

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

A.C., Appellant)	
)	
and)	Docket No. 21-0087
)	Issued: November 9, 2021
SMALL BUSINESS ADMINISTRATION,)	
OFFICE OF DISASTER ASSISTANCE,)	
Herndon, VA, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
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 October 28, 2020 appellant, through counsel, filed a timely appeal from a September 25, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 lumbar condition causally related to the accepted September 1, 2017 employment incident.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On September 28, 2017 appellant, then a 49-year-old loss verifier/construction analyst, filed a traumatic injury claim (Form CA-1) alleging that on September 1, 2017 she fell at her home/duty station office when her foot got caught on the printer cord while taking work-related paperwork from her printer to her desk while in the performance of duty. She reported injuries to her right hip, low back, buttocks, leg, left forehead, and spine. Appellant stopped work on September 18, 2017.

The evidence submitted in support of appellant's claim includes an emergency room report dated September 27, 2017, wherein Dr. Geertruida Kints, a Board-certified emergency medicine specialist, diagnosed lumbar back pain. Dr. Kints reported that appellant related falling and landing on her right hip on September 1, 2017. On September 27, 2017 appellant reported her back locked up when she went to get into her car. Dr. Kints noted that appellant had sought chiropractic treatment on September 19, 2017 as appellant's pain had worsened. A September 27, 2017 x-ray of appellant's lumbar spine x-ray revealed degenerative changes and a bone fragment involving the anterior superior endplate of L4. A computerized tomography (CT) scan revealed no acute fracture of the lumbar spine, but multilevel degenerative end-plate changes and minimal grade 1 retrolisthesis of L5 on S1 "likely degenerative." OWCP initially denied the claim by decision dated November 17, 2017, finding that appellant had not established that the incident occurred as alleged.

OWCP continued to receive medical evidence. In a report dated September 18, 2017, Dr. Steven M. Harrison, a chiropractor, noted that appellant sought chiropractic treatment because her pain had worsened. He diagnosed sacroiliitis and prescribed work restrictions. Dr. Harrison stated that appellant presented that day with complaints of pain and stiffness in her low back. Appellant reported no precipitating event for her complaints, but indicated that for the past several days she had an exacerbation of chronic complaints. Dr. Harrison noted that her job required prolonged sitting, 10 to 12 hours a day, and that was at least part of her complaints. He provided spinal manipulation on September 18, 20, 22, 25, and 29, 2017.

OWCP received a series of treatment notes from Dr. Harrison. In a September 29, 2017 report, Dr. Harrison noted that appellant indicated that her complaints were from a work-related fall. He also noted that she tried to work on Tuesday, but her pain became so severe that after four hours she had to stop work. Dr. Harrison reported that appellant was seen in the emergency room on September 27, 2017 and he reviewed the September 27, 2017 x-ray report of her lumbar spine,

³ Docket No. 18-1406 (issued April 15, 2019).

which he noted did not exclude a nondisplaced fracture, and the CT scan report of her lumbar spine, which he related indicated minimal retrolisthesis and limbic vertebrae. He continued to diagnose sacroiliitis. Dr. Harrison also opined that appellant should not work. In a September 29, 2017 prescription note, he diagnosed sacroiliitis, lumbosacral strain.

On October 5, 2017 Dr. Zacharias Ratliff, an osteopathic physician, diagnosed lumbago and neuritis. He reported that appellant's symptoms began a month prior on September 1, 2017 when she tripped on a printer cord. Dr. Ratliff stated that she reported bruises on her head, right hip, and buttock area. He reported that appellant was seen in the emergency room for an anxiety attack on September 19, 2017, but was so distraught, that she did not mention her September 1, 2017 fall. Dr. Ratliff also described a September 16, 2017 incident when she had immobilizing back pain in her lumbar region when she reached across her desk. He noted that the pain radiated into her buttocks and lower extremities. Appellant also saw a chiropractor for treatment on September 18, 20, 22, and 25, 2017. Because her pain increased, she returned to the emergency room on September 27, 2017. In an October 5, 2017 attending physician's report (Form CA-20), Dr. Ratliff noted appellant's September 1, 2017 trip and fall over a printer cable and diagnosed lumbago and neuritis. He checked a box marked "Yes," indicating that the diagnosed conditions were caused or aggravated by the alleged September 1, 2017 employment incident.

In an October 18, 2017 report, Dr. Jamie Varney, a Board-certified family practitioner, reported that appellant indicated that her symptoms were acute, traumatic, and began 38 "years" prior as a result of a fall on the hip which occurred at home. He provided examination findings and an assessment of trochanteric bursitis, unspecified hip. Dr. Varney indicated that the x-rays of the hip showed mild degenerative changes and spurring over the trochanter. He opined that appellant's current hip symptoms were easily explained by normal wear and tear and inflammation. Dr. Varney also provided an assessment of intervertebral disc degeneration, lumbar region, as noted on the lumbar spine x-rays and CT of the lumbar spine. He opined that he did not suspect a significant acute injury to the lumbar spine. Dr. Varney noted that appellant had been evaluated over the years for musculoskeletal complaints. Copies of the October 18, 2017 x-rays of the hips, which were negative, were attached.

On November 22, 2017 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on April 12, 2018.

By decision dated May 25, 2018, an OWCP hearing representative affirmed the November 17, 2017 decision. A September 28, 2018 magnetic resonance imaging (MRI) scan of appellant's lumbar spine showed mild multilevel disc disease.

On July 12, 2018 appellant filed a timely appeal before the Board. By decision dated April 15, 2019, the Board set aside OWCP's decision,⁴ finding that there was sufficient factual evidence to establish that she tripped over a printer cord and fell at her home/duty station. It also found that she adequately described the incident. The Board remanded the case for development

⁴ *Id.*

on the issue of whether the accepted September 1, 2017 incident occurred in the performance of duty.

Following further development OWCP, by decision dated July 23, 2019, denied the claim finding that appellant was not in the performance of duty. Specifically, it found that a printer was not required for any aspect of her telework and printer/printer supplies were not normally provided to term seasonal or term intermittent employees, like appellant.

On August 2, 2019 appellant, through counsel requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on November 12, 2019.

By decision dated January 17, 2020, the hearing representative set aside the July 23, 2019 decision and remanded the case for further development as to whether appellant was performing work activities for the employing establishment, or something incidental thereto, at the time of the alleged employment injury. The hearing representative further noted that the medical evidence of record was insufficient to establish that an injury was sustained on September 1, 2017.

In a March 7, 2019 report, Dr. Norman W. Mayer, a Board-certified neurosurgeon, indicated that appellant had experienced low back pain for one year without injury. A review of her lumbar spine MRI scan revealed mild multilevel degenerative changes. Dr. Mayer provided an assessment of other intervertebral disc degeneration, lumbar region.

An unsigned July 17, 2019 report from the Pikeville Medical Center indicated that appellant had experienced neck and back pain for over 10 years and that she had multiple falls in the past, but she did not necessarily relate those falls to the onset of her pain. A diagnosis of cervicgia was provided along with segmental and somatic dysfunction of cervical, lumbar, pelvic, sacral, and thoracic regions.

By decision dated April 22, 2020, OWCP denied the claim, finding that appellant was not in the performance of duty at the time of the September 1, 2017 incident. It found that the employing establishment indicated that she was not required to use a printer. OWCP also noted that evidence of record did not support that a medical condition was causally related to the incident.

On May 1, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on July 28, 2020.

By decision dated September 25, 2020, an OWCP hearing representative modified the April 22, 2020 decision to find that appellant was in the performance of duty when the injury occurred. The hearing representative specifically found that the alleged injury occurred while she was walking back to her desk after retrieving an inventory sheet from the printer. While the employing establishment disputed that appellant was required or authorized to print any documents, there was no dispute that she was expected to return the inventory sheet to the employing establishment. Thus, by scanning and e-mailing the document to the employing establishment she was performing an action for the employing establishment's benefit. The hearing representative, however, affirmed the denial of the claim as there was insufficient medical evidence to establish causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 period of FECA, 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 establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee 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 employment factors identified by the employee.⁷

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ A physician's opinion on whether there is causal relationship between the diagnosed condition and the accepted employment incident must be based on a complete factual and medical background. Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the specific employment incident.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

Under FECA, the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to

⁵ See *C.D.*, Docket No. 20-0762 (issued January 13, 2021).

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 *K.F.*, Docket No. 20-0100 (issued June 2, 2020); *R.G.*, Docket No. 19-0233 (issued July 16, 2019). See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *L.S.*, Docket No. 19-1769 (issued July 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁹ *B.C.*, Docket No. 20-0221 (issued July 10, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁰ 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).

correct a subluxation as demonstrated by x-rays to exist.¹¹ OWCP's regulations at 20 C.F.R. § 10.5(bb) have defined subluxation as an incomplete dislocation, off-centering, misalignment, fixation, or abnormal spacing of the vertebrae which must be demonstrable on an x-ray film to an individual trained in the reading of x-rays.¹²

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a lumbar condition causally related to the accepted September 1, 2017 employment incident.

Appellant submitted reports from Dr. Harrison, a chiropractor, dated from September 18, 2017. A chiropractor is only considered to be a qualified physician under FECA to the extent he diagnoses and treats a subluxation demonstrated by x-ray evidence.¹³ Dr. Harrison did not indicate in any of his reports that he was treating appellant by manual manipulation to correct a subluxation demonstrated by x-ray evidence to exist. In his September 29, 2017 report, he reviewed the September 27, 2017 x-ray report of her lumbar spine, which he noted reported retrolisthesis. Dr. Harrison, however, related that he was treating appellant for sacroiliitis, rather than for a lumbar subluxation demonstrated by x-ray evidence. As he did not treat spinal subluxations as demonstrated by x-ray to exist and he is not considered to be a physician as defined under FECA.

In a September 27, 2017 report, Dr. Kints related appellant's history of the September 1, 2017 trip and fall. She noted appellant's pain complaints and indicated that review of x-ray and CT studies revealed findings consistent with lumbar degenerative changes. Dr. Kints, however, offered no medical opinion regarding the cause of appellant's diagnosed conditions. The Board has held that medical evidence, which does not offer an opinion on causal relationship, is of no probative value to the issue of causal relationship.¹⁴ Therefore, this report is insufficient to establish the claim.

In his October 5, 2017 report, Dr. Ratliff diagnosed appellant with lumbago and neuritis. He reported that her symptoms began a month prior and she had described an injury on September 1, 2017 when she tripped on a printer cord. Dr. Ratliff stated that appellant reported bruises on her head, right hip, and buttock area, but none was reported on examination. In a corresponding October 5, 2017 Form CA-20 report he opined, with a checkmark "Yes" that her diagnoses of lumbago and neuritis were caused or aggravated by the September 1, 2017 employment incident. The Board has held, however, that when a physician's opinion as to the cause of a condition or period of disability consists only of a checkmark on a form, without further

¹¹ 5 U.S.C. § 8101(2). *See also C.H.*, Docket No. 19-1127 (issued March 1, 2021); *A.C.*, Docket No. 19-1950 (issued May 27, 2020).

¹² 20 C.F.R. § 10.5(bb).

¹³ 5 U.S.C. § 8101(2) (this subsection 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).

¹⁴ *D.B.*, Docket No. 19-0514 (issued January 27, 2020); *L.T.*, Docket No. 18-1603 (issued February 21, 2019).

explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.¹⁵ Therefore, Dr. Ratliff's reports are insufficient to establish appellant's claim.

The reports from Dr. Varney and Dr. Mayer did not provide a history of the September 1, 2017 employment incident or provide an opinion as to whether the diagnosis are due to the accepted employment incident. As previously noted, medical evidence, which does not offer an opinion on causal relationship, is of no probative value to the issue of causal relationship.¹⁶ Thus, these reports are insufficient to establish appellant's claim.

Appellant submitted an unsigned July 17, 2019 report from the Pikeville Medical Center. The Board, however, has held that reports that are unsigned or bear an illegible signature lack proper identification and thus have no probative value.¹⁷

OWCP also received diagnostic reports in support of appellant's claim. The Board has held that diagnostic studies, standing alone, lack probative value as to the issues of causal relationship as they do not address whether the employment incident caused the diagnosed condition.¹⁸

As appellant has not submitted rationalized medical evidence establishing a diagnosed lumbar condition causally related to the accepted September 1, 2017 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a lumbar condition causally related to the accepted September 1, 2017 employment incident.

¹⁵ See *O.M.*, Docket No. 18-1055 (issued April 15, 2020); *Gary J. Watling*, 52 ECAB 278 (2001).

¹⁶ *D.B.*, *supra* note 14; *L.T.*, Docket No. 18-1603 (issued February 21, 2019).

¹⁷ *K.D.*, Docket No. 19-1405 (issued April 9, 2020); *Z.G.*, Docket No. 19-0967 (issued October 21, 2019); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹⁸ *M.L.*, Docket No. 18-0153 (issued January 22, 2020); see *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

ORDER

IT IS HEREBY ORDERED THAT the September 25, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 9, 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