United States Department of Labor
Employees' Compensation Appeals Board

R.M., Appellant	)	
and	)	**Docket No. 21-0602**
	)	**Issued: March 10, 2022**
DEPARTMENT OF VETERANS AFFAIRS, ROBLEY REX VA MEDICAL CENTER, Louisville, KY, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 9, 2021 appellant, through counsel, filed a timely appeal from a February 17, 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 January 30, 2019 employment incident.

FACTUAL HISTORY

On October 29, 2019 appellant, then a 51-year-old health technician, filed a traumatic injury claim (Form CA-1) alleging that on January 30, 2019 she sustained an injury to the left side of her hip and lower back when she fell on a wet floor after exiting an elevator to walk to her assigned clinic while in the performance of duty. She stopped work on February 1, 2019 and returned to work on February 12, 2019. The employing establishment contended that appellant was not injured in the performance of duty as she was *en route* to her workplace location, but had not yet reported for duty.

In a development letter dated November 6, 2019, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. By separate development letter of even date, OWCP requested additional information from the employing establishment regarding the circumstances of appellant's claimed injury. It afforded both parties 30 days to respond.

OWCP subsequently received an emergency department report dated January 30, 2019, wherein a physician assistant diagnosed right knee contusion with possible right knee strain and right quadriceps strain.

A magnetic resonance imaging (MRI) scan of the left hip obtained on September 4, 2019 demonstrated no internal derangement of the hips, avascular necrosis, or fracture; bilateral gluteal tendon pathology, worse on the left, where there is gluteus minimus tear/detachment and moderate peritendinous inflammation with adjacent peritrochanteric fluid; and minimal inferior sacroiliac joint subarticular marrow edema without effusion or erosion, likely arthritic. An MRI scan of the lumbar spine obtained on the same date demonstrated multilevel degenerative disc disease and facet arthropathy with no significant change from a previous scan obtained on May 28, 2019. An MRI scan of the pelvis obtained on October 8, 2019 demonstrated: mild left and minimal right anterior inferior sacroiliac joint subarticular marrow edema, predominating on the sacral side anteriorly on the left with minimal anterior spurring; intact subchondral bone plats; no evidence of definitive erosive arthropathy; no effusion or periarticular inflammation; suspected minimal subarticular sclerosis; possible osteoarthrosis with stress-related marrow change favored over a primary inflammatory or crystal arthritis; no change in end plate marrow edema at L4-5 and bilateral L4-5 facet arthrosis with a moderate inflammatory component; and no change in the pelvis and hips compared to an MRI scan obtained in September 2019.

In an October 10, 2019 report, Dr. Gary Reasor, Board-certified in anesthesiology and pain medicine, examined appellant for complaints of low back pain, beginning seven months prior. Appellant also told Dr. Reasor that the pain was a result of an incident at work on January 30, 2019 when she slipped and fell on her left hip due to water on the floor, and that the pain became much worse in March and April. Dr. Reasor noted past medical history including back pain, sciatica, degenerative disc disease, and kidney stones. He related appellant's physical examination findings

and diagnosed lumbar spondylosis without myelopathy or radiculopathy, lumbosacral intervertebral disc degeneration, and low back pain. In an accompanying note of the same date, Dr. Reasor recommended work restrictions of no standing for more than 15 minutes and no repetitive bending or twisting of the waist.

In a letter dated October 25, 2019, Dr. Reasor noted that appellant had been seen on October 10, 2019 on referral from her rheumatology office for severe back pain. Appellant told Dr. Reasor that she was injured at work on January 30, 2019 when she entered the employing establishment and slipped on a wet floor, landing on the left hip. She continued to have significant back pain after the fall and was markedly increased after she was asked to participate in cardiopulmonary resuscitation (CPR) training. Dr. Reasor reviewed his physical findings on examination and MRI scan results. He opined that appellant developed significant low back pain attributable to injury of her left sacroiliac joint as well as inflammation of the left lower lumbar facet joints, directly related and caused by her fall at work as the history and mechanism of injury matched her findings on examination.

In a note dated November 15, 2019, Dr. Reasor recommended work restrictions of no lifting, bending, standing, or squatting for more than 15 minutes. In a note dated November 20, 2019, he recommended that appellant be excused from work from November 11 through 22, 2019.

On November 27, 2019 the employing establishment controverted appellant's claim, contending that a medical condition had not been diagnosed resulting from the claimed injury on January 30, 2019 and that the medical evidence of record did not establish a causal relationship between any diagnosed condition and the claimed January 30, 2019 injury.

In a letter dated December 7, 2019, Dr. Reasor diagnosed lumbar spondylosis with pain derived from the lumbar facet joints. He opined that appellant was injured on January 30, 2019 and that the mechanism of injury was a slip and fall on a wet floor as she entered the workplace. Dr. Reasor noted that appellant struck the floor on her left hip and has had back and hip pain since that time. His physical examination revealed tenderness over the lumbar spine and he noted that further examination of the lumbar facets demonstrated concordance between the facets and her complaints of pain. Dr. Reasor stated that an MRI scan study demonstrated hypertrophy of the lumbar facets and opined that without question, the lumbar facets were injured as a result of the fall. He opined to a high degree of medical certainty that there was a direct cause and effect relationship between appellant's fall and her current back and hip pain.

By decision dated December 16, 2019, OWCP denied appellant's claim, finding that the factual evidence of record was insufficient to establish that the January 30, 2019 employment incident occurred, as alleged. It noted that she had not provided a clear description of the events supporting an injury at work on January 30, 2019. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On December 30, 2019 appellant requested reconsideration.

By decision dated February 27, 2020, OWCP reviewed the merits of appellant's claim and found that the medical evidence of record was sufficient to establish that the January 30, 2019 incident occurred as alleged; however, the claim remained denied as the medical evidence of

record was insufficient to establish causal relationship between her diagnosed lumbar spondylosis and the accepted employment incident.

On July 1, 2020 appellant, through counsel, requested reconsideration. Submitted with the request was a letter from Dr. Reasor dated June 7, 2020. Dr. Reasor explained that appellant was referred on October 10, 2019 from an advanced practice registered nurse (APRN) who saw appellant for widespread osteoarthritis and was asked to evaluate appellant's complaints of left back, buttock, and leg pain. Appellant recounted that she fell at work on January 30, 2019 when she slipped on a wet floor, causing her to fall and land on her left hip. Over the course of the next two to three months her pain worsened, particularly when she underwent mandatory CPR training. Dr. Reasor reviewed his physical findings on examination and MRI scan findings. He diagnosed lumbar spondylosis without myelopathy, lumbosacral intervertebral disc degeneration, and low back pain. Dr. Reasor described administering the lumbar medial branch nerve blocks bilaterally at L3, L4, and L5 on November 15, 2019 and January 24, 2020. He noted that to his knowledge, there were no imaging studies of the lumbar spine or hip antedating the January 30, 2019 fall; but, opined that taking that into account, it remained his medical opinion to a high degree of certainty that her fall was the cause of her continued back pain. Dr. Reasor explained that assuming appellant developed lumbar facet arthropathy before the fall in which she slipped on a wet floor and landed on her left hip, it would have caused, at a minimum, an aggravation of underlying facet arthropathy. He further noted that it was unknown if she had an annular tear of the L5-S1 disc, but that the fall "could have easily been the cause of the annular tear in an already-desiccated disc." Dr. Reasor stated that the fall on the left hip, wherein appellant landed on her left buttock, was "the most likely cause of the torn or detached left gluteus minimus tendon. The mechanism of injury, in my opinion, is clear to see."

In a report dated May 6, 2019, an APRN, Sheena Steele, diagnosed cervical radiculopathy, thoracic and low back pain. An MRI scan of appellant's lumbar spine obtained on May 28, 2019 demonstrated a small central annular tear posterior disc margin at L5-S1 that could be a source of back pain, but with no evidence of nerve root impingement, bilateral L4-5 facet arthropathy, and mild inflammation/edema surrounding the L4-5 facet joints that may indicate an active process.

In a report dated May 30, 2019, Ms. Steele diagnosed thoracic spine and low back pain, cervical radiculopathy, and unspecified joint pain.

An MRI scan of appellant's thoracic spine obtained on June 5, 2019 demonstrated: a mild chronic compression fracture of T11, healed with mild deformity; normal thoracic cord signal intensity, no pathologic cord enhancement, no thoracic canal stenosis, and no significant foraminal impingement; and thoracic degenerative changes.

In a report dated June 7, 2019, Lori Weiss, an APRN, diagnosed thoracic and low back pain, cervical radiculopathy, and current long-term use of an opiate analgesic. In a report dated August 15, 2019, she diagnosed thoracic spine, left hip, and low back pain, cervical radiculopathy, and long-term current use of an opiate analgesic. Appellant told the nurse that while completing a CPR class recently, she experienced increased pain to her back and reinjured her already-chronic symptoms from earlier in 2019.

Additional reports received from Dr. Reasor indicated that on November 15, 2019 he performed a medial branch nerve block at L3, L4, and L5 for treatment of diagnosed lumbar spondylosis without radiculopathy.

In a report dated December 3, 2019, Dr. Reasor followed up with appellant after her November 15, 2019 procedure. He opined that her pain was facet-related and due to her fall. On physical examination, Dr. Reasor observed pain with palpation of the lumbar spine with bilateral tenderness over the lumbar facets and pain on extension. He diagnosed lumbar spondylosis without myelopathy or radiculopathy, low back pain, and lumbosacral intervertebral disc degeneration.

On January 24, 2020 Dr. Reasor performed another medial branch nerve block at L3, L4, and L5 bilaterally for treatment of diagnosed lumbar spondylosis without radiculopathy. He noted post-procedure pain reduction of 100 percent.

In a report dated February 14, 2020, Dr. Reasor followed up with appellant after her January 24, 2020 medial branch nerve block at L3, L4, and L5. He noted post-procedure relief of eighty percent for several hours. Appellant advised Dr. Reasor that her pain remained at 8 out of 10 at this follow-up examination. On physical examination of the lumbar spine, Dr. Reasor observed pain with palpation of the midline and bilateral facets and pain on flexion and extension. He diagnosed lumbar spondylosis without myelopathy or radiculopathy, lumbosacral intervertebral disc degeneration, and low back pain.

In a report dated March 5, 2020, Dr. Reasor examined appellant for low back, buttocks, and left lower extremity pain with tingling. He noted that the pain began seven months prior and that it was a result of a work-related incident. Dr. Reasor observed that appellant had an antalgic gait. On physical examination of the lumbar spine, he observed pain with palpation, marked tenderness of the left facets, decreased range of motion, and pain on flexion, extension, lateral movement, and rotation. On examination of the thoracic spine, Dr. Reasor observed pain with palpation, marked tenderness of the left facets, and pain on rotation. He diagnosed thoracic spine pain, lumbar spondylosis without myelopathy or radiculopathy, lumbosacral intervertebral disc degeneration, and low back pain.

By decision dated February 17, 2021, OWCP denied modification.[3]

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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

[3] The February 17, 2021 decision was a reissuance of a decision dated September 29, 2020, wherein OWCP reviewed the merits of appellant's claim and denied modification of the February 27, 2020 decision. A copy of this decision was not mailed to appellant's counsel of record. On October 8, 2020 the employing establishment requested that a copy of the September 29, 2020 decision be mailed to appellant's counsel of record, as it had not yet been annotated as being forwarded to counsel. In a letter dated October 15, 2020, counsel requested an update as to the request for reconsideration in appellant's case.

[4] *Id*.

States within the meaning of FECA, that the claim was timely filed within the applicable time 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 a 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 factors identified by the employee.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted January 30, 2019 employment incident.

In his October 25, 2019 report, Dr. Reasor opined that appellant developed significant low back pain attributable to injury of her left sacroiliac joint as well as inflammation of the left lower lumbar facet joints. He opined that her condition was directly related and caused by her fall at work, as the history and mechanism of injury matched her findings on examination. In his December 3, and 7, 2019 reports, Dr. Reasor opined that appellant was injured on January 30, 2019 and that the mechanism of injury was a slip and fall on a wet floor as she entered the

[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).

workplace. He opined that without question, the lumbar facets were injured as a result of the fall. Dr. Reasor further opined to a high degree of medical certainty that there was a direct cause and effect relationship between appellant's fall and her current back pain. In the June 7, 2020 report, he opined that it remained his medical opinion to a high degree of certainty that her fall was the cause of her continued back pain. Dr. Reasor explained that assuming appellant developed lumbar facet arthropathy before the fall in which she slipped on a wet floor and landed on her left hip, it would have caused, at a minimum, an aggravation of underlying facet arthropathy. He further noted that it was unknown if she had an annular tear of the L5-S1 disc, but that the fall could have easily caused the tear in an already-desiccated disc. The Board has found that 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.[11] While Dr. Reasor noted appellant's past medical history including back pain, sciatica, and degenerative disc disease. He did not specifically differentiate between appellant's preexisting condition(s) and the effects of the January 30, 2019 employment incident. These reports were therefore insufficient to establish causal relationship between the diagnosed lumbar conditions and the accepted January 30, 2019 employment incident.

Regarding appellant's left hip condition, Dr. Reasor stated that the fall on the left hip, wherein appellant landed on her left buttock, was "the most likely cause" of her torn or detached left gluteus minimus tendon. He opined that the mechanism of injury was clear to see. The June 7, 2020 report is insufficient to establish appellant's claim as Dr. Reasor couched his conclusions that the fall "could have easily been" the cause of an annular disc tear and that her detached left gluteus minimus tendon was "most likely" caused by the fall in equivocal terms. The Board has held that while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, it must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.[12] The Board also notes that Dr. Reasor did not discuss the apparent inconsistency between his account of appellant's fall onto her left side on January 30, 2019 and the emergency department report of January 30, 2019, in which the fall was described involving her left leg extending to the front falling hard on her right knee and upper front right thigh. Medical opinions based on an incomplete or inaccurate history are of diminished probative value.[13] Without a discussion of the apparent inconsistency between his account of appellant's fall onto the left side and the January 30, 2019 emergency department report's account of a fall onto the right knee and right thigh, Dr. Reasor's opinions are therefore insufficiently rationalized to establish appellant's claim.

Appellant submitted additional reports and notes dated October 10, November 15, November 20, and December 7, 2019; and January 24, February 14, and March 5, 2020 from Dr. Reasor. These reports and notes did not offer a medical opinion regarding the cause of

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *see L.C.*, *supra* note 6; *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

[12] *L.S.*, Docket No. 18-1494 (issued April 12, 2019); *Ricky S. Storms*, 52 ECAB 349 (2001).

[13] *See D.B.*, Docket No. 19-0663 (issued August 27, 2020); *D.W.*, Docket No. 18-0123 (issued October 4, 2018); *L.G.*, Docket No. 09-1692 (issued August 11, 2010).

appellant's diagnosed conditions. 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.[14] Therefore these reports are insufficient to establish appellant's claim.[15]

Appellant also submitted a report dated January 30, 2019 from a physician assistant and reports dated May 6, May 30, June 7, and August 15, 2019 from APR nurses. However, certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered physicians as defined under FECA.[16] Consequently, these reports will not suffice for purposes of establishing entitlement to FECA benefits.[17]

The remaining evidence consists of diagnostic reports dated May 28, June 5, September 4, and October 8, 2019. The Board has held that diagnostic tests, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion on the relationship between the employment incident and a claimant's diagnosed condition.[18]

As appellant has not submitted rationalized medical evidence establishing that her diagnosed medical conditions were causally related to the accepted employment incident of January 30, 2019, 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 proof to establish a medical condition causally related to the accepted January 30, 2019 employment incident.

[14] *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[15] *S.W.*, Docket No. 19-1579 (issued October 9, 2020); *see L.B.*, *id.*; *D.K.*, *id*.

[16] Section 8101(2) provides that 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 also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *M.F.*, Docket No. 19-1573 (issued March 16, 2020); *N.B.*, Docket No. 19-0221 (issued July 15, 2019); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (finding that lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA).

[17] *See M.C.*, Docket No. 19-1074 (issued June 12, 2020) (nurse practitioners are not considered physicians under FECA); *R.K.*, Docket No. 20-0049 (issued April 10, 2020) (physician assistants are not considered physicians under FECA).

[18] *See C.F.*, Docket No. 18-1156 (issued January 22, 2019); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

ORDER

IT IS HEREBY ORDERED THAT the February 17, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 10, 2022
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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