

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

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| J.K. (nee R.), Appellant |) | |
| |) | |
| and |) | Docket No. 22-0945 |
| |) | Issued: December 16, 2022 |
| U.S. POSTAL SERVICE, PITTSBURGH |) | |
| PERFORMANCE CLUSTER, Pittsburgh, PA, |) | |
| Employer |) | |
| _____ |) | |

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On June 3, 2022 appellant, through counsel, filed a timely appeal from March 7 and May 9, 2022 merit decisions 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 May 9, 2022 decision, appellant submitted 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 established a medical condition causally related to the accepted March 15, 2021 employment incident.

FACTUAL HISTORY

On March 26, 2021 appellant, then a 59-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 15, 2021 she pulled her left upper leg and hip out of place when she tripped on a sidewalk and fell while in the performance of duty. On the reverse side of the claim form appellant's supervisor acknowledged that appellant was injured in the performance of duty. Appellant did not stop work.

In support of her claim, appellant submitted an undated witness statement from K.S., a customer, relating that there was a raised piece of the sidewalk and she saw appellant trip over it after delivering a package and fall into the grass. K.S. noted that appellant had some difficulty getting up because she hurt her leg.

March 19 and 31, 2021 work excuse notes signed by Dr. Alan R. Reefer, a chiropractor, held appellant off work until March 29 and then April 8, 2021, respectively.

In an April 7, 2021 work excuse note, Dr. Michael Ondich, a family medicine osteopath, indicated that appellant was off work from March 19 through April 21, 2021 due to injury. In an April 22, 2021 work excuse note, Dr. Ondich held her off of work pending evaluation by an orthopedist.

An April 29, 2021 report from Dr. Bert Hepner, an osteopath specializing in orthopedic surgery, related that appellant sustained a work injury on March 8, 2021 when she tripped on a broken sidewalk, fell on her side, and pulled something in her left hip. Dr. Hepner's examination of the left hip revealed abnormal passive and active range of motion (ROM) and positive Patrick's test. He reviewed x-rays of the lumbosacral spine, which demonstrated significant degenerative changes in L5-S1 and L4-5 with degenerative changes in the sacroiliac joint, as well as x-rays of the hip, which demonstrated minimal degenerative changes without fracture. Dr. Hepner diagnosed labral tear of hip joint, sprain of left hip, and lumbar and sacral osteoarthritis. He advised that appellant could participate in stationary, sedentary duties pending further evaluation via a magnetic resonance imaging (MRI) scan. In a work restriction note of even date, Dr. Hepner restricted appellant to stationary and sedentary duties until May 13, 2021.

In a development letter dated June 28, 2021, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of evidence necessary. OWCP afforded appellant 30 days to respond.

Appellant subsequently submitted several diagnostic reports, including a March 25, 2021 left hip x-ray, which revealed mild degenerative change in the left sacroiliac joint, and an April 7, 2021 x-ray of the sacrum and coccyx, which revealed no fracture or dislocation.

A July 20, 2021 letter from the employing establishment requested a second opinion, noting that appellant had failed to provide updated medical information in response to its requests.

In a July 21, 2021 work restriction note, Dr. Hepner restricted appellant to sedentary and light-duty work until after her MRI scan.

By decision dated July 28, 2021, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted March 15, 2021 employment incident.

On August 9, 2021 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on December 20, 2021.⁴

Appellant underwent a lumbosacral and pelvic x-ray on March 22, 2021, interpreted by Dr. Reefer, which demonstrated multilevel degenerative disc disease in L3 through S1, osteophyte complex in L3-4, spondylosis and posterior joint arthritis, curvature of the lumbar spine, and lumbar and pelvic subluxation complexes.

In progress notes dated April 7, 2021, Dr. Ondich related that appellant fell down the steps, and landed face first while delivering mail approximately a week ago. His examination revealed tenderness to palpation over the entire spine, tender left ischial tuberosity with palpation, pain with extension and palpation of the left lower extremity, tenderness over the lumbar spine and paraspinal muscles, some muscle spasm bilaterally, tenderness to palpation over the sacrum, and discomfort with rotation, flexion, and extension of the lumbar spine. Dr. Ondich diagnosed pelvic pain and sacral pain.

A September 20, 2021 report from Dr. Scott J. Szabo, a Board-certified orthopedic surgeon, related that on March 15, 2021 appellant was delivering a package, tripped, fell, and landed on her right side. Appellant immediately noted numerous musculoskeletal complaints, but was being seen only for evaluation of the right shoulder. She reported no prior right shoulder injury, symptoms, or treatment. Dr. Szabo noted that appellant was being treated by a chiropractor for her spinal complaints. He reviewed x-rays of the right shoulder, which demonstrated 36.3 degree critical shoulder angle, maintained acromion interval, degeneration of the acromioclavicular joint, normal glenohumeral articulation, and type 3 acromial morphology. Examination of the right shoulder revealed tenderness over the right trapezial and scapular region as well as the acromioclavicular joint and bicipital sheath, decreased sensitivity in the deltoid, markedly positive Neer and Hawkins signs, pain during instability assessment, 140 degrees of frontal flexion, 90 degrees of abduction. Dr. Szabo also noted that at 90 degrees of abduction, appellant externally rotated 60 degrees and internally rotated 20 degrees, and at her side, she externally rotated 40 degrees and internally to S1 interspace. He diagnosed right shoulder rotator cuff tear, superior labrum anterior to posterior (SLAP) tear, biceps tenosynovitis, scapular dyskinesis, impingement syndrome, and acromioclavicular joint arthritis.

In an October 14, 2021 report, Dr. Dana C. Mears, a Board-certified orthopedist, diagnosed unilateral primary osteoarthritis of the left hip and trochanteric bursitis of the left hip. She administered an intra-articular injection to her left hip bursa.

⁴ Appellant submitted numerous illegible chiropractic daily notes from Dr. Reefer dated September 30, 2020 and March 17 through December 22, 2021.

An October 15, 2021 report from Dr. Szabo related appellant's history of injury and reviewed an MRI scan report for appellant's right shoulder, which demonstrated mild-to-moderate insertional tendinopathy of the supraspinatus tendon and degeneration of the acromioclavicular joint. Dr. Szabo diagnosed right shoulder rotator cuff tendinopathy and scapular dyskinesis evolving adhesive capsulitis. He indicated that appellant received a right glenohumeral joint impression and advised that she could return to work with restrictions, including no lifting over 10 pounds and no lifting above the waist for four weeks. In a work restriction note of even date, Dr. Szabo held appellant off work for four weeks and indicated that after that she could return to work with a 10-pound lifting limit to waist height and no above-head lifting.

In a December 1, 2021 addendum to his April 7, 2021 progress notes, Dr. Ondich clarified that appellant did not fall down the steps, but rather tripped over the sidewalk while delivering a package.

A December 9, 2021 letter from Dr. Ondich related that appellant tripped and fell at work, landing on her right side. Appellant stated that her pain and discomfort began immediately after the fall and that she had no prior musculoskeletal injuries or issues with her shoulder or back. Dr. Ondich opined that appellant's musculoskeletal complaints and injury were a direct result of her fall at work. He diagnosed hip strain and sacrococcygeal disorders.

In a December 13, 2021 report, Dr. Szabo examined appellant and diagnosed right rotator cuff tear, impingement, scapular dyskinesis, adhesive capsulitis, and possible SLAP tear.

In a January 24, 2022 statement, the employing establishment noted that appellant had been treated by a chiropractor and orthopedists prior to the March 15, 2021 fall and, thus, her conditions were preexisting and not caused by the employment incident. It attached multiple work excuse notes regarding appellant dated April 22 through June 27, 2019, as well as a duty status report (Form CA-17) dated June 27, 2019.

By decision dated March 7, 2022, OWCP's hearing representative affirmed the July 28, 2021 decision.

Appellant subsequently submitted a March 1, 2022 statement reiterating that she tripped and fell on the sidewalk on March 15, 2021. She clarified that she had received treatment by a chiropractor prior to her fall for a neck condition. Appellant further clarified that she had seen an orthopedist prior to her fall for her right knee, and that it was her left knee, as well as her shoulder, hip, and back, that she injured on March 15, 2021. She asserted that the 2019 work excuse notes submitted by the employing establishment had nothing to do with the injuries that resulted from her March 15, 2021 fall.

In an undated letter, Dr. Reefer indicated that he treated appellant multiple times in 2019 for a neck condition. He indicated that the next time he saw appellant was on March 17, 2021 when she presented with left lower back and hip pain, right neck and shoulder pain, and related subluxation complexes related to the accepted March 15, 2021 employment incident. Dr. Reefer noted that radiographs of the lumbopelvic region were obtained, and he was continuing to treat appellant for these conditions. He opined that the latter course of care had no relationship to the former.

On April 27, 2022 appellant, through counsel, requested reconsideration.

By decision dated May 9, 2022, OWCP denied modification of the March 7, 2022 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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,⁶ 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.⁷ 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.⁸

To determine whether an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred at the time and place, and in the manner alleged.⁹ The second component is whether the employment incident caused a personal injury.¹⁰

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.¹¹ 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 factors identified by the employee.¹²

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted March 15, 2021 employment incident.

⁵ *Supra* note 1.

⁶ *S.S.*, Docket No. 19-1815 (issued June 26, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁸ *S.A.*, Docket No. 19-1221 (issued June 9, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁹ *R.K.*, Docket No. 19-0904 (issued April 10, 2020); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹⁰ *Y.D.*, Docket No. 19-1200 (issued April 6, 2020); *John J. Carlone*, 41 ECAB 354 (1989).

¹¹ *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).

¹² *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).

In a December 9, 2021 letter, Dr. Ondich related that appellant tripped and fell at work, landing on her right side, noting that her pain and discomfort began immediately after the fall and that she had no prior musculoskeletal injuries or issues with her shoulder or back. He diagnosed hip strain and sacrococcygeal disorders and opined that appellant's musculoskeletal complaints and injury were a direct result of her fall at work. While Dr. Ondich provided an affirmative opinion suggestive of causal relationship, he did not offer medical rationale sufficient to explain how appellant's employment duties resulted in or contributed to her diagnosed condition. Without explaining how appellant's employment duties caused or aggravated her condition, this letter is of limited probative value and is insufficient to meet appellant's burden of proof.¹³

In an undated letter, Dr. Reefer noted that appellant complained of left lower back and hip pain, right neck and shoulder pain, and related, based on x-rays, subluxation complexes related to the accepted March 15, 2021 employment incident. As Dr. Reefer diagnosed subluxations based on x-rays, he is considered a physician under FECA.¹⁴ However, he did not provide any rationale explaining the basis for his conclusion that the subluxations resulted from the accepted employment incident. As such, his opinion is of limited probative value and is insufficient to meet appellant's burden of proof.¹⁵

In progress notes dated April 7, 2021, modified by a December 1, 2021 addendum, Dr. Ondich related appellant's history of injury and diagnosed pelvic pain and sacral pain. In an April 29, 2021 report, Dr. Hepner related appellant's history of injury and diagnosed labral tear of hip joint, sprain of left hip, and lumbar and sacral osteoarthritis. In September 20 and October 15, 2021 reports, Dr. Szabo related appellant's history of injury, noting that she reported no prior right shoulder injury, symptoms, or treatment and diagnosed right shoulder rotator cuff tear, SLAP tear, biceps tenosynovitis, scapular dyskinesis, impingement syndrome, and acromioclavicular joint arthritis; and right shoulder rotator cuff tendinopathy and scapular dyskinesis evolving adhesive capsulitis, respectively. In an October 14, 2021 report, Dr. Mears diagnosed unilateral primary osteoarthritis of the left hip and trochanteric bursitis of the left hip. In a December 13, 2021 report, Dr. Szabo diagnosed right rotator cuff tear, impingement, scapular dyskinesis, adhesive capsulitis, and possible SLAP tear. Appellant also submitted work restriction notes dated March 19 through December 13, 2021 from Drs. Ondich, Hepner, and Szabo. None of these reports or notes, however, offered an opinion relative to causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁶ For this reason, these reports and notes are insufficient to meet appellant's burden of proof.

Other work excuse notes, provided by the employing establishment, dated April 22 through June 27, 2019, as well as a Form CA-17 dated June 27, 2019 are of no probative value on the issue

¹³ See *A.P.*, Docket No. 19-0224 (issued July 11, 2019).

¹⁴ The Board notes that section 8101(2) of FECA 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. 5 U.S.C. § 8101(2); *T.H.*, Docket No. 15-0772 (issued May 12, 2016).

¹⁵ See *C.V.*, Docket No. 22-0078 (issued November 28, 2022).

¹⁶ *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).

of causal relationship since they predate the date of the March 15, 2021 employment incident.¹⁷ The Board has held that medical evidence which predates the date of a traumatic injury has no probative value on the issue of causal relationship of a current medical condition.¹⁸

The remaining medical evidence consisted of a March 22, 2021 lumbosacral and pelvic x-ray, a March 25, 2021 left hip x-ray, and an April 7, 2021 sacrum and coccyx x-ray. The Board has held, however, that diagnostic testing reports, 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, this evidence is also insufficient to meet appellant's burden of proof.

As appellant has not submitted rationalized medical evidence establishing that her medical condition is causally related to the accepted March 15, 2021 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 medical condition causally related to the accepted March 15, 2021 employment incident.

¹⁷ *B.P.*, Docket No. 21-0872 (issued December 8, 2021).

¹⁸ *Id.*; *C.W.*, Docket No. 19-1555 (issued February 24, 2020); *P.C.*, Docket No. 18-0167 (issued May 7, 2019).

¹⁹ *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

ORDER

IT IS HEREBY ORDERED THAT the March 7 and May 9, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 16, 2022
Washington, DC

Alec J. Koromilas, 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