United States Department of Labor
Employees' Compensation Appeals Board

D.S., Appellant	)	
and	)	**Docket No. 21-0673**
	)	**Issued: October 19, 2021**
U.S. POSTAL SERVICE, POST OFFICE, Setauket, NY, Employer	)	

Appearances:
Paul Kalker, Esq., for the appellant[1]
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 March 16, 2021 appellant, through counsel, filed a timely appeal from a January 20, 2021 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.[3]

[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*.

[3] The Board notes that, following the January 20, 2021 decision, appellant submitted additional evidence to OWCP. 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.*

ISSUE

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include additional medical conditions as causally related to the accepted October 15, 2019 employment injury.

FACTUAL HISTORY

On October 24, 2019 appellant, then a 54-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 15, 2019 she injured her back when lifting a heavy box while in the performance of duty. She stopped work on October 21, 2019 and worked intermittently thereafter.

On October 24, 2019 the employing establishment properly executed an authorization for examination and/or treatment (Form CA-16). The Form CA-16 listed the date of injury as October 15, 2019 and alleged injuries to appellant's back radiating down her leg. In an October 25, 2019 attending physician's report, Part B of the Form CA-16, Dr. Ahad Ashraf, a Board-certified internist, indicated that appellant had intractable back and neck pain from a previous work injury. He diagnosed herniated nucleus pulposus. Dr. Ashraf acknowledged that the diagnosed conditions were caused or aggravated by the described employment incident. OWCP also received a job description for a city carrier.

In a November 6, 2019 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

On October 23, 2019 appellant was treated by Dr. Faiyaz Ahmed, a Board-certified internist, for radiating low back pain with numbness. In an admission history and physical appellant reported working in the employing establishment and aggravating her back when lifting a package. Dr. Ahmed noted a lumbosacral spine x-ray revealed mild grade 1 L4-5 spondylolisthesis and degenerative changes. Similarly, a magnetic resonance imaging (MRI) scan of the lumbar spine revealed edema within pedicles of L5 suggesting a stress reaction with possible nondisplaced lysis, diffuse degenerative disc disease with foraminal narrowing on the left at L4-5 due to lateral protrusion, and small foraminal protrusions noted at L2-3 and L3-4. Dr. Ahmed diagnosed intractable lower back pain with left lower extremity neuropathy secondary to degenerative disc disease of L4-5, obesity, and asthma.

On October 23, 2019 appellant was also treated by Dr. Adam Ash, a Board-certified emergency room physician, for left buttock pain radiating to the back of the thigh to knee. She reported that her symptoms began after lifting a heavy parcel. Dr. Ash noted that appellant ultimately was unable to walk due to pain. He diagnosed sciatica left side and intractable lower back pain.

On October 24, 2019 appellant was seen in a neurosurgical consult by Stephan K. Salvia, a physician assistant, for a history of chronic neck pain secondary to a past work injury in 2006. Mr. Salvia noted that imaging revealed L4-5 far lateral herniated nucleus pulposus and edema within L5 pedicles.

On October 24, 2019 appellant underwent a computerized tomography (CT) scan of the lumbar spine that revealed narrowing of the left L4-5 neural foramina caused by mild disc protrusion and facet joint hypertrophy, with no evidence of acute fracture. An x-ray of the lumbar spine of even date revealed a 4.5 millimeter anterior spinal listhesis of L4 on L5.

On October 24, 2019 Dr. Sumeer Sathi, a Board-certified neurosurgeon, reviewed the MRI, CT scan, and x-rays of the lumbar spine, which revealed L4-5 grade 1 spondylolisthesis, left L4-5 foramina stenosis related to foramina herniated nucleus pulposus, and multi-level degenerative disc disease. He recommended conservative treatment including a lumbar sacral orthosis (LSO) brace, Medrol dose Pak, and analgesics. In a follow-up note dated October 25, 2019, Dr. Sathi evaluated appellant for injuries sustained in an October 15, 2019 accident. He reviewed radiological studies and indicated that she would continue under his care.

On October 25, 2019 James M. Storc, a physician assistant, treated appellant for low back pain radiating into the left gluteal with medial foot numbness. He noted imaging revealed L4-5 lateral herniated nucleus pulposus and edema at L5 pedicles.

In an inpatient progress note and hospital discharge summary dated October 25, 2019, Dr. Ashraf diagnosed intractable lower back pain with left lower extremity neuropathy secondary to degenerative disc disease of L4-5, left lower extremity foot with numbness, L4-5 lateral herniated pulposus, edema within the L5 pedicles, obesity, asthma, and peripheral neuropathy. He noted appellant was admitted and evaluated by neurosurgery and provided an LSO brace and Medrol dose Pak.

Appellant was treated by Dr. Kenneth B. Levites, a Board-certified family practitioner, on November 1, 2019 for increased pain associated with sciatica and spinal stenosis. She reported being treated in the emergency room twice with a hospitalization for pain and numbness distal to the left knee. Dr. Levites diagnosed sciatica of the left side and spinal stenosis of the lumbosacral region.

In a report dated November 14, 2019, Mr. Salvia treated appellant in follow-up for continued low back pain radiating into her left gluteus and down her foot associated with numbness. In a November 14, 2019 workers' compensation progress note, he acknowledged that the incident described by appellant was the competent medical cause of the injury/illness, her complaints were consistent with her history of injury, and the history of injury was consistent with the objective findings.

In a duty status report (Form CA-17) dated November 26, 2019, Dr. Sathi noted clinical findings of lumbar radiculopathy and lumbago and acknowledged that the diagnosis was due to injury. He noted that appellant was totally disabled from work.

By decision dated December 12, 2019, OWCP denied appellant's traumatic injury claim, finding that she had not established causal relationship between her diagnosed conditions and her accepted October 15, 2019 employment incident.

Appellant submitted additional evidence. On December 27, 2019 Dr. Sathi treated appellant for a work-related injury occurring on October 15, 2019 when she lifted a heavy package from her hamper and felt severe lower back pain. Appellant denied lower back pain or leg symptoms prior to this incident. Dr. Sathi opined that it was highly likely that her work-related injury was a direct contributor to her symptoms. Findings on examination revealed positive

straight leg raise at the left lower extremity, sciatic notch tenderness, and paraspinal muscle spasm of the back. Dr. Sathi indicated that appellant sustained a work-related injury on October 15, 2019 and opined that based on the clinical examination and imaging her symptoms were highly likely a result of the work-related injury. He noted that appellant was totally disabled.

On March 4, 2020 appellant requested reconsideration.

By decision dated March 10, 2020, OWCP denied modification of its December 12, 2019 decision.

OWCP received additional evidence. On May 8 and 27, 2020 Dr. Michael J. Campo, a chiropractor, treated appellant for a work-related accident that occurred on October 15, 2019, when she was loading parcels of mail from a hamper and felt immediate back pain. Appellant's history was significant for a prior work-related cervical injury in 2002. X-rays of the lumbar spine revealed varying degrees of vertebral body rotation and loss of disc space at L4-5. Dr. Campo diagnosed post-traumatic stress fracture with possible non-displaced lysis on the right L5 pedicle with edema, post-traumatic L2-3 and L3-4 foraminal disc protrusion, post-traumatic mild anterior listhesis of L4 on L5, post-traumatic exacerbation of underlying degenerative changes, lumbar radiculopathy, post-traumatic thoracic and lumbar sprain/strain, myospasm and myofascitis, myofascial pain syndrome, and subluxation complex syndrome of the thoracic and lumbar spine. He opined that, based on appellant's condition, physical examination, diagnostic testing, radiographic analysis, and subjective complaints, with reasonable chiropractic medical certainty, appellant suffered an injury as a result of the incident on October 15, 2019.

Appellant was treated by Dr. David Dynof, a Board-certified orthopedist, on May 12, June 9 and July 7, 2020 for a work-related accident on October 15, 2019 when bending down to pick up a package. She reported low back pain radiating to the left buttock, thigh, calf, and foot with paresthesia of the left leg and foot. Findings on examination revealed antalgic gait, moderately overweight, tenderness to palpation at lumbar levels L3 through S1, tenderness over left and right trigger points and sacroiliac joint, and positive straight leg test. Dr. Dynof diagnosed lumbosacral sprain/strain, lumbar myalgia, lumbar trigger points, lumbago, left lumbar radiculopathy, and lumbar facet arthropathy. He performed a series of lumbar paravertebral nerve blocks from May 12 through July 7, 2020, which provided good relief.

Dr. Myassar Zarif, a Board-certified neurologist, treated appellant on August 6, 2020 for low back pain and left leg numbness. He noted that electromyography and nerve conduction velocity (EMG/NCV) testing revealed mild chronic left L5-S1 radiculopathy. Dr. Zarif diagnosed low back pain and radiculopathy of the lumbar region.

On August 10 and September 1, 2020 Dr. Antigone Argyriou, a Board-certified anesthesiologist, treated appellant for back pain radiating down the left leg, which began following a work-related injury on October 15, 2019, when she bent over to lift a package from a hamper. Appellant reported that a subsequent injury occurred as a result of falling onto the floor. Dr. Argyriou noted an EMG/NCV study revealed chronic radiculopathy on the left side at L4-5. He diagnosed radiculopathy, lumbar region, iliotibial band syndrome left leg, and myalgia. In a workers' compensation provider worksheet of even date, Dr. Argyriou noted left L4 radiculopathy corroborated by an EMG/NCV and recommended continued chiropractic care.

On November 20, 2020 appellant, through counsel, requested reconsideration.

By decision dated January 20, 2021, OWCP accepted appellant's claim for lumbosacral sprain/strain and left lumbar radiculopathy.

By decision dated January 20, 2021, OWCP denied expansion of the acceptance of appellant's claim to include the additional conditions of left-side sciatica, spinal stenosis of the lumbosacral region, degenerative disc disease of L4-5, lumbar trigger points, lumbar facet arthropathy, lumbar disc bulge, and lumbar disc herniation.

LEGAL PRECEDENT

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[4]

To establish causal relationship between the condition as well as any additional conditions claimed and the employment injury, an employee must submit rationalized medical evidence.[5] 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.[6]

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include additional conditions as causally related to the accepted October 15, 2019 employment injury.

In an attending physician's report, Part B of the Form CA-16, dated October 25, 2019, Dr. Ashraf affirmed that the condition was caused or aggravated by an employment activity. On October 25, 2019 he diagnosed intractable lower back pain with left lower extremity neuropathy secondary to degenerative disc disease of L4-5, left lower extremity foot with numbness, L4-5 lateral herniated pulposus, edema within the L5 pedicles, obesity, asthma, and peripheral neuropathy. Dr. Levites treated appellant on November 1, 2019 for increased pain associated with sciatica and spinal stenosis and diagnosed sciatica of the left side and spinal stenosis of the lumbosacral region. Similarly, Dr. Zarif treated appellant on August 6, 2020 and diagnosed low back pain and mild chronic left L5-S1 radiculopathy. These reports, however, do not provide an opinion on whether the additional claimed conditions are causally related to the accepted employment injury. 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

[4] *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[5] *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

[6] *T.K.*, *id.*; *I.J.*, 59 ECAB 408 (2008).

of causal relationship.[7] Therefore, the Board finds that these reports are insufficient to meet appellant's burden of proof.

On October 23, 2019 Dr. Ahmed treated appellant for radiating low back pain with numbness and diagnosed intractable lower back pain with left lower extremity neuropathy secondary to degenerative disc disease of L4-5, obesity, and asthma. On October 23, 2019 Dr. Ash treated appellant for radiating left buttock pain and diagnosed sciatica left side and intractable lower back pain. Similarly, on October 24 and 25, 2019 Dr. Sathi treated appellant for lower back pain and noted reviewing diagnostic reports that revealed L4-5 grade 1 spondylolisthesis, left L4-5 foraminal stenosis related to foraminal herniated nucleus pulposus, and multi-level degenerative disc disease. In reports dated May 12 through July 7, 2020, Dr. Dynof treated appellant and diagnosed lumbosacral sprain/strain, lumbar myalgia, lumbar trigger points, lumbago, left lumbar radiculopathy, and lumbar facet arthropathy. On August 10 and September 1, 2020 Dr. Argyriou treated appellant for back pain radiating down the left leg and diagnosed radiculopathy, lumbar region, iliotibial band syndrome left leg, and myalgia. None of these physicians, however, provided an opinion regarding causal relationship between appellant's additional diagnosed conditions and the accepted employment injury. As noted above, 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. As such, these reports are insufficient to establish expansion of the claim.

In a Form CA-17 report dated November 26, 2019, Dr. Sathi noted that the diagnosis due to injury was lumbar radiculopathy and lumbago and indicated that appellant could not work. He affirmed that the diagnosed conditions were caused or aggravated by the described employment incident. The Board, however, has held that a medical opinion must provide an explanation of how the specific employment incident or employment factors physiologically caused or aggravated the additional diagnosed conditions.[8] Therefore, the Board finds that this report is of limited probative value and insufficient to establish appellant's burden of proof.

On December 27, 2019 Dr. Sathi treated appellant for a work-related injury occurring on October 15, 2019 and opined that it was "highly likely" that her work-related injury was a direct contributor to her symptoms. The Board has held that medical opinions that are speculative or equivocal in character are of limited probative value.[9] As such, these medical notes by Dr. Sathi are insufficient to establish expansion of the acceptance of appellant's claim.

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

[8] *G.L.*, Docket No. 18-1057 (issued April 14, 2020).

[9] *J.W.*, Docket No. 18-0678 (issued March 3, 2020).

In reports dated May 8 and 27, 2020, Dr. Campo[10] treated appellant for a work-related accident that occurred on October 15, 2019 when she was loading parcels of mail from a hamper. Appellant's history was significant for a prior work-related cervical injury in 2002. Dr. Campo diagnosed post-traumatic stress fracture with possible non-displaced lysis on the right L5 pedicle with edema, post-traumatic L2-3 and L3-4 foraminal disc protrusion, post-traumatic mild anterior listhesis of L4 on L5, post-traumatic exacerbation of underlying degenerative changes, lumbar radiculopathy, post-traumatic thoracic and lumbar sprain/strain, myospasm and myofascitis, myofascial pain syndrome, and subluxation complex syndrome of the thoracic and lumbar spine. He opined that based on appellant's condition, physical examination, diagnostic testing, radiographic analysis, and subjective complaints, with reasonable chiropractic medical certainty, appellant suffered an injury as a result of the incident on October 15, 2019. While he provided a conclusory opinion, Dr. Campo did not explain with rationale how the accepted employment injury had caused or aggravated additional diagnosed conditions. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was causally related to employment factors.[11] Thus, Dr. Campo's opinion is also of limited probative value and insufficient to establish expansion of the claim.

Appellant submitted notes from Mr. Salvia, a nurse practitioner, and Mr. Storc, a physician assistant. Certain healthcare providers such as nurse practitioners[12] and a physician assistant is not considered a physician as defined under FECA.[13] Consequently, these notes will not suffice for purposes of establishing appellant's claim.[14]

[10] As noted above, Dr. Campo is a chiropractor. 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 correct a subluxation as demonstrated by x-ray to exist. 5 U.S.C. § 8101(2). 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. If the diagnosis of a subluxation as demonstrated by x-ray is not established, the chiropractor is not a physician as defined under FECA and his or her report is of no probative value to the medical issue presented. *See R.P.*, Docket No. 18-0860 (issued December 4, 2018); *Mary A. Ceglia*, 55 ECAB 626 (2004); *Jack B. Wood*, 40 ECAB 95, 109 (1988). The Board notes that Dr. Campo indicated that x-rays of the lumbar spine revealed varying degrees of vertebral body rotation and loss of disc space at L4-5. Dr. Campo further diagnosed subluxation complex syndrome of the thoracic and lumbar spine. Because he related a subluxation diagnosis based on x-ray evidence, the Board finds that he is considered a physician under FECA.

[11] *A.L.*, Docket No. 18-1706 (issued May 20, 2019); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[12] *Paul Foster*, 56 ECAB 208 (2004) (where the Board found that a nurse practitioner is not a "physician" pursuant to FECA).

[13] 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); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (nurse practitioners are not considered physicians under FECA); *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).

[14] *Id*.

Appellant also submitted multiple diagnostic testing reports. The Board has held that diagnostic studies, standing alone, lack probative value as they do not address whether the employment injury caused any of the additional diagnosed conditions.[15]

As the medical evidence of record is insufficient to establish causal relationship, the Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include additional medical conditions causally related to the accepted October 15, 2019 employment injury.

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 that the acceptance of her claim should be expanded to include additional medical conditions causally related to the accepted October 15, 2019 employment injury.[16]

[15] *J.P.*, Docket No. 19-0216 (issued December 13, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

[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. 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 January 20, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 19, 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