United States Department of Labor
Employees' Compensation Appeals Board

L.T., Appellant	)	
and	)	**Docket No. 22-0124**
	)	**Issued: June 7, 2022**
DEPARTMENT OF THE AIR FORCE, ROBINS AIR FORCE BASE, Warner Robins, GA, Employer	)	

Appearances:
Wayne Johnson, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 1, 2021 appellant, through counsel, filed a timely appeal from a May 5, 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 medical condition causally related to the accepted March 10, 2017 employment incident.

FACTUAL HISTORY

On March 15, 2017 appellant, then a 45-year-old aircraft painter, filed a traumatic injury claim (Form CA-1) alleging that on March 10, 2017 she injured her neck, scraped her right knee, and landed on her back when she stepped on the foot of her protective suit, lost her balance and fell, while in the performance of duty. She did not stop work.

May 30, 2017 magnetic resonance imaging (MRI) scans of the cervical and lumbar spine read by Dr. Thomas Oliver, a Board-certified diagnostic radiologist, revealed early degenerative disease to the L5-S1 disc without herniation and degenerative facet arthropathy bilaterally at L4-5 and L5-S1.

In a development letter dated November 8, 2018, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to provide the necessary evidence.

OWCP received work status reports from Dr Winston Jeshuran, a Board-certified orthopedic surgeon, dated May 24, September 20 and 28, and October 8, 2018. Dr. Jeshuran initially noted appellant's work restrictions and on September 28 and October 8, 2018 he related that she could return to work without restrictions.

Dr. Jeshuran also provided reports dated March 1, May 3, September 20, and October 18, 2018. He noted appellant's physical examination findings and diagnosed radiculopathy of lumbar region, low back pain, other specific arthropathies, not elsewhere classified, other specified site, cervical pain, and displacement of intervertebral disc at C5-6 level. Dr. Jeshuran noted that she had cervical facet disease associated with disc herniation at level C5-6, significant lumbar facet disease with retrolisthesis of L5 on S1, and rotatory instability noted between L4-5 and L5-S1 on her x-rays. He recommended treatment in the form of physical therapy and injections.

In an October 8, 2018 progress note, a nurse practitioner diagnosed lumbar radiculopathy and displacement of the intervertebral disc at C5-6.

By decision dated December 27, 2018, OWCP denied appellant's claim. It found that she had not established that the incident occurred as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On December 27, 2019 appellant requested reconsideration.

OWCP received April 18, May 2, and October 4, 2017, January 19, 2018, and March 5 and April 26, 2019 progress notes from nurse practitioners.

In a December 22, 2017 report, Dr. Mohammed Al-Shroof, a Board-certified internist, diagnosed muscle spasm, nerve pain, bulging of cervical and intervertebral disc, and lumbar degenerative disc disease.

A January 14, 2019 progress note from Dr. Jeshuran related that he originally treated appellant on March 1, 2018 and she indicated that she had sustained a work-related injury in 2017. He explained that he did not see her in 2017 and the only person who could provide an opinion on causal relationship was her then-treating physician. Dr. Jeshuran opined that appellant had lumbar pathology which was degenerative in nature and noted that he did not know how her symptoms began, as he did not evaluate her at the time of her injury. He diagnosed displacement of intervertebral disc at C5-6, cervical pain, radiculopathy of lumbar region, low back pain, other specific arthropathies, not elsewhere classified, other specified site, and other intervertebral disc degeneration, lumbar region.

By a February 5, 2020 decision, OWCP modified its December 27, 2018 decision, finding that the March 10, 2017 incident occurred as alleged. However, the claim remained denied as the medical evidence of record was insufficient to establish that appellant's diagnosed medical conditions were causally related to the accepted March 10, 2017 employment incident.

On February 5, 2021 appellant, through counsel, requested reconsideration. Counsel contended that the medical evidence of record established causal relationship.

OWCP received progress notes from a nurse practitioner dated August 25, 2016, April 18, 2017, and June 17, 2019.

OWCP received a copy of the May 30, 2017 cervical MRI scan, previously of record.

By decision dated May 5, 2021, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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, 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.[3] 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.[4]

To determine if 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

[3] *See T.F.*, Docket No. 21-0516 (issued September 15, 2021); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[4] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

component is whether the employee actually experienced the employment incident that allegedly occurred.[5] The second component is whether the employment incident caused a personal injury.[6]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[7] A physician's opinion on whether there is causal relationship between the diagnosed condition and the accepted employment incident must be based on a complete factual and medical background. Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident.[8]

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.[9]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted March 10, 2017 employment incident.

In a January 14, 2019 progress note, Dr. Jeshuran opined that appellant had lumbar pathology which was degenerative in nature. He diagnosed displacement of intervertebral disc at C5-6, cervical pain, radiculopathy of lumbar region, low back pain, other specific arthropathies, not elsewhere classified, other specified site, and other intervertebral disc degeneration, lumbar region. Dr. Jeshuran noted that appellant related that she was injured in 2017, that he did not evaluate her in 2017, and he did not know how her symptoms began. He explained that "the only person that can make the association was [appellant's] treating physician." Dr. Jeshuran also provided work status notes dated May 24, September 20 and 28, and October 8, 2018, and narrative reports dated March 1, May 3, September 20, and October 18, 2018. These notes and reports indicated that appellant had cervical facet disease associated with disc herniation at level C5-6, significant lumbar facet disease with retrolisthesis of L5 on S1, and rotatory instability between L4-5 and L5-S1 on her x-rays. However, Dr. Jeshuran did not offer an opinion on causal

[5] *B.P.*, Docket No. 16-1549 (issued January 18, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[7] *L.S.*, Docket No. 19-1769 (issued July 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[8] *B.C.*, Docket No. 20-0221 (issued July 10, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

[9] Federal (FECA) Procedure Manual, Par2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *See R.D.*, Docket No. 18-1551 (issued March 1, 2019).

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.[10]

In a December 22, 2017 report, Dr. Al-Shroof diagnosed muscle spasm, nerve pain, bulging of cervical and intervertebral disc, and degenerative disc disease, lumbar. However, he did not offer an opinion on causal relationship. Therefore, this report is also insufficient to establish appellant's claim.[11]

OWCP also received notes from nurse practitioners. The Board has held that certain healthcare providers, such as physician assistants, nurse practitioners, and physical therapists, are not considered qualified physicians as defined under FECA.[12] Their medical findings, reports, and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.[13]

OWCP received diagnostic reports including May 30, 2017 MRI scans of the cervical and lumbar area of the spine read by Dr. Thomas. However, diagnostic studies, standing alone, lack probative value as they do not address the issue of causal relationship.[14]

As appellant has not submitted rationalized medical evidence establishing causal relationship between her diagnosed conditions and the accepted March 10, 2017 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 medical condition causally related to the accepted March 10, 2017 employment incident.

[10] *See T.H.*, Docket No. 18-0704 (issued September 6, 2018); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[11] *Id*.

[12] Section 8102(2) of FECA provides, "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 9 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 E.W.*, Docket No. 20-0338 (issued October 9, 2020); *D.S.*, Docket No. 19-1657 (issued July 20, 2020) (nurse practitioners and registered nurses are not considered physicians under FECA).

[13] *S.E.*, Docket No. 21-0666 (issued December 28, 2021); *K.A.*, Docket No. 18-0999 (issued October 4, 2019); *K.W.*, 59 ECAB 271, 279 (2007).

[14] *See C.S.*, Docket No. 19-1279 (issued December 30, 2019).

ORDER

IT IS HEREBY ORDERED THAT the May 5, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 7, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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