United States Department of Labor
Employees' Compensation Appeals Board

J.D., Appellant	)	
and	)	**Docket No. 19-1953**
	)	**Issued: January 11, 2021**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Corona, NY, 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 20, 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.[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 September 19, 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 that the acceptance of her claim should be expanded to include the additional condition of lumbar endplate fracture (L1) as causally related to her accepted March 9, 2018 employment injury.

FACTUAL HISTORY

On March 12, 2018 appellant, then a 65-year-old internal revenue agent, filed a traumatic injury claim (Form CA-1) alleging that she sustained an injury on March 9, 2018 due to a fall that occurred while in the performance of duty. She stopped working on the date of injury and then returned to work on March 12, 2018.

In a March 12, 2018 narrative statement, appellant indicated that on March 9, 2018 she fell while attending a scheduled field appointment after her right-hand slipped while pushing on a door and she fell backward onto her buttocks. She noted that she immediately felt dizzy and had an extremely sharp pain.

A March 9, 2018 emergency department report confirmed that appellant had been seen on that day. Appellant was released without restrictions effective March 12, 2018.

In a March 14, 2018 disability certificate, Dr. Helena M. Tsourounakis, a chiropractor, opined that appellant was totally disabled from work for the period March 14 to 28, 2018 due to her work-related injury.

In a March 19, 2018 development letter, OWCP advised appellant of the factual and medical deficiencies in her claim. It informed her of the type of evidence necessary to establish her claim and provided a questionnaire for her completion regarding the facts and circumstances of the injury. OWCP afforded appellant 30 days to respond. It also requested information from the employing establishment.

Appellant subsequently submitted a report dated March 14, 2018 from Dr. Emanuel N. Tsourounakis, a chiropractor, who diagnosed segmental and somatic dysfunction (vertebral) of lumbar region, lumbosacral radiculopathy, and muscle spasm of the back. Dr. Tsourounakis reported that appellant's pain had started on March 9, 2018 when she went to open the door and her hand slipped off the handle and she landed on her buttock. He indicated that appellant had been wearing a back brace since the accident and had not been able to work since the fall due to severe pain.

In a March 26, 2018 disability certificate, Dr. Emanuel Tsourounakis opined that appellant was partially disabled due to her work-related injury and released her back to light-duty work with restrictions of sitting or standing no longer than 20 minutes and lifting or carrying no more than 8 to 10 pounds.

In two attending physician's reports (Form CA-20), one undated and one dated March 17, 2018, Dr. Emanuel Tsourounakis checked a box marked "Yes" indicating his opinion that

appellant's back condition was caused or aggravated by an employment activity as she fell at work, while attempting to open door, causing her back pain.[4]

In an attending physician's report (Form CA-20) dated April 20, 2018, Dr. Emanuel Tsourounakis diagnosed lumbar segmental dysfunction and lumbosacral radiculopathy due to appellant falling on her buttocks while leaving work.[5] He checked a box marked "Yes" indicating his opinion that appellant's back condition was caused or aggravated by an employment activity.

By decision dated April 24, 2018, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish a valid medical diagnosis from a qualified physician in connection with her March 9, 2018 employment injury. It concluded, therefore, that she had failed to establish the medical component of fact of injury.

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

Appellant subsequently submitted diagnostic testing results dated April 13, 2018 which consisted of sonographic imaging of the cervical spine, bilateral trapezius, lumbar spine, and bilateral sacroiliac joints revealed evidence of articular and/or soft tissue inflammatory changes.

In attending physician's reports (Form CA-20) dated April 13, May 5, and June 8 and 22, 2018, Dr. Emanuel Tsourounakis continued to diagnose lumbar segmental dysfunction and lumbosacral radiculopathy. He continued to indicate that appellant was disabled from work.

A magnetic resonance imaging (MRI) scan of the lumbar spine dated August 13, 2018 revealed an inferiority directed Schmorl's node at the L1 superior endplate associated with an endplate fracture and loss of L1 vertebral body height. The report noted a possible correlation for history of recent trauma.

In an August 10, 2018 report, Dr. Peter G. Passias, a Board-certified orthopedic surgeon, diagnosed lower back pain and left lower extremity pain due to a March 9, 2018 injury when she fell at work.

A telephonic hearing was held before an OWCP hearing representative of the Branch of Hearings and Review on September 19, 2018. Appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence.

Following the hearing appellant submitted a September 24, 2018 progress report from Dr. Passias who reported that appellant's back pain was improving and that she used a back brace at times. He released appellant to work on June 11, 2018 and indicated that she would be using a special ergonomic chair and a sit-to-stand desk.

[4] On March 16, 2018 Dr. Emanuel Tsourounakis signed a medical necessity form for functional evaluation testing and functional assessment for appellant.

[5] In an April 19, 2018 disability certificate, Dr. Emanuel Tsourounakis opined that appellant was totally disabled from April 19 to May 3, 2018 due to her work-related low back injury. In a May 8, 2018 disability certificate, Dr. Helena Tsourounakis released appellant to return to work without restrictions effective June 11, 2018.

By decision dated October 26, 2018, OWCP's hearing representative affirmed the April 24, 2018 decision, finding that the record remained insufficient to establish a valid medical diagnosis from a qualified physician in connection with the accepted March 9, 2018 employment injury.

On November 16, 2018 appellant, through counsel, requested reconsideration and submitted two reports dated October 12, 2018 from Dr. Ajay N. Kiri, a family practitioner, who indicated that appellant was injured at work on March 9, 2018 while opening a door to a building. Dr. Kiri indicated that when she fell forward, she injured her lower back with derangement/sprain of ligaments of lumbar spine and a fracture to the endplate at the L1 vertebral level. He opined that the injury to her back was causally related to her federal employment.

Appellant further submitted a functional capacity evaluation report dated March 16, 2018 from Dr. Emanuel Tsourounakis in support of her claim.

By decision dated February 12, 2019, OWCP denied appellant claim, as modified, finding that she had submitted a medical diagnosis in connection with her injury, but failed to establish causal relationship between her diagnosed conditions and the accepted March 9, 2018 employment incident.

On May 29, 2019 appellant, through counsel, requested reconsideration and submitted a February 22, 2019 report from Dr. Kiri who clarified that appellant had not fallen forward, but backwards and suffered complex injuries and a fracture to her lower back area.

By decision dated August 20, 2019, OWCP accepted the claim for derangement/sprain of ligaments of lumbar spine. However, by separate August 20, 2019 decision, it denied the claim for the additional condition of lumbar endplate fracture at L1 finding that the medical evidence submitted was insufficient to establish that the diagnosed condition was causally related to the accepted March 9, 2018 employment injury.

LEGAL PRECEDENT

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the accepted employment injury.[6]

To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence.[7] 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.[8]

[6] *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[7] *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

[8] *V.S.*, Docket No. 19-1370 (issued November 30, 2020); *Victor J. Woodhams*, 41 ECAB 345 (1989).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that the acceptance of her claim should be expanded to include the additional condition of lumbar endplate fracture (L1) as causally related to her accepted March 9, 2018 employment injury.

Appellant submitted various medical reports by Dr. Kiri who indicated that she was injured at work on March 9, 2018 while opening a door to a building. Dr. Kiri opined that when she fell backwards, she suffered complex injuries, including a derangement/sprain of ligaments of lumbar spine and a fracture to the endplate and the lumbar 1 vertebral level. Although he described appellant's fall on March 9, 2018 and provided an affirmative opinion on causal relationship, Dr. Kiri did not explain the pathophysiological process of how falling backwards caused or contributed to her lumbar L1 endplate fracture, nor did he explain why the fracture was not noted on initial diagnostic reports prior to the August 13, 2018 MRI scan report.[9] The Board has held that a medical opinion should reflect a correct history and offer a medically sound and rationalized explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions.[10] Therefore, the Board finds that Dr. Kiri's reports are insufficient to establish appellant's burden of proof.

In an August 10, 2018 report, Dr. Passias diagnosed lower back pain and left lower extremity pain due to a March 9, 2018 injury when she fell at work. While Dr. Passias provided a history of the accepted March 9, 2018 employment incident, he failed to provide a firm diagnosis or address causation. Lacking a firm diagnosis and rationalized medical opinion regarding causal relationship, this report is of no probative value and is therefore insufficient to establish the claim.[11] His report is therefore insufficient to establish appellant's claim.

The Board further finds that none of the chiropractic reports from Drs. Helena and Emanuel Tsourounakis constitute probative medical evidence, because a chiropractor is only considered a physician for purposes of FECA if he or she diagnoses subluxation based upon x-ray evidence.[12] As appellant's chiropractors did not diagnose a spinal subluxation based upon x-ray evidence, they are not considered physicians as defined under FECA and their reports do not constitute competent medical evidence.[13]

[9] *J.C.*, Docket No. 18-1474 (issued March 20, 2019); *M.M.*, Docket No. 15-0607 (issued May 15, 2015); *M.W.*, Docket No. 14-1664 (issued December 5, 2014).

[10] *See J.M.*, Docket No. 17-1002 (issued August 22, 2017).

[11] *P.C.*, Docket No. 18-0167 (issued May 7, 2019).

[12] Section 8101(2) of FECA provides that the term physician include chiropractors only if the treatment consists of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. 5 U.S.C. § 8101(2). *See T.T.*, Docket No. 18-0838 (issued September 19, 2019); *Thomas W. Stevens*, 50 ECAB 288 (1999); *George E. Williams*, 44 ECAB 530 (1993).

[13] *C.S.*, Docket No. 19-1279 (issued December 30, 2019).

Appellant also submitted a lumbar MRI scan dated August 13, 2018. The Board has long held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether an employment incident caused the diagnosed condition.[14]

As noted above, the medical evidence required to establish causal relationship between a claimed specific condition and an employment injury is rationalized medical opinion evidence.[15] The Board finds that in this case appellant has not submitted sufficient rationalized medical evidence to establish causal relationship between her March 9, 2018 fall at work and her lumbar L1 endplate fracture.

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 that the acceptance of her claim should be expanded to include the additional condition of lumbar endplate fracture (L1) as causally related to her accepted March 9, 2018 employment injury.

[14] *J.P.*, Docket No. 19-0216 (issued December 13, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

[15] *J.C.*, *supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the August 20, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 11, 2021
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