United States Department of Labor
Employees' Compensation Appeals Board

S.L., Appellant	)	
and	)	**Docket No. 21-0128**
	)	**Issued: June 4, 2021**
U.S. POSTAL SERVICE, GREENSBORO PROCESSING & DISTRIBUTION CENTER, Greensboro, NC, 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 November 2, 2020 appellant filed a timely appeal from a June 22, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees'

[1] Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of her oral argument request, appellant asserted that oral argument should be granted because she sustained an injury from the accepted November 15, 2019 employment incident, which placed her on light-duty work to the present day. The Board, in exercising its discretion, denies appellant's request for oral argument because this matter requires an evaluation of the medical evidence presented. As such, the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

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]

ISSUE

The issue is whether appellant has met her burden of proof to establish a diagnosed medical condition causally related to the accepted November 15, 2019 employment incident.

FACTUAL HISTORY

On November 21, 2019 appellant, then a 26-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on November 15, 2019 she strained the middle of her back when she felt pain in her upper shoulder while inducting mail in the performance of duty. She stopped work on November 15, 2019.

A November 15, 2019 after-visit summary report indicated that appellant presented to the emergency department with complaints of back pain. Dr. Stephen Rancour, Board-certified in emergency medicine, diagnosed back spasm. In a note of even date, her provided work restrictions and indicated that appellant could return to work on November 17, 2019.

In a November 22, 2019 attending physician's report, Part B of an authorization for medical examination and/or treatment (Form CA-16), Dr. Shannon R. Banks, Board-certified in family practice, indicated that appellant had preexisting upper back pain, diagnosed back muscle spasm, and checked a box marked "Yes," indicating that the condition was caused or aggravated by the described employment activity. In a duty status report (Form CA-17) of even date, she noted that appellant experienced back muscle spasms and tenderness in trapezius/thoracic spine. Dr. Banks diagnosed back spasm and provided work restrictions. In a note of even date, she indicated that appellant could return to light-duty work with restrictions on December 2, 2019.

In a December 2, 2019 development letter, OWCP requested that appellant submit additional evidence in support of her claim, including a qualified physician's opinion, which established that the reported November 15, 2019 employment incident caused, aggravated, or precipitated a diagnosed medical condition. It afforded her 30 days to submit the requested medical evidence.

OWCP received a November 15, 2019 medical report by Dr. Rancour who noted that appellant presented with upper back pain, which occurred at work earlier that day when she was lifting a box of mail above her head. Dr. Rancour indicated that appellant did not experience pain prior to lifting the box. He reported that she felt no associated numbness, tingling, or weakness.

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that 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.*

Dr. Rancour conducted a physical examination, which demonstrated arthralgias, back pain, and myalgias. He diagnosed back spasm.

In a November 15, 2019 medical report, Dr. Banks noted that appellant was seen that day for a work-related injury. She indicated that appellant experienced a burning pain in her upper back at work while moving trays of mail above her head. Dr. Banks indicated that she experienced back pain since starting her job. She conducted a physical examination and diagnosed back spasm. An after visit summary of even date also indicated that appellant was seen by Dr. Banks for back spasm. In a note of even date, Dr. Banks excused appellant from work for the period November 15 through 22, 2019.

In a November 22, 2019 medical report, Dr. Banks again diagnosed back spasm. In a December 16, 2019 medical report, she noted that appellant experienced a burning sensation in her upper back after getting off work each day. Dr. Banks diagnosed muscle spasm and recommended that appellant should continue working with restrictions. In a note of even date, she indicated that appellant was seen by her on that day. In a Form CA-17 of even date, Dr. Banks again diagnosed back spasm and provided work restrictions.

By decision dated January 3, 2020, OWCP accepted that the November 15, 2019 employment incident occurred as alleged, but denied the claim finding that the medical evidence of record was insufficient to establish a medical diagnosis. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On January 28, 2020 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a January 22, 2020 statement, appellant asserted that she had been working at the employing establishment since 2016 without an accident until November 14, 2019. She noted that performing her tasks at work on the night of November 14, 2019 gradually became difficult as she felt heavy straining of her back, eventually feeling a sharp pain in her back. After midnight, appellant experienced a burning sensation in her upper back. She immediately notified her supervisor that she injured her back. Appellant noted that Dr. Banks explained to her that the tearing and/or strain to the thoracic spinal would cause back muscle spasms. She asserted that she sustained an injury due to the accepted November 15, 2019 employment incident.

During the hearing, held on April 21, 2020, appellant testified that she was seen by both Drs. Rancour and Banks on November 15, 2019 following the accepted employment incident. She acknowledged that she had not been diagnosed with a medical condition due to her accepted employment incident. Appellant, however, asserted that Dr. Banks told her that she pulled her back muscle.

In an April 22, 2020 letter, Dr. Banks indicated that appellant was seen by her on November 15, 2019 for muscle spasms "likely secondary to muscle strain on her upper back."

By decision dated June 22, 2020, the hearing representative affirmed OWCP's January 3, 2020 decision.

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. Second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[8]

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[9] 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 by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition causally related to the accepted November 15, 2019 employment incident.

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[4] *Supra* note 2.

[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).

[9] *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).

[10] *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).

In medical reports dated November 15, 22, and December 16 2019, Dr. Banks consistently diagnosed back spasm. In an April 22, 2020 narrative report, Dr. Banks indicated that appellant was seen on November 15, 2019 for muscle spasms "likely secondary to muscle strain on her upper back." The Board has held, however, that a muscle spasm is a symptom and not a compensable medical diagnosis.[11] Furthermore, 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] Thus, these reports are insufficient to establish appellant's burden of proof.

In a medical report, after visit summary, and note dated November 15, 2019, Dr. Rancour noted that appellant presented with upper back pain, which occurred at work earlier that day when she was lifting a box of mail above her head. He diagnosed back spasm. As noted above, a muscle spasm is a symptom and not a compensable medical diagnosis.[13] Likewise, the Board has also held that pain is a symptom, not a diagnosis.[14] As this evidence lacks a firm diagnosis and a rationalized medical opinion regarding causal relationship, it is insufficient to establish appellant's claim.[15]

As the record lacks rationalized medical evidence establishing a diagnosed medical condition causally related to the accepted November 15, 2019 employment incident, the Board finds that appellant has not met her burden of proof to establish her claim.[16]

Appellant may submit additional evidence, together 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 November 15, 2019 employment incident.

[11] *K.C.*, Docket No. 20-0683 (issued September 23, 2020); *V.B.*, Docket No. 19-0643 (issued September 6, 2019); *T.J.*, Docket No. 18-1500 (issued May 1, 2019); *see also J.G.*, Docket No. 17-1382 (issued October 18, 2017).

[12] *See L.B.* Docket No. 18-0533 (issued August 27, 2018); *D.K.* Docket No. 17-1549 (issued July 6, 2018).

[13] *See id.*

[14] *E.M.*, Docket No. 18-1599 (issued March 7, 2019).

[15] *See M.P.*, Docket No. 20-0996 (issued January 26, 2021).

[16] The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 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. *See* 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

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

Issued: June 4, 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