United States Department of Labor
Employees' Compensation Appeals Board

S.B.-C., Appellant	)	
and	)	**Docket No. 20-1521**
	)	**Issued: August 6, 2021**
U.S. POSTAL SERVICE, POST OFFICE, Fort Wayne, IN, Employer	)	

Appearances:
Joseph E. Allman, 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
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On August 17, 2020 appellant, through counsel, filed a timely appeal from a February 20, 2020 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 low back condition causally related to the accepted May 14, 2016 employment incident.

FACTUAL HISTORY

On March 14, 2018 appellant, then a 50-year-old rural letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 14, 2016 she sustained low back pain/strain while lifting a heavy package for a customer delivery while in the performance of duty. On the reverse side of the claim form appellant's supervisor, E.D., noted that it was "undetermined" if the injury occurred in the performance of duty. Appellant stopped work on May 20, 2016.

Appellant was treated by Brian Laursen, a physician assistant, on May 20, 2016, who diagnosed sprain and strain of lumbosacral joint/ligament, initial encounter. Mr. Laursen held appellant off work from May 20 through 24, 2016 and released appellant to return to work without restrictions on May 25, 2016.

In a work restriction worksheet dated May 24, 2016, Dr. Kevin Rahn, a Board-certified orthopedist, advised that appellant should remain off work until her next office visit. On June 20, 2016 he reviewed x-rays of the lumbar spine, which revealed retrolisthesis at L3-4, decreased disc space at L3-4, and a prior fusion, which appeared to be solid at L4-S1. On July 15, 2016 Dr. Rahn performed a fusion of the lumbar spine and diagnosed stenosis at L3-4, status post fusion at L4-S1 with the addition of a large foraminal disc herniation at L3-4 on the left. He noted severe stenosis at L3-4 with foraminal disc herniation at L3-4, which was not visualized well on the magnetic resonance imaging (MRI) scan. Dr. Rahn indicated that L3-4 was compressing and crushing the L3 nerve root, which was probably the etiology of appellant's L3 nerve root pain.

On September 9, 2016 appellant underwent a Doppler ultrasound, which revealed no indication of deep venous thrombosis.

Dr. Rahn treated appellant in a follow-up visit on November 29, 2016 four months status post decompression and instrumented fusion of the lumbar spine. He noted that the x-rays of the lumbar spine revealed good fixation, instrumentation, and fusion. Dr. Rahn found appellant totally disabled from work. On March 9, 2017 he examined appellant eight months status post instrumented and fusion of the lumbar spine. Dr. Rahn reported that appellant was improving, but she was still in a fair amount of pain and would remain off work. Appellant was again seen by Dr. Rahn on October 17, 2017, where he reported no change in her examination. He indicated that appellant was stable and continued permanent restrictions.

In restriction worksheets dated January 31 and March 30, 2018, Dr. Rahn noted chronic back pain, hip numbness, and left knee numbness. He noted permanent restrictions of occasional bending, twisting, or stretching, no lifting over five pounds, and alternating between sitting and standing as tolerated. Dr. Rahn advised that appellant could not return to work. In an April 4, 2018 attending physician's report (Form CA-20), he related that appellant was injured at work on May 14, 2016, when picking up a package. Dr. Rahn noted her history was significant for a June 20, 2008 lumbar fusion at L4-S1. He diagnosed lumbar radicular pain and lumbar stenosis

and checked a box marked "Yes" indicating that appellant's condition had been caused or aggravated by an employment activity.

In a March 19, 2018 development letter, 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.

The employing establishment submitted a statement from T.C., a supervisor, dated April 5, 2018, T.H., a manager, undated, and A.C., a field sales representative, dated April 12, 2018; who each indicated that appellant did not report an accident or injury at work during their tenure. K.H., the postmaster provided appellant a reasonable accommodation request form.

By decision dated April 24, 2018, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a causal relationship between a diagnosed medical condition and the accepted May 14, 2016 employment incident.

OWCP received a November 23, 2016 letter from K.H. who requested updated medical documentation from appellant in support of her continuing absence from work. In a letter dated January 25, 2018, K.H. indicated that appellant's last day in pay status was September 3, 2016 and requested a status of her return to work.

On May 15, 2018 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on October 2, 2018.

By decision dated November 14, 2018, OWCP's hearing representative affirmed the April 24, 2018 decision.

OWCP subsequently received a January 7, 2019 letter from the Office of Personnel Management (OPM), which granted appellant disability retirement due to lumbar stenosis with radiculopathy.

On January 19, 2019 Dr. Rahn noted reviewing appellant's medical chart as well as OWCP's decision denying her claim. He reiterated that appellant did not have any issues develop after her fusion at L4-S1 in 2008 and continued to work prior to the May 14, 2016 work injury. Dr. Rahn indicated that, although he did not know the weight of the box lifted, often times it was not the size or the weight, but a combination of size, weight, and position of the spine when lifting or moving a large box that can cause an injury. He advised that appellant had a fusion at L4-S1, which would cause a 15 to 20 percent increased risk of degeneration on the adjacent levels including at L3-4. Dr. Rahn noted likely stenosis and degeneration with time, with or without a fusion. During the surgery on July 15, 2016, he reported a large foraminal disc herniation, which was not well documented on the MRI scan prior to surgery. Dr. Rahn advised that this was an acute injury and not typically found on a chronic basis and "more often than not" occurred at some point three to six months prior to the July 15, 2016 surgery. He noted findings of spinal stenosis for all people as they age, but indicated that appellant's history was significant for prior surgery at L4-S1. Dr. Rahn opined that the adjacent level degeneration was quite sudden and noted intraoperatively as a cause of her leg pain and radicular symptoms. He opined that "more often than not" the surgery was the result of a recent injury three to six months prior based on the

foraminal disc herniation. Dr. Rahn stated that, assuming appellant had not sought care prior to this injury for her low back pain, he would more often than not opine that this was the result of her injury on May 14, 2016.

On March 11, 2019 appellant, through counsel, requested reconsideration.

By decision dated February 20, 2020, OWCP denied modification of the November 14, 2018 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 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 fact of injury has been established. 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 sufficient evidence to establish that the employment incident caused a personal injury.[7]

The medical evidence required to establish causal relationship is rationalized medical opinion evidence.[8] 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

[3] *Supra* note 2.

[4] *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).

[5] *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).

[6] *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).

[7] *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *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).

by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment incident identified by the employee.[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 low back condition causally related to the accepted May 14, 2016 employment incident.

In support of her claim, appellant submitted a January 19, 2019 report from Dr. Rahn who reiterated that appellant was asymptomatic after her fusion at L4-S1 in 2008 and continued to work prior to the May 14, 2016 work injury. Dr. Rahn advised that the large foraminal disc herniation found on July 15, 2016 was an acute injury and not typically found on a chronic basis and "more often than not" occurred at some point three to six months prior to the July 15, 2016 surgery. He opined that "more often than not" the surgery was the result of a recent injury. The Board has held that medical opinions that suggest that a condition was likely or more often than not caused by work activities are speculative or equivocal in character and have limited probative value.[11] As such, this report by Dr. Rahn does not offer a rationalized medical opinion explaining causal relationship and is insufficient to establish appellant's claim.

In a series of reports dated June 20, 2016 through October 17, 2017, Dr. Rahn diagnosed stenosis at L3-4 and status post fusion at L4-S1 with the addition of a large foraminal disc herniation at L3-4 on the left. He noted that appellant was improving status post-surgery and x-rays of the lumbar spine revealed good fixation, instrumentation, and fusion. Dr. Rahn found appellant totally disabled from work. He did not, however, offer an opinion regarding the cause of appellant's conditions in these reports. In work restriction worksheets dated May 24, 2016 through March 30, 2018, Dr. Rahn noted chronic back pain, hip numbness, and left knee numbness and advised that appellant could not return to work. 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.[12] As such, this evidence is insufficient to meet appellant's burden of proof.

In a Form CA-20 attending physician's report dated April 4, 2018, Dr. Rahn related that appellant was injured at work on May 14, 2016, when picking up a package. He diagnosed lumbar

[9] *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).

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

[11] *J.W.*, Docket No. 18-0678 (issued March 3, 2020).

[12] *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

radicular pain and lumbar stenosis and checked a box marked "Yes," indicating that appellant's condition had been caused or aggravated by an employment activity. However, the Board has held that an opinion on causal relationship with an affirmative check mark, without more by way of medical rationale, is insufficient to establish the claim.[13] As such, these reports are insufficient to establish appellant's claim.

Appellant submitted a physician assistant report dated May 20, 2016. Certain healthcare providers, such as physician assistants,[14] are not considered "physician[s]" as defined under FECA.[15] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[16]

Appellant also submitted a September 9, 2016 Doppler ultrasound. The Board has held, however, that diagnostic test reports, standing alone, lack probative value as they do not provide an opinion on causal relationship between an employment incident and a diagnosed condition.[17]

As the medical evidence of record does not include a rationalized opinion establishing causal relationship between appellant's claimed conditions and the accepted May 14, 2016 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 a low back condition causally related to the accepted May 14, 2016 employment incident.

[13] *See C.S.*, Docket No. 18-1633 (issued December 30, 2019); *D.S.*, Docket No. 17-1566 (issued December 31, 2018).

[14] *C.P.*, Docket No. 19-1716 (issued March 11, 2020) (a physician assistant is not a physician as defined under FECA).

[15] 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, Par 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).

[16] *Id.*

[17] *L.F.*, Docket No. 19-1905 (issued April 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

ORDER

IT IS HEREBY ORDERED THAT the February 20, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 6, 2021
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