

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

C.T., Appellant)	
)	
and)	Docket No. 22-0310
)	Issued: August 18, 2022
U.S. POSTAL SERVICE, KANSAS CITY)	
NETWORK DISTRIBUTION CENTER,)	
Kansas City, MO, Employer)	
)	

Appearances:
Shannon Bravo, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On December 28, 2021 appellant, through counsel, filed a timely appeal from a November 18, 2021 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.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 November 18, 2021 decision, OWCP received additional evidence. 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 establish a medical condition causally related to the accepted December 22, 2020 employment incident.

FACTUAL HISTORY

On December 29, 2020 appellant, then a 42-year-old computer operation clerk, filed a traumatic injury claim (Form CA-1) alleging that on December 22, 2020 she injured her right shoulder, elbow, and ankle, as well as her lumbar spine and chest, when her foot was struck by a pallet of mail while in the performance of duty. She stopped work that day and returned to work on December 28, 2020.

OWCP received a narrative statement from appellant further describing how the claimed December 22, 2020 employment incident occurred. Appellant explained that a coworker struck a stack of boxes she was checking for dates. She alleged that she fell into a box and could not move as she was pinned in between two boxes. OWCP also received statements dated December 22 and 23, 2020 from P.P., the coworker who hit the pallet of mail.

The employing establishment executed an authorization for examination and/or treatment (Form CA-16) on December 22, 2020.

In a December 22, 2020 emergency department treatment note, Dr. Jonathan Dangers, a Board-certified emergency medicine specialist, diagnosed arthralgia, unspecified joint and myalgia and requested that appellant be excused from work for four days. He noted that diagnostic imaging tests involving the right ankle, chest, right elbow, lateral spine, and right shoulder were ordered.

In a December 29, 2020 return to work/school note, Dr. Kim M. Davies, an internist, held appellant off work until February 5, 2021.

In a January 7, 2021 development letter, OWCP advised appellant of the deficiencies of her claim. It requested additional factual and medical evidence and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In a January 13, 2021 report, Dr. Davies reported that appellant was struck by a forklift on December 22, 2020. She diagnosed osteoarthritis. Return to work/school notes dated January 6, 22, and 29, 2021 from Dr. Davies were also submitted.

OWCP also received a January 13, 2021 work status summary, which was unsigned; and a January 22, 2021 work status summary from a certified family nurse practitioner.

In a January 29, 2021 work status summary, Dr. Mark Scott, an osteopath Board-certified in emergency medicine, noted appellant's December 22, 2020 date of injury. He diagnosed unspecified injury of lower back; cervicalgia; and pain in left thigh, right shoulder, and right thigh. Dr. Scott also provided work restrictions commencing January 13, 2021.

In a February 4, 2021 report, Dr. Britney Briscoe, an emergency medicine specialist, reported that appellant was seen and treated in the emergency department and could return to work

on February 8, 2021. In a February 4, 2021 after visit summary, Dr. Adrienne N. Malik, an emergency medicine specialist, diagnosed low back pain and sciatica.

By decision dated February 9, 2021, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted December 22, 2020 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On July 7, 2021 appellant, through counsel, requested reconsideration. Evidence submitted in support of the request for reconsideration included photographs; a limited-duty job offer for a process control analyst, which appellant accepted on February 8, 2021; and January 22 and February 4, 2021 treatment notes from Allison Lyles, a nurse practitioner.

OWCP continued to receive medical evidence. A December 22, 2020 x-ray of appellant's right shoulder indicated findings of calcific tendinopathy of the right rotator cuff. Diagnostic testing dated December 22, 2020 of appellant's right elbow, right ankle, and chest x-rays did not note abnormal findings.

In a January 29, 2021 report, Dr. Scott noted appellant's December 22, 2020 history of injury as appellant was crushed between two boxes of packages that were struck by a forklift. He noted her medical course and that her prior history was significant for osteoarthritis and right rotator cuff tear. Dr. Scott provided findings on physical examination and diagnosed unspecified injury to the lower back, cervicalgia, bilateral thigh and right shoulder pain. He released appellant to work with restrictions and recommended use of a patch for pain.

A February 4, 2021 magnetic resonance imaging (MRI) scan of thoracic spine demonstrated mild thoracic spondylosis without significant stenosis. A February 4, 2021 MRI scan of the lumbar spine demonstrated mild disc degeneration and mild disc protrusion at L6-S1 levels (partially obscured) with mild left lateral recess narrowing and mild left neural foraminal stenosis.

In a March 1, 2021 report, Dr. Matthew J. Pierson, a Board-certified neurosurgeon, evaluated appellant for worsening left shoulder and neck pain. He reported that appellant's left shoulder pain had been present since a 2016 work injury and worsened since December 22, 2020, when she was smashed by a piece of machinery and wedged between two large pallets. Dr. Pierson provided examination findings and diagnosed upper extremity weakness, cervical pain and lumbar radiculopathy. He recommended additional diagnostic tests and that she be seen by a neurologist to rule out injury to cervical spine. In an April 22, 2021 report, Dr. Pierson discussed appellant's electromyography and nerve conduction velocity study results, which he indicated did not demonstrate radiculopathy or peripheral nerve entrapment syndrome and diagnosed neck pain. He noted that no restrictions were needed for her cervical complaints and that she should continue physical therapy and pain management.

In a March 9, 2021 report, Dr. Daniel C. Farrell, a Board-certified orthopedic surgeon, related that appellant experienced left shoulder pain after an injury at work. He diagnosed left upper arm pain.

In a March 23, 2021 report, Dr. Susheel Govindan, an anesthesiologist, noted that appellant reported that she did not have back pain prior to the December 22, 2020 injury when she was hit

by a speeder (a motorized pallet jack) and was pinned between boxes with immediate sharp pain in her lower back with pain radiating down the left leg. He noted her medical course, provided examination findings and discussed the February 4, 2021 diagnostic testing of the lumbar and thoracic spine. Dr. Govindan diagnosed lumbosacral radiculopathy and chronic left-sided lower back pain with left-sided sciatica. He noted that the low back and left lower extremity pain began after the claimed December 22, 2020 work injury.

In an April 16, 2021 report, Dr. Andrew M. Sack, a Board-certified pain management specialist, noted the history of appellant's December 22, 2020 injury relating that she was hit by a speeder jack and pinned between boxes with immediate onset of sharp pain in lower back with pain radiating down the left leg. Appellant reported no back pain prior to the December 22, 2020 injury. Dr. Sack noted physical examination findings, reviewed the February 4, 2021 MRI reports and diagnosed lumbosacral radiculopathy. He noted that low back and left lower extremity pain started after the claimed December 22, 2021 work injury.

In a June 15, 2021 report, Dr. Sack noted appellant's physical examination findings and his review of the February 4, 2021 thoracic and lumbar spine MRI reports. He provided diagnoses of lumbosacral radiculopathy, lumbar herniated disc, and work-related injury. Dr. Sack opined that it was "very likely" that appellant's symptoms were due to the claimed December 22, 2020 work injury.

By decision dated November 18, 2021, OWCP modified its prior decision to find that appellant had established a diagnosed medical condition in connection with the accepted employment incident. However, the claim remained denied as the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted December 22, 2020 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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,⁵ 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.⁶ 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.⁷

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

⁴ *Supra* note 2.

⁵ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *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).

⁷ *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).

are two components involved in establishing fact of injury. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury.⁸

The evidence required to establish causal relationship is rationalized medical opinion evidence.⁹ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 specific employment incident identified by the employee.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted December 22, 2020 employment incident.

In his December 22, 2020 report, Dr. Dangers diagnosed arthralgia and myalgia. Similarly, in a January 29, 2021 work status summary and report, Dr. Scott diagnosed unspecified injury to the lower back, cervicalgia, bilateral thigh, and right shoulder pain. In a February 4, 2021 report, Dr. Malik diagnosed low back pain with sciatica. On March 9, 2021 Dr. Farrell reported the history as left shoulder pain after an injury at work and diagnosed left upper arm pain. The Board has held that pain is a description of a symptom, not a clear diagnosis of a medical condition.¹¹ In a February 4, 2021 report, Dr. Briscoe reported that appellant was seen and treated in the emergency department, but he failed to provide a diagnosis of a medical condition. Medical reports which lack a firm diagnosis are of no probative value.¹² While these reports noted appellant's symptoms, lacking a firm diagnosis, these reports were insufficient to establish appellant's claim.

Dr. Davies, in her January 13, 2021 report, noted the history of appellant's December 22, 2020 injury and diagnosed osteoarthritis. The Board has long held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value.¹³ These reports are, therefore, insufficient to establish causal relationship.

⁸ *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).

⁹ *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).

¹⁰ *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).

¹¹ *See E.S.*, Docket No. 21-0189 (issued November 16, 2021); *C.S.*, Docket No. 20-1354 (issued January 29, 2021); *D.R.*, Docket No. 18-1408 (issued March 1, 2019); *D.A.*, Docket No. 18-0783 (issued November 8, 2018).

¹² *L.T.*, Docket No. 20-0582 (issued November 15, 2021); *E.S.*, *id.*; *C.S.*, *id.*; *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

¹³ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

In a March 1, 2021 report, Dr. Pierson reported that appellant's left shoulder pain had been present since a 2016 work injury and worsened since December 22, 2020, when she was smashed by a piece of machinery and wedged between two large pallets. He provided diagnoses of upper extremity weakness, cervical pain, and lumbar radiculopathy and, in an April 22, 2021 report he noted neck pain. Dr. Govindan, in a March 23, 2021 report, diagnosed lumbosacral radiculopathy and chronic left-sided lower back pain with left-sided sciatica, noting that the low back and left lower extremity pain began after the December 22, 2020 work injury. While Dr. Pierson and Dr. Govindan attributed appellant's pain complaints to the accepted December 22, 2020 employment incident, neither physician provided any medical rationale explaining how the December 22, 2020 incident resulted in her diagnosed conditions. Medical opinion evidence should offer a medically-sound explanation of how the specific employment incident or work factors, physiologically caused injury.¹⁴ These reports are, therefore, of limited probative value and insufficient to establish causal relationship.¹⁵

OWCP also received reports from Dr. Sack. In his April 16, 2021 report, Dr. Sack noted the history of appellant's December 22, 2020 injury with immediate onset of sharp pain in her lower back, with pain radiating down her left leg. He diagnosed lumbosacral radiculopathy and noted that low back and left lower extremity pain started after the claimed December 22, 2021 work injury. In a June 15, 2021 report, Dr. Sack diagnosed lumbosacral radiculopathy, lumbar herniated disc, and work-related injury. He opined that it was "very likely" that appellant's symptoms were due to the claimed December 22, 2020 work injury. The Board has held that, while an opinion supporting causal relationship must be one of reasonable medical certainty and not speculative or equivocal in character.¹⁶ Further, as previously noted, the medical opinion evidence should offer a medically-sound explanation of how the specific employment incident or work factors, physiologically caused injury.¹⁷ Dr. Sack did not offer a rationalized explanation as to how the employment incident caused a diagnosed condition. For these reasons, his reports are insufficient to establish appellant's claim.

OWCP also received reports from nurse practitioners. The Board has held that medical reports signed solely by a nurse practitioner are of no probative value as such healthcare providers are not considered physicians as defined under FECA and are, therefore, not competent to provide medical opinions.¹⁸ Consequently, their medical findings and/or opinions will not suffice for the purpose of establishing entitlement to FECA benefits.

¹⁴ *O.E.*, Docket No. 20-0554 (issued October 16, 2020); *L.R.*, Docket No. 16-0736 (issued September 2, 2016).

¹⁵ *J.N.*, Docket No. 21-0606 (issued November 23, 2021); *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *see H.A.*, Docket No. 18-1466 (issued August 23, 2019); *L.R.*, *id.*

¹⁶ *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *C.H.*, Docket No. 19-0409 (issued August 5, 2019).

¹⁷ *O.E.*, *supra* note 14; *L.R.*, *supra* note 14.

¹⁸ 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); *S.O.*, Docket No. 21-1050 (issued January 21, 2022); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (nurse practitioners are not considered physicians under FECA).

The remaining evidence consisted of diagnostic testing in the form of x-rays, EMG/NCV study, and MRI scan reports. The Board has held that diagnostic tests, standing alone, lack probative value on the issue of causal relationship as they do not address the relationship between the accepted employment incident and a diagnosed condition.¹⁹ For this reason, these reports are insufficient to meet appellant's burden of proof.

Appellant also submitted a January 13, 2021 unsigned report. The Board has held that reports that are unsigned, or bear an illegible signature, lack proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.²⁰ Therefore, this report is also insufficient to establish the claim.

As there is no rationalized medical evidence of record establishing that appellant's diagnosed conditions are causally related to the accepted employment incident, the Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted December 22, 2020 employment incident.

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 medical condition causally related to the accepted December 22, 2020 employment incident.²¹

¹⁹ See *D.M.*, Docket No. 21-1244 (issued March 25, 2022); *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

²⁰ *A.O.*, Docket No. 20-0038 (issued August 26, 2020); *M.A.*, Docket No. 19-1551 (issued April 30, 2020); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

²¹ The Board notes that the employing establishment executed a Form CA-16. A properly 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. See 20 C.F.R. § 10.300(c); *L.W.*, Docket No. 21-0789 (issued March 25, 2022); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

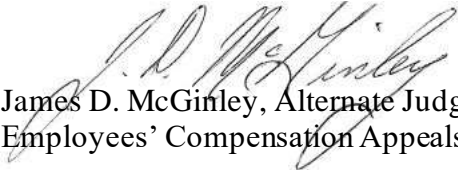
ORDER

IT IS HEREBY ORDERED THAT the November 18, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 18, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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


James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board