United States Department of Labor
Employees' Compensation Appeals Board

C.Q., Appellant	)	
and	)	**Docket No. 22-0375**
	)	**Issued: August 18, 2022**
U.S. POSTAL SERVICE, DOVER POST OFFICE, Dover, NJ, Employer	)	

Appearances:
James D. Muirhead, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On January 13, 2022 appellant, through counsel, filed a timely appeal from a September 21, 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.

[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 back condition causally related to the accepted February 1, 2021 employment incident.

FACTUAL HISTORY

On February 12, 2021 appellant, then a 52-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 1, 2021 she injured her low back when she slipped on snow and her body jerked while she was exiting her vehicle in the parking lot before her tour of duty started. In separate statements, she indicated that she only slipped, but did not fall.

In a February 6, 2021 statement, *K.B.*, supervisor customer services, indicated that on February 1, 2021 appellant told her she had injured her back while stepping out of her personal vehicle before her tour started. She indicated that she slid (without falling) in the snowy parking lot and that her body had jerked causing pain and discomfort in her back. *K.B.* noted that appellant was out of work from January 22 through 28, 2021 due to a nonwork-related back condition and that she had returned to work on January 30, 2021.

On February 11, 2021 the employing establishment issued an authorization for examination and/or treatment (Form CA-16). On February 12, 2021, however, it controverted the claim as their investigation had determined that appellant had a preexisting back injury.

In February 11, 2021 prescription notes, Dr. Joseph Vitale, a Board-certified internist, indicated that appellant was seen on February 3, 4, 8, and 11, 2021 due to the work incident. He related that her x-rays showed spine fractures. Dr. Vitale placed appellant off work for the period February 2 through March 16, 2021 due to the February 1, 2021 incident.

In a February 17, 2021 development letter, OWCP informed appellant regarding the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and afforded her 30 days to submit the necessary evidence.

In a February 23, 2021 report, Dr. Faisal Mahmood, a Board-certified orthopedic surgeon, noted that appellant was previously seen in 2019 for arthritis and sciatic pain, which she indicated was well controlled prior to her February 1, 2021 work injury. Appellant indicated that, on February 1, 2021 the day of the blizzard, she was getting out of her vehicle for work when she slipped on the snow and attempted to catch herself. She did not fall, but the slip and subsequent attempt to catch herself caused significant pain in her back. Dr. Mahmood noted that appellant's February 8, 2021 lumbar spine x-rays showed multilevel spondylosis and a mild, chronic, and anterior wedging compression fracture at T12. He also took x-rays of the lateral lumbar spine, which revealed a L1 compression fracture. Dr. Mahmood opined, based on appellant's presentation and history of a fall, that the L1 compression fracture was new and that the T12 was debatable chronic versus acute.

By decision dated March 22, 2021, OWCP accepted that the February 1, 2021 employment incident occurred, as alleged. However, it denied appellant's traumatic injury claim, finding that

the evidence of record was insufficient to establish causal relationship between the accepted February 1, 2021 employment incident and her diagnosed back conditions.

On March 25, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on July 14, 2021.

OWCP continued to received evidence. This included unsigned reports dated March 17, 19, and 22, 2021 from a chiropractor relating to treatment for lumbar radiculopathy, reports dated March 22 and 24, 2021 from an acupuncturist, and reports dated March 17, 19, and 22, 2021 from a physical therapist. OWCP also received a November 28, 2018 lumbar spine magnetic resonance imaging (MRI) scan, a January 9, 2019 electromyogram and nerve conduction velocity (EMG/NCV) study, and February 8, 2021 lumbar spine x-rays. Appellant also submitted reports from various physicians dated January 8 and 17, and February 25, 2019; January 16, February 20, July 2, September 17, and November 5, 2020; and January 21, 2021 which pertained to her preexisting chronic low back pain and treatment of a right pubic ramus fracture.

In a March 9, 2021 report, Dr. Ahmad Badri, D.O., an osteopathic physician specializing in orthopedic surgery, reevaluated appellant's lower back pain in the settling of a compression fracture of L1 as a result of a February 1, 2021 work-related injury. He noted her physical examination findings and indicated that her lumbar spine x-rays revealed no change in loss of height of an L1 compression fracture and evidence of a chronic T12 compression fracture. Dr. Badri noted that a February 25, 2021 bone density dual-energy x-ray absorptiometry scan of the lumbar spine and left hip was normal. He opined that appellant could return to her regular work duties with a 10-pound lifting restriction on March 23, 2021.

In a July 1, 2021 report, Dr. Raj Panchal, a physiatrist, indicated that appellant had chronic low back pain, which worsened in February 2021 when she had a slip and fall at work. He noted that she was found to have a compression fracture at L1. Dr. Panchal noted that appellant's symptoms had improved, and that the physical examination was largely unchanged from her prior visit. He opined that she had acute chronic low back pain likely secondary to lumbar spondylosis, previous compression fracture.

By decision dated September 21, 2021, OWCP's hearing representative affirmed the March 22, 2021 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

[3] *Id*.

[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).

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. 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, 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 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 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 incident identified by the claimant.[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 back condition causally related to the accepted February 1, 2021 employment incident.

In his narrative report dated February 23, 2021, Dr. Mahmood indicated that appellant's arthritis and sciatic pain were well controlled until prior to her February 1, 2021 work injury, when she slipped, but did not fall, on snow and attempted to catch herself. He conducted a physical

[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).

[9] *A.C.*, Docket No. 21-1307 (issued March 22, 2022); *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

[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); *see R.D.*, Docket No. 18-1551 (issued March 1, 2019).

examination, took lumbar spine x-rays, which revealed a L1 compression fracture, and read February 8, 2021 lumbar spine x-rays, which showed multilevel spondylosis and a mild, chronic, anterior wedging compression fracture at T12. However, based on appellant's presentation and history of injury, Dr. Mahmood found that the L1 compression fracture was new, and that the T12 was debatable chronic versus acute condition. However, such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how the accepted February 1, 2021 employment incident actually caused a diagnosed medical condition.[11] The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have physiologically caused or aggravated a medical condition.[12] To the extent Dr. Mahmood relied on the proper factual history, he failed to provide a pathophysiological explanation as to how the accepted employment incident of a slip on snow either caused or contributed to appellant's new compression fracture at L1 or the debatable chronic versus acute T12 condition.[13] Thus, this report is of limited probative value and insufficient to establish that appellant's diagnosed conditions are causally related to the accepted May 11, 2020 employment incident.

In a July 1, 2021 report, Dr. Panchal opined that appellant had acute chronic low back pain likely secondary to lumbar spondylosis, previous compression fracture. He indicated that her chronic low back pain worsened in February 2021 when she had a slip and fall at work, and that she was found to have a compression fracture at L1. The Board notes that Dr. Panchal did not have an accurate history of injury as appellant did not fall. To the extent that appellant had increased pain, the Board has held that pain is a symptom and not a compensable medical diagnosis.[14] Dr. Panchal's report is, therefore, of limited probative value and is insufficient to establish causal relationship between her diagnosed lumbar conditions and the accepted February 1, 2021 incident.[15]

In a March 9, 2021 report, Dr. Badri reevaluated appellant's lower back pain in the setting of a compression fracture of L1 as a result of a February 1, 2021 employment incident. In February 11, 2021 prescription notes, Dr. Vitale noted that she was seen for a work incident and that the x-rays showed spine fractures. He also held appellant off work. Neither physician however presented a complete description of the mechanism of injury or provided a supportive medical explanation as to how slipping, without a fall, would result in a compression fracture at L1 or an objective worsening of a preexisting condition.[16] As previously noted, the Board has held

[11] *See V.L.*, Docket No. 20-0884 (issued February 12, 2021); *J.B.*, Docket No. 18-1006 (issued May 3, 2019).

[12] *Id.*, *see also Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[13] *I.M.*, Docket No. 21-0324 (issued July 9, 2021); *T.D.*, Docket No. 19-1779 (issued March 9, 2021).

[14] *See S.L.*, Docket No. 19-1536 (issued June 26, 2020); *D.Y.*, Docket No. 20-0112 (issued June 25, 2020).

[15] *M.N.*, Docket No. 18-1193 (issued December 28, 2018).

[16] *See supra* note 9.

that a medical report lacking a rationalized medical opinion regarding causal relationship is of no probative value.[17] As such, these reports are insufficient to establish appellant's claim.

Appellant also submitted physical therapy, occupational therapy, and acupuncturist reports prior to and after the February 1, 2021 employment injury. They also do not constitute competent medical evidence because physical therapists, occupational therapists, and acupuncturists are not considered a "physician" as defined under FECA.[18] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to compensation benefits.[19]

OWCP also received unsigned chiropractic reports which related appellant's diagnosis as lumbar radiculopathy. The Board notes that section 8101(2) of FECA[20] provides that the term physician, as used therein, 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 and subject to regulation by the Secretary.[21] OWCP's implementing federal regulation at 20 C.F.R. § 10.5(bb) defines subluxation as an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrated on x-ray. As these reports did not diagnose a subluxation as demonstrated by x-ray, they do not constitute probative medical evidence.[22]

Lastly, appellant submitted diagnostic testing, including February 8, 2021 lumbar spine x-rays, a January 9, 2019 EMG/NCV study, and a November 28, 2018 lumbar spine MRI scan. The Board has explained however that diagnostic studies, standing alone, lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.[23] Thus, these reports are also insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence establishing causal relationship between her diagnosed back conditions and the accepted February 1, 2021

[17] *W.R.*, Docket No. 20-1101 (issued January 26, 2021); *N.D.*, Docket No. 20-0699 (issued November 16, 2020).

[18] Section 8101(2) of FECA provides that the term 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 supra* note 10 at Chapter 2.805.3a(1) (January 2013); *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); *see also S.S.*, Docket No. 18-0081 (issued August 22, 2018); *P.Y.*, Docket No. 16-1324 (issued July 24, 2017) (a speech pathologist is not considered a physician under FECA); *F.H.*, *supra* note 4; *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (a physical therapist is not considered a physician under FECA); *S.J.*, Docket No. 20-1061 (issued December 22, 2020); *J.R.*, Docket No. 19-0812 (issued September 29, 2020) (an occupational therapist is not considered a physician under FECA); *I.M.*, Docket No. 21-0324 (issued July 9, 2021); *K.L.*, Docket No. 18-1018 (issued April 10, 2019) (acupuncturists are not considered physicians under FECA).

[19] *Id*.

[20] 5 U.S.C. § 8101(2).

[21] *Id.*; 20 C.F.R. § 10.311.

[22] *T.H.*, Docket No. 17-0833 (issued September 7, 2017); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

[23] *M.B.*, Docket No. 19-1638 (issued July 17, 2020); *T.S.*, Docket No. 18-0150 (issued April 12, 2019).

employment incident, the Board finds that she has not met her burden of proof to establish her claim.[24]

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 back condition causally related to the accepted February 1, 2021 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the September 21, 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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

[24] 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. *See* 20 C.F.R. § 10.300(c); *S.P.*, Docket No. 19-1904 (issued September 2, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).