

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

E.K., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
TRANSPORTATION SECURITY)
ADMINISTRATION, Linthicum, MD, Employer)

**Docket No. 22-1130
Issued: December 30, 2022**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On July 16, 2022¹ appellant filed a timely appeal from a January 19, 2022 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 Under the Board’s *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from January 19, 2022, the date of OWCP’s last decision, was July 18, 2022. Because using July 22, 2022, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is July 16, 2022, rendering the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, on appeal, 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 met her burden of proof to establish a back condition causally related to the accepted May 27, 2021 employment incident.

FACTUAL HISTORY

On June 11, 2021 appellant, then a 52-year-old financial specialist, filed a traumatic injury claim (Form CA-1) alleging that on May 27, 2021 she sustained a lower back injury when she was bending and twisting to unload a computer, keyboard, mouse, binders, and papers as she set up her workstation while in the performance of duty.

In an employing establishment first notice of injury call-in sheet and employee statement dated June 11, 2021, appellant related that on May 27, 2021 she experienced pain, swelling, redness, and stiffness in her lower back and buttocks while unloading her bag.

In a June 11, 2021 narrative medical report, Dr. Delbert U. Morales, a Board-certified family practitioner, noted a history of injury that on May 27, 2021 appellant felt pain and a pull in her back while bending over to lift a computer. He diagnosed right-side sciatica. Dr. Morales noted that appellant could perform light-duty work with restrictions commencing June 12, 2021 with a full-duty release date of June 19, 2021.

In a June 11, 2021 attending physician's report (Form CA-20), Dr. Morales noted his diagnosis of sciatica and opinion that appellant could resume light-duty work on June 12, 2021. He checked a box marked "Yes" indicating that the diagnosed condition was caused or aggravated by an employment activity.

Dr. Morales, in an undated work capacity evaluation (Form OWCP-5c), noted that appellant was unable to perform her usual job, but advised that she could work eight hours per day with restrictions.

In a narrative report and Form CA-20 report dated June 18, 2021, Dr. Muhammad Imran, a Board-certified family practitioner, noted a history that on May 27, 2021, appellant was bending over to lift a computer when she felt pain and a pull in her back. He diagnosed right-side sciatica. In the Form CA-20 report, Dr. Imran checked a box marked "Yes" indicating that the diagnosed condition was caused or aggravated by the described employment activity. He advised that appellant could resume light-duty work with restrictions commencing June 19, 2021.

Dr. Imran, in a June 18, 2021 Form OWCP-5c report, noted that appellant was unable to perform her usual job, however, he advised that she could work eight hours per day with restrictions.

OWCP, by development letter dated June 21, 2021, informed appellant of the deficiencies of her claim. It advised her of the type of additional factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP received a June 28, 2021 report from Dr. Winko Zan, a Board-certified family practitioner. Dr. Zan related a history of injury that on May 27, 2021 appellant was bending over

to pick up a computer when she felt pain and a pull in her back. He diagnosed sciatica. Dr. Zan noted that appellant could perform light-duty work with restrictions as of the date of his report.

In a July 12, 2021 response to OWCP's development questionnaire, appellant described the immediate effects of the alleged May 27, 2021 employment incident as back and leg pain. She continued to work and reported her injury to her supervisor on the date of injury. Appellant indicated that she sustained no other injury, aside from the alleged May 27, 2021 employment incident, between the date of injury and the date it was first reported to her supervisor. She acknowledged that she underwent a prior back surgery in December 1999.

Appellant also submitted a December 3, 1999 report from Dr. Arthur I. Kobrine, a Board-certified neurosurgeon, who diagnosed right lumbar radiculopathy and advised that appellant was a good candidate for a lumbar laminectomy and discectomy.

OWCP subsequently received medical evidence from Dr. Emeka Nwodim, an attending Board-certified orthopedic surgeon. In orders and visit notes dated July 14 and 21, 2021, Dr. Nwodim discussed his findings on physical examination and reviewed diagnostic test results. He diagnosed lumbar radiculopathy and low back pain.

In a Form CA-20 report dated July 21, 2021, Dr. Nwodim noted appellant's history of injury on May 27, 2021. He again diagnosed low back pain. Dr. Nwodim checked a box marked "Yes" indicating that the diagnosed condition was caused or aggravated by an employment activity. He related that the diagnosed condition was exacerbated by the work incident. Dr. Nwodim advised that appellant could resume light-duty work as of July 14, 2021.

In a Form OWCP-5c report of even date, Dr. Nwodim indicated that appellant was unable to perform her usual job or work eight hours per day with restrictions due to low back pain that was likely a low back muscular strain. However, he indicated that she could work four to six hours per day with restrictions.

Dr. Mark Armstrong, a Board-certified diagnostic radiologist, in a July 15, 2021 lumbar spine magnetic resonance imaging (MRI) scan report provided impressions of mild spondylosis and grade 1 retrolisthesis at L5-S1; tiny left paracentral protrusion at L1-2; mild bulge at L2-3 that effaced the thecal sac and foramina; broad bulge with left foraminal protrusion that abutted L3 foraminal roots and left L4 root in the canal; broad bulge with central protrusion at L4-5 that abutted L5 roots in the canal; broad bulge at L5-S1 that abutted L5 foraminal roots; and lateral stenosis with ligamentous and facet hypertrophy from L2-S1.

By decision dated July 22, 2021, OWCP accepted that the May 27, 2021 employment incident occurred, as alleged, but denied appellant's claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted employment incident.

On August 12, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP thereafter received an October 7, 2021 letter from Dr. Matthew I. Adler, a Board-certified family practitioner. Dr. Adler noted a history of the accepted May 27, 2021 employment incident and appellant's current symptoms of back and right lower extremity pain. He discussed

his findings on physical examination and reviewed diagnostic tests. Dr. Adler diagnosed lumbar disc disease with radiculopathy and lumbar spondylolisthesis.

OWCP received additional medical evidence from Dr. Nwodim, including Form CA-20 reports dated September 8 and November 3, 2021 in which Dr. Nwodim reiterated a history of the May 27, 2021 employment incident and restated his diagnosis of lumbar radiculopathy. He checked a box marked “Yes” indicating that the diagnosed condition was caused or aggravated by the described employment activity. Dr. Nwodim explained that appellant likely sustained a muscular strain with the computer setup on May 27, 2021, which may lead to inflammation around neural tissues. He reiterated that she could resume light-duty work as of July 14, 2021.

In Form OWCP-5c reports of even dates, Dr. Nwodim reiterated his opinion regarding appellant’s work capacity. In the September 8, 2021 Form OWCP-5c report, he noted that she could not perform her usual job because she likely suffered a muscular strain and experienced lumbar radiculopathy.

In a November 29, 2021 report, Dr. Robert Reif, a neurologist, performed an electromyogram and nerve conduction velocity (EMG/NCV) study of appellant’s lumbar spine due to an indication of lumbar radiculopathy. He noted that the EMG/NCV study was normal and that there was no evidence of lumbar radiculopathy or polyneuropathy.

Following a December 14, 2021 telephonic hearing, OWCP continued to receive medical evidence from Dr. Nwodim.

In a December 22, 2021 Form CA-20 report, Dr. Nwodim restated a history of the May 27, 2021 employment incident and continued to check a box marked “Yes” indicating that appellant’s diagnosed low back pain was caused or aggravated by the described employment activity. He explained that she likely sustained a soft tissue muscular strain. Dr. Nwodim cleared appellant from all restrictions.

In a Form OWCP-5c report of even date, Dr. Nwodim indicated that appellant could perform her usual job with no restrictions.

In a January 10, 2022 letter, Dr. Nwodim noted that appellant underwent spinal surgery in 1999. He related, however, that in May 2021 her lumbar spine condition was aggravated when she lifted computer equipment, binders, files, and folders onto her desk at work. Dr. Nwodim opined that appellant’s subsequent lumbar spine injury directly resulted from her work duties.

By decision dated January 19, 2022, OWCP’s hearing representative affirmed the July 22, 2021 decision.

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

⁴ *Id.*

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 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 and can be established only by medical evidence.⁸

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident 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 back condition causally related to the accepted May 27, 2021 employment incident.

OWCP initially received a series of June 11, 2021 reports from Dr. Morales. Dr. Morales diagnosed low back sciatica. In a Form CA-20 dated June 11, 2021, he checked a box marked “Yes” indicating that the diagnosed condition was caused or aggravated by the May 27, 2021 employment incident. The Board has held that reports that address causal relationship only by checkmark, without medical rationale explaining how the employment incident caused or

⁵ *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).

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).

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).

aggravated the diagnosed condition, are of diminished probative value.¹¹ Dr. Morales did not offer a rationalized medical opinion in his other reports dated June 11, 2021 causally relating appellant's diagnosed sciatica to her May 27, 2021 accepted employment incident. Medical reports lacking an opinion regarding causal relationship are insufficient to establish appellant's claim.¹²

Similarly, OWCP received a series of reports dated June 18, 2021 from Dr. Imran in which he diagnosed sciatica, and a June 28, 2021 report from Dr. Zan wherein he diagnosed sciatica. Dr. Imran also completed a Form CA-20 in which he noted by check mark that appellant's diagnosed condition was causally related to the accepted employment incident. Dr. Imran and Dr. Zan, however, did not provide any other medical rationale in their reports explaining how the accepted incident caused or aggravated the diagnosed conditions. These reports are therefore likewise insufficient to establish appellant's claim.¹³

In support of her claim, appellant submitted reports dated July 14, 2021 through January 10, 2022 from Dr. Nwodim. Dr. Nwodim's orders and visit notes dated July 14 and 21, 2021 diagnosed lumbar radiculopathy and low back pain, but do not address causal relationship. Medical evidence that does not offer an opinion on the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁴ Thus, the Board finds that this evidence is insufficient to establish appellant's claim.

In his Form CA-20 reports dated July 21, September 8, November 3, and December 22, 2021, Dr. Nwodim diagnosed low back pain and lumbar radiculopathy. He checked boxes marked "Yes" indicating that the diagnosed conditions were caused or aggravated by the May 27, 2021 employment incident. Additionally, Dr. Nwodim initially found that appellant could resume light-duty work as of July 14, 2021, and subsequently found that she could resume work without restrictions as of December 22, 2021. He did not provide medical rationale in support of his opinion on causal relationship in the July 21, 2021 Form CA-20 report. The Board has held that reports that address causal relationship only by checkmark, without medical rationale explaining how the employment incident caused or aggravated the diagnosed condition, are of diminished probative value.¹⁵ In the September 8, November 3, and December 22, 2021 Form CA-20 reports, Dr. Nwodim's opinion that appellant "likely" sustained a muscular strain due to the May 27, 2021 employment incident is speculative. The Board has held that medical opinions that suggest that a condition is "likely" or "possibly" employment related are speculative or equivocal in character

¹¹ See *J.O.*, Docket No. 22-0240 (issued June 8, 2022); *R.C.*, Docket No. 20-1525 (issued June 8, 2021); *D.A.*, Docket No. 20-0951 (issued November 6, 2020); *K.R.*, Docket No. 19-0375 (issued July 3, 2019); *Deborah L. Beatty*, 54 ECAB 340 (2003).

¹² See *L.K.*, Docket No. 21-1155 (issued March 23, 2022); *T.S.*, Docket No. 20-1229 (issued August 6, 2021); *J.M.*, Docket No. 19-1169 (issued February 7, 2020); *A.L.*, 19-0285 (issued September 24, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ *Supra* note 10.

¹⁴ *Id.*

¹⁵ See *supra* note 11.

have little probative value.¹⁶ Moreover, as noted above, the Board has held that a checkmark or affirmative notation in response to a form question on causal relationship is insufficient, without medical rationale, to establish causal relationship.¹⁷ Dr. Nwodim did not explain how bending and twisting to unload her computer, keyboard, mouse, binders, and papers on May 27, 2021 caused or contributed to appellant's muscular strain. For these reasons, the Board finds that the medical evidence from Dr. Nwodim is insufficient to establish appellant's claim.

Dr. Nwodim's Form OWCP-5c reports dated September 8, and November 3, 2021 addressed appellant's work capacity, finding that she could not perform her usual job or work eight hours per day because she "likely" suffered a muscular strain and experienced lumbar radiculopathy. However, he found that she could work four to six hours per day with restrictions. Dr. Nwodim did not provide a firm diagnosis of a medical condition regarding appellant's muscular strain. A medical report lacking a firm diagnosis is of no probative value.¹⁸ Moreover, Dr. Nwodim did not offer an opinion as to whether a diagnosed condition was causally related to the accepted employment incident. The Board has held that medical evidence that does not include an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁹ Thus, for these reasons, this evidence is insufficient to establish appellant's claim.

Dr. Nwodim's December 22, 2021 Form OWCP-5c report failed to provide an opinion regarding how bending and twisting to unload a computer, keyboard, mouse, binders, and papers on May 27, 2021 was causally related to appellant's partial disability from work.²⁰

In a January 10, 2022 letter, Dr. Nwodim referenced appellant's 1999 lumbar spine surgery. He opined that the May 27, 2021 employment incident aggravated her prior lumbar spine condition and caused her current lumbar spine condition. A medical report lacking a rationalized medical opinion regarding causal relationship, explaining how the employment incident physiologically caused the diagnosed condition is insufficient to establish causal relationship.²¹ Such rationale is particularly important here, as Dr. Nwodim noted that appellant had a preexisting lumbar spine condition for which she underwent surgery.²² Thus, this report is insufficient to meet appellant's burden of proof.

¹⁶ See *M.L.*, Docket No. 18-0153 (issued January 22, 2020); *N.B.*, Docket No. 19-0221 (issued July 15, 2019); *Z.B.*, Docket No. 17-1336 (issued January 10, 2019); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

¹⁷ See *supra* note 10.

¹⁸ See *S.M.*, Docket No. 22-0075 (issued May 6, 2022); *S.E.*, Docket No. 21-0666 (issued December 28, 2021); *J.P.*, Docket No. 20-0381 (issued July 28, 2020).

¹⁹ *J.H.*, Docket No. 20-1414 (issued April 5, 2022); *S.W.*, Docket No. 19-1579 (issued October 9, 2020); *L.B.*, *supra* note 12; *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

²⁰ *J.W.*, Docket No. 18-1246 (issued February 13, 2019).

²¹ See *J.K.*, Docket No. 20-0527 (issued May 24, 2022); *T.H.*, Docket No. 19-1891 (issued April 3, 2020); *P.C.*, Docket No. 18-0167 (issued May 7, 2019).

²² See *J.K.*, *id.*; *K.M.*, *supra* note 7; *B.R.*, Docket No. 16-0456 (issued April 25, 2016).

Dr. Adler's October 7, 2021 report is also insufficient to establish appellant's claim. He related appellant's history of injury on May 27, 2021 and diagnosed lumbar disc disease with radiculopathy and lumbar spondylolisthesis. However, Dr. Adler did not offer an opinion on the cause of appellant's lumbar conditions. As noted above, offering no opinion on the cause of a diagnosed condition is of no probative value on the issue of causal relationship.²³ Thus, the Board finds that this report is insufficient to establish appellant's claim.

Appellant also submitted Dr. Armstrong's July 15, 2021 lumbar spine MRI scan and Dr. Reif's November 29, 2021 EMG/NCV study. The Board has held, however, that diagnostic studies standing alone lack probative value on the issue of causal relationship as they do not provide an opinion on causal relationship between an employment incident and a diagnosed condition.²⁴

As appellant has not submitted rationalized medical evidence to establish a back condition causally related to the accepted May 27, 2021 employment incident, the Board finds that she has not met her burden of proof.

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 May 27, 2021 employment incident.

²³ See *L.B.*, *supra* note 12.

²⁴ *N.B.*, Docket No. 20-0794 (issued July 29, 2022); *C.F.*, Docket No. 19-1748 (issued March 27, 2020); *L.B.*, *supra* note 12; *D.K.*, *supra* note 19.

ORDER

IT IS HEREBY ORDERED THAT the January 19, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 30, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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