United States Department of Labor
Employees' Compensation Appeals Board

E.T., Appellant	)	
and	)	**Docket No. 21-0014**
	)	**Issued: May 20, 2021**
U.S. POSTAL SERVICE, POST OFFICE, Walton, NY, Employer	)	

Appearances:
Thomas S. Harkins, Esq., for the appellant[1]
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 October 6, 2020 appellant, through counsel, filed a timely appeal from an April 22, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' 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.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a low back condition causally related to the accepted July 28, 2020 employment incident.

FACTUAL HISTORY

On August 2, 2018 appellant, then a 57-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 28, 2018, she sustained a lower back injury when the door of her long life vehicle (LLV) became stuck as she was closing it while in the performance of duty. On the reverse side of the claim form C.F., an employing establishment supervisor, controverted the claim, asserting that the LLV door had been opened and closed numerous times without sticking. Appellant stopped working on August 2, 2018.

In a letter of controversion dated August 9, 2018, the employing establishment alleged that appellant did not report the injury on the day that it occurred and that the medical evidence it had received failed to establish causal relationship or ongoing disability.

In an August 1, 2018 emergency room note, Paul Downton, a physician assistant, noted that appellant was experiencing acute back pain, which she attributed to an incident at work five days prior when she was sliding her vehicle door, and it jammed. He performed a physical examination, which revealed painful range of motion of the lumbar spine, and ordered x-rays, which were normal. Mr. Downton diagnosed acute low back pain and recommended that appellant remain out of work until August 8, 2018.

In an August 13, 2018 development letter, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. It advised her of the factual and medical evidence necessary and also provided a questionnaire for completion. OWCP afforded appellant 30 days to respond. In the same letter, it also informed the employing establishment that, if appellant was treated at an employing establishment medical facility for the alleged injury, it must provide treatment notes.

In an August 21, 2018 response to OWCP's development questionnaire, appellant indicated that she wrenched her back while on her mail route delivering parcels. She tried to continue working for three days after the injury, but the pain worsened so she sought treatment at the emergency room.

OWCP received various notes and forms signed by Christina Wightman, a physician assistant, for dates of service on August 9 and 16, 2018. Ms. Wightman documented her physical examination findings and diagnosed appellant with lower back pain, muscle spasm of the back, and a back sprain and strain due to pulling down the rear door of her vehicle which jammed, jarring her low back. She recommended that appellant remain out of work until evaluation by a spine specialist.

By decision dated September 13, 2018, OWCP accepted that the incident occurred as alleged, but denied appellant's claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted July 28, 2018 employment

incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive evidence. On August 21, 2018 Ms. Wightman referred appellant for physical therapy. A doctor's initial report, dated September 21, 2018 bearing Ms. Wightman's signature and that of Dr. Scott Treatman, an osteopath, noted that appellant was prescribed ongoing physical therapy and medication and was to remain out of work due to persistent back pain and spasm.

On September 24, 2018 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a report dated October 9, 2018, Dr. Franklin Wetzel, an orthopedic surgeon, noted that appellant related a history of experiencing spine pain on July 28, 2018 after closing the door of her mail truck with force. He indicated that she appeared toxic, sickly, and distressed and, during physical examination, he found tenderness, pain, and reduced range of motion of the thoracic back. Dr. Wetzel opined that appellant was totally disabled and referred her for a magnetic resonance imaging (MRI) scan of her back. He diagnosed low back pain and spondylosis of the lumbar region without myelopathy or radiculopathy. In a letter of even date, Dr. Wetzel indicated that appellant was suffering from thoracolumbar back pain of unclear etiology.

Lumbar spine x-rays dated October 9, 2018 demonstrated scattered mild degenerative changes, but revealed no malalignment or abnormal motion.

In a progress note dated November 16, 2018, Dr. Wetzel noted that he reviewed appellant's MRI scan personally and found central prolapse of L4-5 on the left, but that appellant's subjective complaints and physical examination findings had improved. He diagnosed resolving lumbar strain. In a separate letter of even date, Dr. Wetzel opined that appellant remained totally disabled.

In a letter of controversion dated October 16, 2018, A.L., a health and resource manager for the employing establishment, noted that she had received Dr. Wetzel's October 9, 2018 letter and, on that basis, requested that OWCP continue to deny appellant's claim based upon causal relationship.

At a telephonic hearing held on January 8, 2019, appellant recounted the history of the July 28, 2018 employment incident, as well as her subsequent medical treatment for her lower back. The hearing representative explained that additional medical evidence addressing causal relationship was needed and held the case record open for 30 days.

OWCP subsequently received a January 22, 2019 letter by Dr. Wetzel, indicating that appellant continued to suffer from left-sided back pain without radiation following a work injury on July 28, 2018. Dr. Wetzel noted that an MRI scan had revealed age-appropriate degenerative disc disease without a focal lesion and opined that she continued to be totally disabled on the basis of disc disease, characterized by a post-traumatic exacerbation of a preexisting degenerative condition. He recommended additional physical therapy and pain management, but no surgery.

By decision dated February 13, 2019, OWCP's hearing representative modified the September 13, 2018 decision, finding that appellant had established valid medical diagnoses of

lumbar strain/sprain and degenerative disc disease in connection with the accepted July 28, 2018 employment incident. The claim remained denied, however, as she found that the medical evidence of record was insufficient to establish these conditions were causally related to the accepted July 28, 2018 employment incident.

OWCP continued to receive evidence. In an April 5, 2019 progress report, Dr. Wetzel noted that appellant wished to return to work.

On February 6, 2020 appellant requested reconsideration of the February 13, 2019 decision.

By decision dated April 22, 2020, OWCP denied modification of its prior decision.

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 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]

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 can be established only by medical evidence.[7]

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[8] The opinion of the physician must be based on a complete factual and medical background of the employee, must

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[3] *Supra* note 1.

[4] *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).

[5] *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).

[6] *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).

[7] *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).

[8] *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).

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.[9]

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.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a low back condition causally related to the accepted July 28, 2018 employment incident.

In his January 22, 2019 letter, Dr. Wetzel noted the history of appellant's accepted July 28, 2018 employment incident and opined that she was disabled due to disc disease, characterized by a post-traumatic exacerbation of a preexisting degenerative condition. However, he did not offer any rationale to explain how the accepted employment incident would have caused appellant's diagnosed conditions. The Board has held that a medical opinion should offer a medically-sound explanation of how the specific employment incident physiologically caused the injury.[11] As noted above, a well-rationalized opinion is particularly important when there is a preexisting condition involving the same body part.[12] The Board has required medical rationale differentiating between the effects of the work-related injury and the preexisting condition in such cases.[13] Lacking a rationalized explanation, Dr. Wetzel's January 22, 2019 letter is insufficient to meet appellant's burden of proof.

In his October 9, 2018 report, Dr. Wetzel provided diagnoses of low back pain and spondylosis of the lumbar region without myelopathy or radiculopathy. In a November 16, 2018 follow-up visit, he diagnosed a lumbar sprain and, in a letter of even date, noted that appellant remained disabled. Thereafter, on April 5, 2019 Dr. Wetzel diagnosed lumbar disc disease. These reports, however, do not contain an opinion on causal relationship. The Board has held that a report that does not offer an opinion regarding the cause of an employee's condition is of no

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[9] *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).

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *M.B.*, Docket No. 20-1275 (issued January 29, 2021).

[11] *C.D.*, Docket No. 20-0762 (issued January 13, 2021).

[12] *K.R.,* Docket No. 18-1388 (issued January 9, 2019).

[13] *See, e.g., A.J.,* Docket No. 18-1116 (issued January 23, 2019); *M.F.,* Docket No. 17-1973 (issued December 31, 2018); *J.B.*, Docket No. 17-1870 (issued April 11, 2018); *E.D.*, Docket No. 16-1854 (issued March 3, 2017); *P.O.,* Docket No. 14-1675 (issued December 3, 2015).

probative value.[14] Further, in his letter dated October 9, 2018, Dr. Wetzel noted that appellant's thoracolumbar pain was of unknown etiology. The Board has held that medical evidence that negates causal relationship is of no probative value.[15] Thus, this letter likewise does not support appellant's claim.

Dr. Treatman prescribed ongoing physical therapy and medication and indicated that appellant was to remain out of work. As he did not offer an opinion on causal relationship, his report is of no probative value.[16]

The evidence of record also consists of reports from Mr. Downton, physician assistants. Certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not are not considered qualified physicians as defined under FECA.[17] Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.[18]

The remainder of the evidence of record consists of diagnostic study reports. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the accepted employment injury caused any of the additional diagnosed conditions.[19]

As appellant has not submitted rationalized medical evidence establishing that her low back condition is causally related to the accepted July 28, 2018 employment incident, 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 10.607.15.

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[14] *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[15] *C.M.*, Docket No. 19-1211 (issued August 5, 2020); *M.C.*, Docket No. 19-1074 (issued June 12, 2020); *T.W.,* Docket No. 19-0677 (issued August 16, 2019).

[16] *Supra* note 14.

[17] 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); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *K.A.*, Docket No. 18-0999 (issued October 4, 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).

[18] *K.A.*, *id.*; *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, *id.*

[19] *F.D.*, Docket No. 19-0932 (issued October 3, 2019); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a low back condition causally related to the accepted July 28, 2018 employment incident.

ORDER

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

Issued: May 20, 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