

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

_____)	
J.G., Appellant)	
)	
and)	Docket No. 20-1125
)	Issued: March 8, 2021
U.S. POSTAL SERVICE, VEHICLE)	
MAINTENANCE FACILITY, Chicago, IL,)	
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 May 4, 2020 appellant filed a timely appeal from a January 7, 2020 merit decision and an April 14, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a back condition causally related to the accepted September 10, 2019 employment incident; and (2) whether OWCP properly determined that appellant had abandoned her request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 17, 2019 appellant, then a 36-year-old tire vehicle maintenance employee, filed a traumatic injury claim (Form CA-1) alleging that on September 10, 2019 she pulled a muscle in her lower back while loading tires onto a truck. She stopped work on September 10, 2019 and returned on September 17, 2019.

In a September 10, 2019 note, Dr. Shantala Sreerama, a Board-certified internist, advised that appellant was seen that day and should be excused from work until September 17, 2019.

In a work status note dated September 10, 2019, Dr. Sanjay Sinha, a Board-certified family medicine physician, related an injury date of September 10, 2019 and diagnoses of lumbar ligament sprain and unspecified dorsalgia. He noted that appellant was capable of working with restrictions including no lifting over the shoulder or from waist to shoulder more than 10 pounds and no pulling/pushing more than 15 pounds.

Appellant attended physical therapy on November 19 and 21, 2019 for unspecified dorsalgia.

In a development letter dated December 4, 2019, OWCP indicated that when appellant's claim was first received, it appeared to be a minor injury that resulted in minimal or no lost time from work and, based on these criteria and because the employing establishment had not controverted continuation of pay or challenged the case, payment of a limited amount of medical expenses was administratively approved. It explained that it had reopened the claim for formal consideration of the merits because it received a claim for wage-loss compensation. OWCP requested additional evidence and afforded appellant 30 days to respond to its inquiries.

In response to OWCP's request for additional evidence, appellant submitted progress notes from Dr. Sreerama and additional physical therapy reports dated from November 19 to December 26, 2019.

Dr. Sreerama, in progress notes dated September 10, 2019, reported that appellant had injured her back at work that morning. Appellant related to Dr. Sreerama that she felt back pain while changing a tire on a truck and she had felt severe pain with pain and tingling radiating into her legs. On September 26, 2019 Dr. Sreerama noted that appellant was seen for a follow-up visit with regard to her September 10, 2019 employment injury and detailed her examination findings. She related that appellant had continued mid back pain and had been referred for physical therapy.

In a December 14, 2019 report, Dr. Sreerama noted appellant's complaints of mid and low back pain since straining her back at work in September 2019.

By decision dated January 7, 2020, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed back condition and the accepted September 10, 2019 employment incident.

On January 8, 2020 appellant timely requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant thereafter submitted a physical therapy appointment summary, a September 26, 2019 x-ray interpretation, and a report dated January 30, 2020 from Dr. Sreerama. In the January 30, 2020 report, Dr. Sreerama noted that appellant was first seen on September 10, 2019 for back pain she sustained while pulling tires at work. She related appellant's continued pain complaints and diagnosed mid back strain.

In a March 2, 2020 notice, OWCP's hearing representative notified appellant that a telephonic hearing was scheduled for April 3, 2020 at 10:30 a.m. Eastern Standard Time (EST). The notice included a toll-free number to call and the required passcode to participate in the telephonic hearing. OWCP instructed appellant to "call the toll free number listed below and when prompted, enter the pass code also listed below." It mailed the notice to her last known address of record. Appellant did not appear or request postponement of the hearing.

By decision dated April 14, 2020, OWCP's hearing representative found that appellant had failed to appear at the oral hearing and had abandoned her request. The hearing representative indicated that appellant received a 30-day advance notice of the hearing scheduled for April 3, 2020 and found that there was no evidence that she had contacted OWCP either prior to or subsequent to the scheduled hearing to request a postponement or explain her failure to appear.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² 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,³ 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.⁴ 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.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the 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, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

² *Id.*

³ *D.D.*, Docket No. 20-0626 (issued September 14, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *D.D.*, *id.*; *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *D.D.*, *id.*; *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *D.D.*, *id.*; *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q).

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.⁷

ANALYSIS -- ISSUE 1

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

Dr. Sinha provided a work status note dated September 10, 2019 in which he noted appellant sustained an injury that day. He provided impressions of lumbar ligament sprain and unspecified dorsalgia and opined that she was capable of working with restrictions. However, Dr. Sinha did not offer an opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.⁸ Dr. Sinha's work status note is, therefore, insufficient to establish appellant's claim.

Dr. Sreerama provided several reports and disability notes dated from September 10 through December 14, 2019 in which she either noted the history of the accepted employment incident or reiterated appellant's complaint that her back pain started after changing a tire on a truck at work. She provided impressions of mid-back pain and periods of disability from appellant's position. The Board has long held, however, that pain is a symptom, not a compensable medical diagnosis.⁹ Moreover, a medical opinion must explain how the implicated employment incident caused, contributed to, or aggravated the specific diagnosed conditions.¹⁰ Lacking a compensable medical diagnosis and such an explanation, Dr. Sreerama's reports are insufficient to meet appellant's burden of proof.¹¹

⁷ *D.M.*, Docket No. 20-0314 (issued June 30, 2020); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *See A.S.*, Docket No. 20-0301 (issued October 26, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

⁹ *M.B.*, Docket No. 19-1816 (issued April 28, 2020); *M.H.*, Docket No. 19-0162 (issued July 3, 2019).

¹⁰ *C.M.*, Docket No. 19-0360 (issued February 25, 2020).

¹¹ *Id.*

Appellant submitted reports from physical therapists. However, the Board has held that physical therapists are not considered physicians as defined under FECA and, thus, these reports do not constitute competent medical evidence.¹²

As appellant has not submitted rationalized medical evidence explaining a causal relationship between her diagnosed back conditions and the accepted September 10, 2019 employment incident, the Board finds that she has not met her burden of proof to establish her traumatic injury 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.

LEGAL PRECEDENT -- ISSUE 2

Under FECA and its implementing regulations, a claimant who has received a final adverse decision by OWCP is entitled to receive a hearing upon writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought. Unless otherwise directed in writing by the claims examiner, an OWCP hearing representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date.¹³ OWCP has the burden of proving that it mailed notice of the scheduled hearing to a claimant.¹⁴ Section 10.622(f) of OWCP's regulations provides that a claimant who fails to appear at a scheduled hearing may request in writing within 10 days after the date set for the hearing that another hearing be scheduled.¹⁵ Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing. Where good cause is shown for failure to appear at the second scheduled hearing, review of the matter will proceed as a review of the written record.¹⁶ Where it has been determined that a claimant has abandoned his or her right to a hearing, OWCP will issue a formal decision finding that the claimant abandoned the request for a hearing.¹⁷

¹² Section 8101(2) of FECA provides that medical opinions can only be given by a qualified physician. This section defines a physician as 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* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(a)(1) (January 2013); *A.S.*, *supra* note 8; *H.K.*, Docket No. 19-0429 (issued September 18, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *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).

¹³ *Id.* at § 10.617(b).

¹⁴ *T.R.*, Docket No. 19-1952 (issued April 24, 2020); *A.R.*, Docket No. 19-1691 (issued February 24, 2020).

¹⁵ 20 C.F.R. § 10.622(f).

¹⁶ *Id.*

¹⁷ *T.R.*, *supra* note 14; *A.J.*, Docket No. 18-0830 (issued January 10, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(g) (October 2011).

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly determined that appellant abandoned her request for a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

The record establishes that on March 2, 2020, in response to appellant's timely request for an oral hearing, a representative of OWCP's Branch of Hearings and Review properly mailed a notice of the scheduled telephonic hearing scheduled for April 3, 2020 at 10:30 a.m. EST. The hearing notice was mailed to appellant's last known address of record and provided instructions on how to participate. Appellant failed to call-in for the scheduled telephonic hearing. She did not request a postponement or provide an explanation to OWCP for her failure to attend the hearing within 10 days of the scheduled hearing. The Board, thus, finds that OWCP properly determined that appellant abandoned her request for a telephonic hearing.¹⁸

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a back condition causally related to the accepted September 10, 2019 employment incident. The Board further finds that OWCP properly determined that appellant abandoned her request for a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

ORDER

IT IS HEREBY ORDERED THAT the April 14 and January 7, 2020 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 8, 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

¹⁸ *Id.*