

**United States Department of Labor  
Employees' Compensation Appeals Board**

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<b>B.M., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 21-0198</b>
	)	<b>Issued: June 29, 2021</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>GREENVILLE VETERANS AFFAIRS CLINIC,</b>	)	
<b>Greenville, NC, Employer</b>	)	
_____	)	

*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  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On November 16, 2020 appellant filed a timely appeal from a September 11, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has met her burden of proof to establish a degenerative disc condition causally related to the accepted factors of her federal employment.

**FACTUAL HISTORY**

On June 19, 2019 appellant, then a 66-year-old staff specialty registered nurse, filed an occupational disease claim (Form CA-2) alleging that her preexisting degenerative disc disease

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

worsened due to factors of her federal employment, including walking on uneven floors. She explained that she first became aware of her condition its relationship to her federal employment in June 2016; however, she had previously submitted the wrong form for her claim. On the reverse side of the claim form, a supervisor indicated that appellant stopped work on December 19, 2017 and returned to work on January 3, 2018.

In a development letter dated October 21, 2019, OWCP advised appellant that it did not receive any documentation with her claim form. It requested that she submit a narrative medical report from her attending physician, which included the physician's opinion supported by a medical explanation as to how the work activities in her federal employment caused, contributed to, or aggravated her medical condition. OWCP also attached a questionnaire for appellant's completion. It afforded her 30 days to submit the necessary evidence. No additional evidence was received.

By decision dated December 2, 2019, OWCP denied appellant's claim as the employment factors were not established. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On December 26, 2019 appellant timely requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on March 13, 2020. At the telephonic hearing, she alleged that she was required to lift, stoop, and bend in her federal employment which worsened her degenerative disc condition. Appellant also stated that she fell during her federal employment in 2016 and 2017 which also worsened her condition. The hearing representative gave her 45 days to submit documentation. No additional evidence was received.

By decision dated June 30, 2020, the hearing representative determined that OWCP's December 2, 2019 decision should be vacated and the case remanded to the district office. The representative remanded the case to OWCP to combine the instant case with appellant's prior claims, and then review the factual and medical evidence and issue a *de novo* decision.<sup>2</sup>

OWCP received a position description from the employing establishment detailing the position of a registered nurse.

In a report dated June 9, 2016, Dr. Deanna L. Lassegard, an emergency medicine specialist, related that appellant sought treatment at the emergency room after a fall at work and complained of left hip pain. The report listed degenerative disc disease as part of her medical history. Appellant also submitted a nurse's note dated June 9, 2016 which related the same.

In a report dated November 9, 2017, Dr. John Edward Gough, a Board-certified emergency medicine specialist, stated that appellant fell at work and landed on her knees and chin. He related that she had similar falls every other month and that her fall could have been caused by a syncope.

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<sup>2</sup> On January 10, 2018 appellant filed a traumatic injury claim (FormCA-1) under OWCP File No. xxxxxx580, alleging that on December 19, 2017 she fell and sustained neck, left arm, and chin injuries. OWCP accepted this claim for a chin laceration. OWCP File No. xxxxxx580 has been administratively combined with the instant claim and OWCP File No. xxxxxx580 serves as the master file.

The report listed degenerative disc disease as part of her medical history. Appellant also submitted the corresponding nurse's notes dated November 9, 2017 detailing the same.

OWCP received a report dated November 14, 2017 from Dr. Myriam Daniel, an internist. Dr. Daniel related that appellant sustained a fall recently and suffered pain in her knees and low back. She diagnosed degenerative joint disease of the bilateral knees and lumbar spine.

OWCP also received a report dated November 15, 2017 from Dr. Ronald M. Sayers, a Board-certified diagnostic radiology and neuroradiology specialist, which revealed that appellant had a history of back pain. Dr. Sayers diagnosed moderate lumbar spondylosis as well as a rightward curvature and degenerative anterolisthesis.

In a report dated December 19, 2017, Dr. Jennifer M. Bennett, a Board-certified emergency medicine specialist, stated that appellant fell at work and her chin laceration was repaired with sutures. She stated that appellant had known spinal stenosis and had intermittent leg weakness due to spinal stenosis and that appellant's fall was likely related to such diagnosis. Appellant also submitted a nurse's note dated December 19, 2017 detailing the same.

In a consultation note dated January 3, 2018, Elwood Moore, a physician assistant, stated that appellant experienced varying degrees of low back pain for years. He noted a diagnosis of idiopathic thrombocytopenic purpura in 1997 and rheumatoid arthritis in 2004. The consultation note also listed degenerative disc disease as a part of appellant's medical history. Mr. Moore diagnosed degenerative spondylolisthesis at L4-5, acquired lumbar scoliosis, and advanced lumbar spondylosis.

OWCP received a Family and Medical Leave Act form report dated February 9, 2018 from Dr. Daniel. Dr. Daniel related that appellant was unable to do the following: stand or sit for a long period of time; bend; or lift weight over 10 pounds. She stated that appellant was diagnosed with moderate lumbar stenosis, lumbar region without neurogenic claudication, degenerative arthritis, bulging disc, and scoliosis of the spine.

In a report dated December 19, 2019, Dr. Gregory G. Klingstein, a Board-certified orthopedic surgeon and a hip and knee specialist, related that appellant was seen for low back pain.

By *de novo* decision dated September 11, 2020, OWCP accepted the implicated employment factors, but denied appellant's claim as causal relationship was not established between a diagnosed medical condition and the accepted employment factors.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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 FECA, that the claim was timely filed within the applicable time

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<sup>3</sup> *Supra* note 1.

limitation period of FECA,<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.<sup>7</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>8</sup> 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.<sup>9</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors, is sufficient to establish causal relationship.<sup>10</sup>

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.<sup>11</sup>

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<sup>4</sup> *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).

<sup>5</sup> *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).

<sup>6</sup> *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).

<sup>7</sup> *See T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>8</sup> *J.F.*, Docket No. 18-0492 (issued January 16, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>9</sup> *A.M.*, Docket No. 18-0562 (issued January 23, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>10</sup> *E.W.*, Docket No. 19-1393 (issued January 29, 2020); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>11</sup> 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).

## ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a degenerative disc disease causally related to the accepted factors of her federal employment.

In a report dated June 9, 2016, Dr. Lassegard noted that appellant's medical history included degenerative disc disease. Similarly, a report dated November 9, 2017 from Dr. Gough also noted that appellant's medical history included degenerative disc disease. However, neither physician provided their own diagnosis or medical opinion explaining the cause of appellant's diagnosed condition. The Board has held that a medical report is of no probative value if it does not provide a firm diagnosis of a particular medical condition, or offer a specific opinion as to whether the accepted employment incident caused or aggravated the claimed condition.<sup>12</sup>

OWCP received a report dated November 14, 2017 from Dr. Daniel which related a diagnosis of degenerative disc disease, a November 15, 2017 report from Dr. Sayers which noted a diagnosis of spondylosis, a December 19, 2017 report from Dr. Bennet which noted a diagnosis of spondylosis, and a February 9, 2018 report from Dr. Daniel which noted diagnoses of spinal stenosis and degenerative disc disease. However, none of these reports provided an opinion regarding causal relationship of the diagnosed conditions to appellant's alleged factors of her federal employment. 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.<sup>13</sup> As such, these reports are insufficient to establish appellant's claim.

In a report dated December 19, 2019, Dr. Klingstein noted that appellant was seen for back pain. The Board has held that pain is a symptom and not a compensable medical diagnosis.<sup>14</sup> This report is, therefore, insufficient to establish appellant's claim.

OWCP also received nurse's notes and a consultation note from a physician assistant. However, certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered physicians as defined under FECA.<sup>15</sup> Consequently, the nurse's notes and consultation form will not suffice for purposes of establishing entitlement to FECA benefits.<sup>16</sup>

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<sup>12</sup> *L.E.*, Docket No. 19-0470 (issued August 12, 2019); *M.J.*, Docket No. 18-1114 (issued February 5, 2019).

<sup>13</sup> *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).

<sup>14</sup> *See S.L.*, Docket No. 19-1536 (issued June 26, 2020); *D.Y.*, Docket No. 20-0112 (issued June 25, 2020).

<sup>15</sup> Section 8101(2) 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 supra* note 11 at Chapter 2.805.3a(1) (January 2013); *M.F.*, Docket No. 19-1573 (issued March 16, 2020); *N.B.*, Docket No. 19-0221 (issued July 15, 2019); *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).

<sup>16</sup> *See M.C.*, Docket No. 19-1074 (issued June 12, 2020) (nurse practitioners are not considered physicians under FECA).

As the medical evidence of record is insufficient to establish causal relationship between appellant's degenerative disc condition and the accepted factors of her federal employment, 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 degenerative disc disease causally related to her accepted factors of her federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 11, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 29, 2021  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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