United States Department of Labor
Employees' Compensation Appeals Board

D.D., Appellant	)	
and	)	**Docket No. 20-0626**
	)	**Issued: September 14, 2020**
U.S. POSTAL SERVICE, POST OFFICE, Greensboro, NC, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 27, 2020 appellant filed a timely appeal from a January 22, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 diagnosed lumbar condition causally related to the accepted July 27, 2019 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following OWCP's January 22, 2020 decision, appellant submitted additional evidence on appeal. 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 July 29, 2019 appellant, then a 48-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 27, 2019 she injured her lower back when she stepped in a hole that was covered in grass as she was walking toward a customer's car while in the performance of duty. She explained that she stumbled forward and twisted her back injuring her lower back on the left side of her spine. Appellant stopped work on the date of the alleged injury.

In a development letter dated July 31, 2019, OWCP advised appellant that it required additional factual and medical evidence to establish her claim. It requested that she submit a narrative medical report from her physician, explaining how the reported employment incident caused or aggravated her medical condition. OWCP afforded appellant 30 days to respond.

Susan Carr, a nurse practitioner, reported on August 1, 2019 that she evaluated appellant for back pain and identified July 27, 2019 as the date of injury. She recounted that her injury was the result of an alleged employment incident in which she stepped in a hole. Ms. Carr also noted that appellant had a similar problem in the past on her right side. She referred to a diagnostic report of even date in which Dr. Michael Hill, a Board-certified radiologist, interpreted an x-ray of appellant's spine. Dr. Hill diagnosed moderate degenerative changes L5-S1, osteopenia and slight dextroscoliosis. Ms. Carr diagnosed a sprain of the ligaments of the lumbar spine and advised that appellant could return to work with restrictions.

On August 1, 2019 the employing establishment executed an authorization for examination and/or treatment (Form CA-16) at an urgent care facility. In the attending physician's report, Part B of the Form CA-16, Ms. Carr diagnosed a lumbar strain and identified the history of appellant's injury as the July 27, 2019 employment incident in which she stepped in a hole. She also noted that appellant had a history of back surgery.

In medical reports dated August 3 and 9, 2019, Laura Medlin, a physician assistant, noted appellant's history of low back pain which she indicated began on July 27, 2019. She noted a diagnosis of sprain of the ligaments of the lumbar spine.

Appellant also submitted duty status reports (Form CA-17) dated from August 1 to 23, 2019 in which Ms. Carr and Ms. Medlin diagnosed lumbar pain, a lumbar strain, and radiculopathy due to the alleged July 27, 2019 employment incident.

By decision dated September 9, 2019, OWCP denied appellant's traumatic injury claim, finding that, although appellant had established that the July 27, 2019 incident occurred, as alleged, the medical evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

OWCP continued to receive evidence. In an August 23, 2019 medical report, Ms. Medlin provided an update of appellant's condition relating to her diagnosed sprain of the ligaments of the lumbar spine.

An illegibly signed September 2, 2019 Form CA-17 provided a diagnosis of left lower back pain and joint pain and opined that appellant's injury was due to the July 27, 2019 employment incident.

Appellant also submitted multiple copies of medical evidence previously considered by OWCP.

On November 22, 2019 appellant requested reconsideration of OWCP's September 9, 2019 decision.

By decision dated January 22, 2020, OWCP denied modification of its September 9, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 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 first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that 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

[3] *Supra* note 1.

[4] *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *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] *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[8]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a diagnosed lumbar condition causally related to the accepted July 27, 2019 employment incident.

Appellant submitted medical evidence consisting of medical reports and Form CA-17s dated from August 1 to 23, 2019 signed by Ms. Carr, a nurse practitioner, and Ms. Medlin, a physician assistant. The Board has held that medical reports signed solely by a nurse practitioner or a physician assistant, however, are of no probative value, as nurse practitioners and physician assistants are not considered physicians as defined under FECA and are, therefore, not competent to provide a medical opinion.[9] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[10]

Appellant also submitted an August 1, 2019 diagnostic report with diagnoses-of-moderate degenerative changes L5-S1, osteopenia and slight dextroscoliosis. The Board has held that diagnostic tests, standing alone, lack probative value as they do not provide an opinion on causal relationship between her employment duties and the diagnosed conditions.[11] Accordingly, August 1, 2019 diagnostic report is insufficient to meet appellant's burden of proof.

The remaining medical evidence of record consists of an illegibly signed September 2, 2019 Form CA-17 diagnosing lower back pain and joint pain. The Board has consistently held that a report that is unsigned or bears an illegible signature lacks proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.[12]

As appellant has not submitted rationalized, probative medical evidence sufficient to establish a diagnosed medical condition causally related to her July 27, 2019 employment incident, the Board finds that she has not met her burden of proof.

---

[8] *D.M.*, Docket No. 20-0314 (issued June 30, 2020); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[9] 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); 20 C.F.R. § 10.5(t). *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); *T.L.*, Docket No. 19-1467 (issued July 24, 2020) (physician assistants are not considered physicians under FECA); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (nurse practitioners are not considered physicians under FECA).

[10] *See T.S.*, Docket No. 20-0343 (issued July 15, 2020); *K.W.*, 59 ECAB 271, 279 (2007).

[11] *See J.M.*, Docket No. 17-1688 (issued December 13, 2018).

[12] *K.C.*, Docket No. 18-1330 (issued March 11, 2019).

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.[13]

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a lumbar condition causally related to the accepted July 27, 2019 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the January 22, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 14, 2020
Washington, DC

Alec J. Koromilas, 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

[13] The Board notes that the case record contains a Form CA-16 dated November 5, 2018. A properly completed Form CA-16 form authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. 20 C.F.R. § 10.300(c); *M.O.*, Docket No. 19-1398 (issued August 13, 2020); *P.R.*, Docket No. 18-0737 (issued November 2, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).