United States Department of Labor
Employees' Compensation Appeals Board

C.D., Appellant	)	
and	)	**Docket No. 20-0762**
	)	**Issued: January 13, 2021**
U.S. POSTAL SERVICE, POST OFFICE, Harrisburg, PA, 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
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On February 20, 2020 appellant filed a timely appeal from a January 27, 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 lower back condition causally related to the accepted December 11, 2019 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that following the January 27, 2020 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 evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On December 11, 2019 appellant, then a 24-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her lower back when she picked up a tub of spurs from the floor while in the performance of duty. On the reverse side of the claim form, appellant's supervisor noted that appellant had a preexisting back condition. Appellant stopped work on December 11, 2019 and returned to work on December 13, 2019.

A December 11, 2019 report by Brooke Horrigan, a physician assistant, noted that appellant presented with a workers' compensation back injury. Ms. Horrigan diagnosed lumbar pain and stated that appellant could return to light-duty work with restrictions.

In a December 13, 2019 report, Dr. Adedayo Ashana, a Board-certified orthopedic surgeon, related that appellant complained of left-sided low back pain that started two days prior when she bent over to pick something up and felt pain and numbness. Appellant's pain increased upon flexion, extension, reaching, laying supine, weight bearing, walking, and changing positions and was alleviated by laying prone, sitting, and standing. Dr. Ashana related that appellant had a preexisting L5-S1 central disc bulge and low back pain with associated radicular symptoms. Appellant's physical examination revealed a slightly antalgic gait and tenderness upon palpation of the left superior iliac spine. Dr. Ashana noted that December 13, 2019 x-rays of appellant's lumbar spine displayed no evidence of fracture or dislocation or any change in comparison to appellant's August 26, 2019 lumbar spine x-rays. He diagnosed low back pain and stated that he believed appellant simply had a contusion. Dr. Ashana indicated that she could return to work with restrictions.[3]

In a December 19, 2019 development letter, OWCP informed appellant that additional evidence was required to establish her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and attached a questionnaire for her completion. OWCP afforded appellant 30 days to submit the requested evidence.

OWCP subsequently received a September 5, 2019 lumbar spine magnetic resonance imaging (MRI) scan interpreted by Dr. Kasim Ali, a Board-certified radiologist, which revealed a central disc protrusion which impressed on the ventral thecal sac.

A December 16, 2019 e-mail from a coworker indicated that, on multiple occasions prior to the alleged incident, appellant had related that she had problems with her back.

In a January 7, 2020 letter, the employing establishment asserted that appellant did not immediately report her alleged injury and continued to case mail. It contended that she has a preexisting back condition and argued that appellant's medical documentation was insufficient to establish a diagnosed medical condition and casual relationship.

A January 14, 2020 medical report by Dr. Michael Furman, Board-certified in physical medicine and rehabilitation, noted that appellant presented with new symptoms of right lower extremity numbness, tingling, and weakness. Dr. Furman related that on December 11, 2019 appellant was injured at work when she lifted a tub of spurs and felt shooting and aching pain in

[3] On December 13, 2019 appellant accepted a limited-duty modified job offer.

her lower back. He stated that recently appellant developed pain radiating into her lower limbs, posterior thighs, and calves that stopped at her ankle on her left side and at the dorsum of her foot on her right side. Appellant's pain was exacerbated with flexion, extension, reaching, weight-bearing, standing, walking and driving and alleviated by laying prone. A physical examination revealed tenderness in the lumbosacral spine and the bilateral posterior iliac spine, minimal pain with extension and rotation, and positive slump for neural tension signs in the right lower limbs. Dr. Furman indicated that on October 3, 2019 appellant received an injection in her lower back and stated that appellant's September 5, 2019 MRI scan of her lumbar spine revealed degenerative disc disease of the L5-S1 disc with desiccation and protrusion and narrowing of the bilateral L5-S1 neural foramen, August 26, 2019 lumbar spine x-rays revealed scoliosis with minimal spondylosis and narrowing of the L5-S1 foramen, and December 11, 2019 lumbar spine x-rays revealed slight scoliosis and narrowing of the L5-S1 foramen. He diagnosed lumbar radiculopathy and opined that appellant could continue working full-time with restrictions of sedentary work.

OWCP also received physical therapy notes.

By decision dated January 27, 2020, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish causal relationship between her diagnosed back condition and her accepted December 11, 2019 employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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,[5] 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.[6] 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.[7]

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. There are two components involved in establishing 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. The second component is whether the employment incident caused a personal injury and this component can be established only by medical evidence.[8]

[4] *Supra* note 1.

[5] *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).

[6] *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).

[7] *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).

[8] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[9] A physician's opinion on whether there is causal relationship between the diagnosed condition and the accepted employment incident must be based on a complete factual and medical background. Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the specific employment incident.[10]

In any 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.[11]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a lower back condition causally related to the accepted December 11, 2019 employment incident.

Dr. Ashana's December 13, 2019 medical report indicated that appellant complained of left-sided low back pain that started two days prior when she bent over to pick something up and felt pain and numbness. He related that appellant had a preexisting L5-S1 central disc bulge and low back pain with associated radicular symptoms. Dr. Ashana diagnosed low back pain and stated that he believed appellant simply had a contusion. As noted above, where a preexisting condition exists involving the same body part, the medical evidence must differentiate the work-related injury and preexisting condition.[12] As Dr. Ashana did not specifically differentiate between appellant's preexisting condition and the effects of the accepted December 11, 2019 employment incident, his report is insufficient to establish causal relationship.[13]

Dr. Furman's January 14, 2020 medical report indicated that appellant presented with new symptoms of right lower extremity numbness, tingling, and weakness. He related that on December 11, 2019 appellant was injured at work when she lifted a tub of spurs and felt shooting and aching pain in her lower back. Dr. Furman indicated that appellant's September 5, 2019 MRI scan of her lumbar spine revealed degenerative disc disease of the L5-S1 disc with desiccation and protrusion and narrowing of the bilateral L5-S1 neural foramen, her August 26, 2019 lumbar spine x-rays revealed scoliosis with minimal spondylosis and narrowing of the L5-S1 foramen, and her December 11, 2019 lumbar spine x-rays revealed slight scoliosis and narrowing of the L5-S1 foramen, and additionally diagnosed lumbar radiculopathy. His opinion was conclusory in nature. The Board has held that a medical opinion is of limited probative value if it is conclusory in

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

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

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *See R.D.*, Docket No. 18-1551 (issued March 1, 2019).

[12] *Id*.

[13] *See M.C.*, Docket No. 20-0125 (issued July 15, 2020).

nature.[14] A medical opinion must explain how the implicated employment factors physiologically caused, contributed to, or aggravated the specific diagnosed conditions.[15] As Dr. Furman did not differentiate between appellant's preexisting condition and the effects of the accepted December 11, 2019 employment incident, and did not explain how physiologically the accepted employment incident caused appellant's low back conditions, his report is insufficient to establish causal relationship.[16]

A December 11, 2019 medical report by Ms. Horrigan, a physician assistant, indicated that appellant presented with a workers' compensation back injury and diagnosed lumbar pain. The Board has held, however, that certain healthcare providers such as physician assistants are not considered physician[s] as defined under FECA.[17] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[18] Thus, this evidence is of no probative value and is insufficient to establish appellant's claim.

Appellant also submitted physical therapy notes. The Board has held that reports signed solely by a physical therapist are of no probative value as physical therapists are not considered physicians as defined under FECA.[19] These notes are therefore insufficient to establish appellant's claim.

Appellant additionally submitted a September 5, 2019 lumbar spine MRI scan. The Board has held, however, that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion on causal relationship between an employment incident and a diagnosed condition.[20]

As appellant has not submitted sufficient medical evidence to establish a back condition causally related to the accepted December 11, 2019 employment injury, the Board finds that she has not met her burden of proof to establish her claim.

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.

[14] *C.M.*, Docket No. 19-0360 (issued February 25, 2020).

[15] *Id.*; *see also K.G.*, Docket No. 20-0625 (issued November 6, 2020).

[16] *Supra* note 12.

[17] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[18] 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 supra* note 10 at 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); *R.K.*, Docket No. 20-0049 (issued April 10, 2020) (a physician assistant is not considered a physician as defined under FECA).

[19] *Id.*

[20] *M.M.*, Docket No. 20-0019 (issued May 6, 2020).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a back condition causally related to the accepted December 11, 2019 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the January 27, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 13, 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