *N.S.*, Docket No. 19-0167 (issued June 21, 2019); *J.G.*, Docket No. 17-1382 (issued October 18, 2017).

[12] *M.N.*, Docket No. 19-0694 (issued September 3, 2019); *A.B.*, Docket No. 16-1163 (issued September 8, 2017).

Similarly, on April 25, 2018 Dr. Choudhary diagnosed paresthesias, noting that appellant had fallen two days prior from a chair at work. On May 11, 2018 Dr. Lemann diagnosed "multiple complaints" and severe claustrophobia and also noted that she had fallen off of a rolling chair at work on April 23, 2018. As previously noted, generalized statements that merely recite appellant's allegations are insufficient to establish causal relationship.[13] Further, entitlement to FECA benefits may not be based on surmise, conjecture, speculation, or on the employee's own belief of a causal relationship.[14] Accordingly, the opinions of Dr. Choudhary and Dr. Lemann are also insufficient to meet appellant's burden of proof.

Appellant was also treated by Drs. Shaw, Cannada, Salari, and Choudhary, and Ms. Roeder whose notes were later countersigned by Dr. Salari. These physicians provided firm diagnoses, however, failed to provide any opinion regarding causal relationship to the accepted April 23, 2018 employment injury. The Board has held that medical evidence that does not include an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[15] Therefore, these reports are insufficient to meet appellant's burden of proof.

In her April 23, 2018 report, Dr. Coffman diagnosed diffuse achiness status post fall and noted appellant's reports of mild-to-moderate pain in the low back, buttocks, neck, left shoulder, right wrist, and both knees. The Board has consistently held that a diagnosis of pain does not constitute the basis for payment of compensation, as pain is a symptom rather than a specific diagnosis.[16] The Board has also held that a medical report lacking a firm diagnosis and a rationalized medical opinion regarding causal relationship is of no probative value.[17] For this reason, the Board finds that Dr. Coffman's report is insufficient to meet appellant's burden of proof.

Appellant also submitted physical therapy notes and reports from a nurse practitioner. However, these reports do not constitute competent medical evidence because physical therapists and nurse practitioners are not considered "physician[s]" as defined under FECA.[18] Consequently,

[13] *Id*.

[14] *See W.C.*, Docket No. 18-0531 (issued November 1, 2018); *Sharon Yonak (Nicholas Yonak)*, 49 ECAB 250 (1997).

[15] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[16] *A.F.*, Docket No. 17-1374 (issued March 19, 2019); *Robert Broome*, 55 ECAB 339 (2004).

[17] *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

[18] *M.G.*, Docket No. 19-1199 (issued December 19, 2019); *L.T.*, Docket No. 19-0145 (issued June 3, 2019); *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *see 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); 5 U.S.C. § 8101(2) (this subsection 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). *See also M.O.*, *supra* note 10 (physical therapists are not considered physicians under FECA).

their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[19]

Finally, appellant submitted diagnostic testing results in support of her claim. The Board, however, has explained that diagnostic studies, standing alone, lack probative value as they do not address whether the accepted employment incident caused any of the diagnosed conditions.[20]

As the record lacks rationalized medical evidence establishing causal relationship between appellant's diagnosed conditions and the accepted April 23, 2018 employment injury, 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 a medical condition causally related to the accepted April 23, 2018 employment incident.

[19] *K.W.*, 59 ECAB 271, 279 (2007); *see also C.K.*, Docket No. 19-1549 (issued June 30, 2020).

[20] *D.H.*, Docket No. 19-1308 (issued January 7, 2020).

ORDER

IT IS HEREBY ORDERED THAT the August 23, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 4, 2020
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board