United States Department of Labor
Employees' Compensation Appeals Board

A.B., Appellant	)	
	)	
and	)	**Docket No. 20-1017**
	)	**Issued: June 11, 2021**
U.S. POSTAL SERVICE, AUGUSTA POST OFFICE, Augusta, ME, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 12, 2020 appellant filed a timely appeal from a December 19, 2019 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 medical condition causally related to the accepted October 10, 2019 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the December 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*.

FACTUAL HISTORY

On October 16, 2019 appellant, then a 32-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on October 10, 2019 she sustained a lower back injury as a result of picking up a heavy parcel from within a container while in the performance of duty. She stopped work on that date and accepted a modified clerk job offer effective November 1, 2019.

In a work excuse note dated October 10, 2019, Dr. Laura Caron, a family medicine specialist, stated that appellant would be off work on that date and October 11, 2019 due to injury. She recommended that appellant return to work on October 14, 2019.

In a work excuse note dated October 15, 2019, Dr. Caron stated that appellant would be off work until October 30, 2019 for an acute injury.

By letter dated October 18, 2019, the employing establishment challenged appellant's claim on the basis that no medical diagnosis had been provided.

In a report dated October 10, 2019, Dr. Caron indicated that she examined appellant for complaints of stomach pain. Appellant told Dr. Caron that she had developed abdominal pain while leaning forward and lifting something heavy at work "two days" prior. She stopped lifting and stood when she developed a sharp shooting pain in the left lower quadrant. Appellant sat for 10 to 15 minutes, then was able to continue moving boxes, though she experienced pain with any bending at the waist and lifting anything heavier than paper. On physical examination Dr. Caron observed a normal back posture with mild hypertonicity of the left lower lumbar spine around L4 with a trigger point, as well as tenderness lateral to the umbilicus, worse on activation of the abdominal wall. She diagnosed as related to this encounter morbid obesity and abdominal wall pain. Under the heading "Plan," Dr. Caron provided an additional diagnosis of abdominal wall muscle sprain. In a follow-up report dated October 15, 2019, she examined appellant for complaints of back pain. Dr. Caron noted that appellant experienced worsening back pain after an injury at work on October 10, 2019. Appellant advised Dr. Caron that when she returned to work after having been off for three days, she experienced a return of the pain at work the night of October 14, 2019, after feeling a "pop." She finished her shift, but could hardly walk afterward. On physical examination Dr. Caron observed hypertonicity and mild tenderness of the right lumbar spine, marked hypertonicity and hypersensitivity of the left lumbar spine, decreased rotation to the right, full, but painful hip flexion, and reduced knee extension and flexion secondary to pain. She diagnosed muscle spasm and lumbago. Under the heading "Plan," Dr. Caron diagnosed mechanical low back pain.

In a form report dated October 15, 2019, Dr. Caron diagnosed low back pain and cramp and spasm related to an injury on October 10, 2019. She checked a box, indicating that the problem was work related and checked a box recommending no return to work.

In a duty status report (Form CA-17) dated October 30, 2019, Dr. Caron diagnosed muscle "spasm (L) back" and stated that appellnt could return to work with restrictions on October 30, 2019.

In a development letter dated November 9, 2019, OWCP informed appellant that additional medical evidence was needed to establish her claim. It advised her of the type of factual and medical evidence needed. OWCP afforded appellant 30 days to submit the necessary evidence.

In a follow-up report dated October 30, 2019, Dr. Caron evaluated appellant for back pain related to a workplace injury and potential return to work. Appellant noted that her pain was not as severe, but still consistent, and she had not lifted anything more than a gallon of milk. On physical examination Dr. Caron observed increased lumbar lordosis, minimal tenderness of the right side, hypertonicity of the left lumbar spine into the left gluteus, almost full rotation to the left with discomfort, full rotation to the right passively, and inability to actively rotate to the right due to pain. She diagnosed lumbago, muscle spasm, morbid obesity, and other sleep disorders. Under the heading "Plan," Dr. Caron noted that appellant's lumbago had improved by 50 percent. She recommended appellant return to work at light duty with restrictions.

By decision dated December 19, 2019, OWCP denied appellant's traumatic injury claim, finding that she had not submitted medical evidence containing a medical diagnosis in connection with her accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

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]

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred.[7] The second component is whether the

[3] *Supra* note 1.

[4] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *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] *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).

[7] *Id.*; *Elaine Pendleton*, 40 ECAB 1143 (1989).

employment incident caused a personal injury and generally can be established only by medical evidence.[8]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[9] 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 incident identified by the claimant.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted October 10, 2019 employment incident.

Dr. Caron, in her October 10, 2019 medical report, indicated that appellant had developed abdominal pain while leaning forward and lifting something heavy at work two days prior. Under the heading "Plan," she provided a diagnosis of abdominal wall muscle sprain. While abdominal wall muscle sprain is an acceptable diagnosis under FECA, it appears that, based on the history of injury provided by appellant, Dr. Caron's diagnosis was related to a separate work incident "two days" prior to the accepted employment incident of October 10, 2019 as related to this diagnosed condition.[11] As such, the diagnosis contained in her October 10, 2019 report, appearing to be related to a separate incident two days prior to the accepted employment incident of October 10, 2019, is insufficient to establish a diagnosis in connection with the accepted employment incident.

In her October 10 15, and 30, 2019 reports, Dr. Caron provided assessments of abdominal wall pain, mechanical low back pain, low back pain, and lumbago. Under FECA, the assessment of pain is not considered a diagnosis, as pain merely refers to a symptom of an underlying condition.[12] Dr. Caron also provided assessments of muscle spasm, cramp and spasm, muscle spasm of the left back, and muscle spasm. Similarly, to the assessment of pain, cramp, and spasm are symptoms and not specific medical diagnoses.[13] Therefore, these reports and forms, lacking firm diagnoses of any condition in connection with the accepted employment incident of October 10, 2019, are insufficient to establish appellant's claim.

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[8] *K.L.*, Docket No. 18-1029 (issued January 9, 2019). *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

[9] *M.S.*, Docket No. 19-1096 (issued November 12, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[10] *R.S.*, Docket No. 19-1484 (issued January 13, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

[11] *See J.D.*, Docket No. 16-0887 (issued November 4, 2016; *M.E.*, Docket No. 14-399 (issued June 20, 2014); *C.G.*, Docket No. 11-1602 (issued March 23, 2012).

[12] The Board has consistently held that pain is a symptom, not a compensable medical diagnosis. *See T.W.*, Docket No. 20-0767 (issued January 13, 2021); *M.V.*, Docket No. 18-0884 (regarding lumbago) (issued December 28, 2018); *P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[13] *See K.C.*, Docket No. 20-0683 (issued September 23, 2020); *M.H.*, Docket No. 18-0873 (issued December 18, 2019); *J.S.*, Docket No. 19-0863 (issued November 4, 2019); *V.B.*, Docket No. 19-0643 (issued September 6, 2019).

The Board finds that appellant has not submitted rationalized, probative medical evidence sufficient to establish a diagnosed medical condition in connection with her October 10, 2019 employment incident.[14] Appellant, therefore, 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 diagnosed medical condition causally related to the accepted October 10, 2019 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the December 19, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 11, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

[14] *See T.J.*, Docket No. 18-1500 (issued May 1, 2019); *see D.S.*, Docket No. 18-0061 (issued May 29, 2018).