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

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| **N.P., Appellant** | ) | |
| **and** | ) | **Docket No. 21-1311** |
| | ) | **Issued: February 22, 2022** |
| **U.S. POSTAL SERVICE, POST OFFICE** | ) | |
| **Islandia, NY, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*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 August 27, 2021 appellant filed a timely appeal from a July 6, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

### *ISSUE*

The issue is whether appellant has met her burden of proof to establish a diagnosed medical condition causally related to the accepted May 12, 2021 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the July 6, 2021 decision, OWCP received additional evidence. 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.*

## ***FACTUAL HISTORY***

On May 27, 2021 appellant, then a 37-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on May 12, 2021 she sustained a hernia in her left pelvis area as a result of unloading a truck while in the performance of duty. On the reverse side of the claim form E.M., an employing establishment supervisor asserted that appellant did not notify any supervisor at the time of injury and indicated that she was not injured while in the performance of duty. Appellant stopped work on May 12, 2021.

In a May 13, 2021 hospital note, Dr. Fazila Lalani, a Board-certified emergency medicine specialist, diagnosed an abdominal hernia. In a return-to-work note of even date, an unidentifiable healthcare provider indicated that appellant should remain off work through May 17, 2021.

In a May 17, 2021 note, Dr. Christina Delpin, a Board-certified general surgeon, performed an x-ray on appellant's abdomen, noted abdominal pain on her left side, and diagnosed a supra umbilical hernia.

A May 20, 2021 letter from E.M. noted that on May 19, 2021 the employing establishment was notified that appellant received treatment in the emergency room on May 13, 2021 and was to be excused from work until May 17, 2021. However, E.M. alleged that no discharge paperwork or nature of illness was identified and that she did not notify any supervisor of the workplace incident.

On May 21, 2021 Elena Reyes, a nurse practitioner, held appellant off work through May 31, 2021 and noted that, after she underwent a magnetic resonance imaging (MRI) of her spine for a back injury, she would be reevaluated for a return-to-work date.

In a May 24, 2021 letter, S.S., an employing establishment supervisor, reiterated that appellant did not notify the employing establishment of her alleged injury at the time it occurred.

On May 27, 2021 E.M. contended that the employing establishment was controverting the claim because appellant did not report the incident to management and that no medical documentation was submitted to indicate that the incident occurred during her federal employment. In a statement of even date, appellant alleged that on May 12, 2021 she was working at the docks when she began to experience pain in her pelvic area and an inability to walk. As a result of the pain, she sought medical treatment at the emergency room and was diagnosed with a hernia.

In a development letter dated June 3, 2021, 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. OWCP afforded appellant 30 days to submit the necessary evidence. In a letter of even date, it requested that the employing establishment provide further evidence to support that appellant's workplace incident did not occur as alleged. OWCP did not receive a response from either party.

On June 7, 2021 appellant was seen by Carolina Munoz, a nurse practitioner, who continued to hold her off from work through June 21, 2021.

A June 16, 2021 note from Dr. Joseph Elliot Weinstein, an orthopedic surgeon, held appellant off work through July 7, 2021.

By decision dated July 6, 2021, OWCP accepted that the May 12, 2021 employment incident occurred as alleged. However, it denied the claim, finding that the medical evidence of record was insufficient to establish a medical condition causally related to the accepted employment incident. OWCP concluded, therefore, that appellant had not met the requirements to establish an injury as defined by FECA.

## ***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 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 must first be determined whether fact of injury has been established.[7] Generally, fact of injury consists of two components that must be considered in conjunction with one another. First, 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.[8] Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[9]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[10] The opinion of the physician must be based upon a complete factual and medical background, must be one of reasonable medical certainty, and must be

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[3] *Supra* note 1.

[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).

[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] *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

[8] *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

[10] *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, *supra* note 7; *Robert G. Morris*, 48 ECAB 238 (1996).

supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident.[11]

## *ANALYSIS*

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition causally related to the accepted May 12, 2021 employment incident.

In support of her claim, appellant submitted reports from Dr. Lalani dated May 13, 2021 and Dr. Delpin dated May 17, 2021. While both Dr. Lalani and Dr. Delpin diagnosed a hernia, neither offered an opinion as to the cause of the hernia. 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.[12] As such, the evidence is insufficient to meet her burden of proof.[13]

The remaining medical evidence consists of return-to-work notes dated May 13, 21, June 7 and 16, 2021. However, these notes do not offer a medical diagnosis or opinion that appellant's diagnosed hernia was causally related to her May 12, 2021 employment incident. The Board has held that a medical report lacking a firm diagnosis is of no probative value.[14] This evidence, therefore, is insufficient to establish appellant's claim.

As appellant has not submitted rationalized, probative medical evidence sufficient to establish a diagnosed medical condition causally related to the accepted May 12, 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 diagnosed medical condition causally related to the accepted May 12, 2021 employment incident.

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[11] *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018).

[12] *See S.J.*, Docket No. 20-0310 (issued April 21, 2021); *E.B.*, Docket No. 19-1548 (issued July 14, 2020); *L.B.*, *id.*; *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[13] *C.C.*, Docket No. 19-1071 (issued August 26, 2020).

[14] *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

***ORDER***

**IT IS HEREBY ORDERED THAT** the July 6, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 22, 2022
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