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

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| **S.D., Appellant** | ) | |
| | ) | **Docket No. 22-0405** |
| **and** | ) | **Issued: October 5, 2022** |
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| **U.S. POSTAL SERVICE, POST OFFICE, Bellmawr, NJ, Employer** | ) | |

*Appearances:*
*Russell T. Uliase, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

### ***JURISDICTION***

On January 24, 2022 appellant, through counsel, filed a timely appeal from a July 28, 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 to consider 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 lumbar or thoracic conditions causally related to the accepted January 3, 2017 employment incident.

## ***FACTUAL HISTORY***

This case has previously been before the Board.[3] The facts and circumstances as set forth in the Board's prior orders are incorporated herein by reference. The relevant facts are as follows.

On January 3, 2017 appellant, then a 61-year-old mail handler, filed a notice of recurrence (Form CA-2a) alleging that she sustained a recurrence of disability on that date as a result of her previously accepted December 6, 2016 traumatic injury under OWCP File No. xxxxxx708.[4] She alleged that she experienced lower back pain in the same location where she was previously injured. Following her December 6, 2016 employment injury, appellant returned to full-duty work until January 3, 2017. In an OWCP development questionnaire dated February 13, 2017, she explained that her recurrence occurred while she was driving and pulling equipment.

Medical reports from Dr. Michael S. Levy, an attending orthopedic surgeon, were submitted. In narrative reports dated December 22, 2016, January 5 and February 2, 16, and 23, 2017, Dr. Levy noted that appellant presented for a follow-up evaluation of her December 6, 2016 work-related lumbar sprain. He noted that she had previously attempted to return to work on January 3, 2017 and experienced a significant increase in pain. Appellant worked three hours and was unable to continue. Dr. Levy discussed his examination findings and diagnosed lumbar sprain/strain, back pain, and thoracic spine spondylosis. In a January 5, 2017 duty status report (Form CA-17), he noted a history of the accepted December 6, 2016 employment injury and diagnosed lumbar strain due to injury. Dr. Levy placed appellant off work. By letter dated January 26, 2017, he advised that she may resume work on February 3, 2017. In a February 2, 2017 work capacity evaluation (Form OWCP-5c), Dr. Levy reiterated his diagnosis of lumbar sprain/strain and advised that appellant was totally disabled from work.

OWCP, by development letter dated March 13, 2017, provided a questionnaire for appellant's completion regarding the circumstances surrounding her claimed injury and requested that she submit a narrative medical report from her physician. It afforded her 30 days to respond.

On March 20, 2017 appellant responded to OWCP's development questionnaire, relating that on January 3, 2017 she was driving a tow motor and pulling empty hampers to her area when her back started to hurt in the same area as her previous injury. She noted that she immediately reported her injury to her supervisor.

[3] *Order Dismissing Appeal,* Docket No. 19-0590 (issued June 25, 2019); *Order Granting Petition for Reconsideration and Reinstating Appeal,* Docket No. 19-0590 (issued May 18, 2020); *Order Remanding Case,* Docket No. 19-0590 (issued August 28, 2020).

[4] Appellant filed a traumatic injury claim (Form CA-1) on December 6, 2016 alleging that on that day she sustained a back injury when a tow motor rear ended the tow motor she was operating while in the performance of duty. OWCP assigned File No. xxxxxx708 and accepted the claim for lumbar and thoracic sprains.

Appellant submitted additional medical evidence from Dr. Levy. In reports dated March 2 and 16, 2017, Dr. Levy reiterated his prior diagnosis of lumbar sprain/strain. In prescriptions dated March 16 and 17, 2017, he ordered a pain management evaluation and continued physical therapy. In a March 23, 2017 prescription note, Dr. Levy noted that appellant was progressing with physical therapy and that she should not return to work until one month after completing such treatment.

Appellant also submitted a March 15, 2017 lumbar spine magnetic resonance imaging (MRI) scan report from Dr. Joel D. Swartz, a Board-certified diagnostic radiologist. Dr. Swartz provided impressions of no evidence of fracture/dislocation, marrow replacing process or intraspinal/paraspinous mass; disc bulging at L1-2, disc desiccation with bilateral intraforaminal disc bulging right greater than left at L2-3; left far lateral/intraforaminal disc herniation at L3-4; disc degeneration with broad disc protrusion, marginal osteophytosis, facet joint degenerative joint disease, and degenerative offset at L4-5; and disc degeneration with broad disc protrusion more to the left at L5-S1.

By decision dated April 18, 2017, OWCP accepted that the January 3, 2017 employment incident occurred, as alleged. However, it denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish that the diagnosed lumbar and thoracic spine conditions were causally related to the accepted employment incident.

On April 27, 2017 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

In support of her request, appellant submitted an April 6, 2017 letter from Dr. Levy. Dr. Levy noted a history of his treatment of appellant beginning December 22, 2016 and his review of medical records. He opined that her diagnoses included disc and osteophyte changes and changes to the lumbar spine causally related to her December 6, 2016 employment injury. Dr. Levy noted that appellant was ordered back to work pending an evaluation by a pain management physician and review of an MRI scan, which revealed a bulging disc and degenerative joint disease.

OWCP subsequently received additional medical evidence. In prescriptions notes dated May 19, 2017, Dr. Robert T. Rinnier, a Board-certified anesthesiologist and pain medicine specialist, diagnosed lumbago and lumbar herniated nucleus pulpous and ordered physical therapy to treat the diagnosed conditions and appellant's core strength. He placed her off work for one month until her next evaluation.

In a June 15, 2017 prescription note, Dr. Uplekh S. Purewal, an attending Board-certified anesthesiologist and pain medicine specialist, placed appellant off work for four weeks due to medical issues.

Following a September 27, 2017 telephonic hearing, appellant submitted an October 5, 2017 prescription note from Dr. Purewal who related that appellant returned to work on January 3, 2017 and engaged in bending over while pulling hampers to a tow motor. Dr. Purewal opined that the work performed on that day aggravated her lumbar radiculopathy which caused her to stop work.

By decision dated November 7, 2017, an OWCP hearing representative affirmed the April 18, 2017 decision. He found that the medical evidence submitted was insufficient to establish that appellant's diagnosed lumbar and thoracic spine conditions were causally related to the accepted January 3, 2017 employment incident.

On February 28, 2018 appellant, through counsel, requested reconsideration. She also submitted a statement describing her work duty of driving a tow motor. Appellant explained that the job not only required driving the tow motor, but also required bending over to hook up cages and hampers, and then connecting them to the tow motor.

OWCP, by decision dated March 5, 2018, denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), as the evidence submitted was irrelevant or immaterial.

On March 23, 2018 appellant, through counsel, again requested reconsideration. She submitted a March 16, 2018 report from Dr. Purewal who noted that appellant developed post-traumatic lumbago following her December 6, 2016 employment injury. Dr. Purewal advised that her condition was aggravated and exacerbated by her tow motor work and hooking up a hamper on January 3, 2017.

OWCP, by decision dated June 19, 2018, denied modification of the November 7, 2017 decision affirming the denial of appellant's traumatic injury claim. It found that the medical evidence submitted failed to provide a rationalized opinion explaining how the January 3, 2017 employment incident contributed to or aggravated her diagnosed back conditions.

On July 31, 2018 appellant, through counsel, requested reconsideration.

OWCP, by decision dated October 29, 2018, denied modification of its June 19, 2018 decision.

On January 21, 2019 appellant, through counsel, appealed the October 29, 2018 decision to the Board. By order dated June 25, 2019, the Board dismissed the appeal at appellant's request.[5] On June 28, 2019 appellant, through counsel, filed a petition for reconsideration of the Board's June 25, 2019 order. Counsel contended that appellant's appeal was mistakenly dismissed after the Board received a dismissal request from a different appellant with the same name. By order dated May 18, 2020, the Board granted appellant's petition for reconsideration and reinstated her appeal.[6]

A July 17, 2019 form report from a nurse practitioner with an illegible signature noted appellant's work restrictions.

Form CA-17 reports dated June 27, 2019 and January 16, 2020 from a healthcare provider with an illegible signature noted that appellant had a lifting injury. The reports provided diagnoses

[5] *Supra* note 3.

[6] *Id.*

of low back pain and other intervertebral disc displacement due to injury and indicated that appellant could work with restrictions.

By order dated August 28, 2020, the Board set aside the October 29, 2018 decision and remanded the case directing OWCP to combine appellant's claims under File Nos. xxxxxx708 and xxxxxx562 and issue a *de novo* merit decision.

Thereafter, OWCP administratively combined the files with File No. xxxxxx708 serving as the master file.[7]

The relevant medical evidence in OWCP File No. xxxxxx708 included reports dated April 27, 2017 through May 24, 2018 from Dr. Purewal. In these reports, Dr. Purewal noted a history of the December 6, 2016 employment injury and discussed examination findings. He provided an assessment that appellant developed post-traumatic lumbago following her December 6, 2016 employment injury. Dr. Purewal addressed her work capacity and restrictions, noting that she returned to work on January 3, 2017, but was only able to work several hours due to back pain and she had subsequent intermittent periods of disability from work.

In OWCP File No. xxxxxx562, OWCP received a September 30, 2020 form report from Lisa A. Paul, an advanced practical nurse, who provided appellant's work restrictions. In an October 1, 2020 prescription, Ms. Paul noted that appellant should be able to return to work within six months.

By decision dated January 25, 2021, OWCP denied appellant's claims for a traumatic injury and recurrence of disability of his previously accepted December 6, 2016 employment injury, finding that the medical evidence of record was insufficient to establish a medical condition or disability causally related to the January 3, 2017 employment incident.

On February 4, 2021 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on May 14, 2021.

OWCP received an additional form report dated July 22, 2021 from Ms. Paul, noting appellant's work restrictions.

By decision dated July 28, 2021, an OWCP hearing representative affirmed the January 25, 2021 decision, finding that the medical evidence of record was insufficient to establish that the January 3, 2017 employment incident caused or aggravated appellant's diagnosed conditions.

## ***LEGAL PRECEDENT***

An employee seeking benefits under FECA[8] 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

[7] At the same time, OWCP also administratively combined File No. xxxxxx739 which was accepted for a lumbar strain on December 14, 2004.

[8] *Supra* note 2.

States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,[9] 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.[10] 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.[11]

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 to be established is that the employee 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.[12]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[13] 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.[14]

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.[15]

[9] *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).

[10] *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).

[11] *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).

[12] *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).

[13] *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).

[14] *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).

[15] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *A.C.*, Docket No. 21-1307 (issued March 22, 2022); *M.B.*, Docket No. 20-1275 (issued January 29, 2021); *see R.D.*, Docket No. 18-1551 (issued March 1, 2019).

## ***ANALYSIS***

The Board finds that appellant has not met her burden of proof to establish lumbar or thoracic conditions causally related to the accepted January 3, 2017 employment incident.

In support of her claim, appellant submitted medical evidence from Dr. Levy. In reports dated December 22, 2016 through March 16, 2017, Dr. Levy noted that, following her December 6, 2016 employment injury, appellant attempted to return to work on January 3, 2017. He noted, however, that she was only able to work three hours and stopped work due to a significant increase in pain. Dr. Levy diagnosed the accepted condition of lumbar sprain. He also diagnosed lumbar strain. In a January 5, 2017 Form CA-17 report, Dr. Levy advised that appellant's lumbar strain was due to her December 6, 2016 employment injury and he placed her off work. In an April 6, 2017 letter, he diagnosed disc and osteophyte changes and changes to the lumbar spine based on MRI scan findings and opined that the diagnosed conditions were causally related to the December 6, 2016 employment injury. While he noted appellant's attempt to return to work on January 3, 2017, Dr. Levy did not provide a detailed history of injury pertaining to the accepted January 3, 2017 employment incident. Further, he did opine that the diagnosed lumbar conditions were causally related to the accepted employment incident. Rather, Dr. Levy attributed the diagnosed conditions to appellant's previously accepted December 6, 2016 employment injury. His January 26, 2017 letter, February 2, 2017 Form OWCP-5c report, and March 23, 2017 prescription note initially indicated that appellant could resume work on February 3, 2017, then found that she was totally disabled from work, and subsequently advised that she could not return to work until one month following completion of physical therapy treatments. Dr. Levy did not provide a history of injury, a firm medical diagnosis, or an opinion as to whether the January 3, 2017 employment incident caused a diagnosed medical condition and disability from work.[16] Likewise, his remaining prescriptions dated February 2 and March 16 and 17, 2017, which ordered physical therapy and a pain management evaluation did not provide a history of injury, a firm medical diagnosis, or an opinion on causal relationship.[17] For these reasons, the Board finds that the medical evidence from Dr. Levy is insufficient to establish appellant's burden of proof.

Appellant also submitted medical evidence from Dr. Purewal. In an October 5, 2017 prescription note, Dr. Purewal opined that appellant's lumbar radiculopathy was aggravated by the January 3, 2017 employment incident. In a March 16, 2018 report, he also opined that her post-traumatic lumbago, which she developed following the December 6, 2016 employment injury, was aggravated and exacerbated by the January 3, 2017 employment incident. While Dr. Purewal provided an affirmative opinion suggestive of causal relationship, he did not offer medical rationale sufficient to explain how the accepted January 3, 2017 employment incident would have aggravated or exacerbated appellant's diagnosed conditions.[18] The Board has previously held that conclusory statements lacking medical rationale are insufficient to establish causal relationship

[16] *See D.L.*, Docket No. 19-1053 (issued January 8, 2020); *C.C.*, Docket No. 18-1099 (issued December 21, 2018).

[17] *Id*.

[18] *S.A.*, Docket No. 21-0593 (issued February 3, 2022); *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *see H.A.*, Docket No. 18-1466 (issued August 23, 2019); *L.R.*, Docket No. 16-0736 (issued September 2, 2016).

between employment factors and diagnosed conditions.[19] In reports dated April 27, 2017 through May 24, 2018 and a prescription note dated June 15, 2017, Dr. Purewal placed appellant off work for intermittent periods of disability due to medical issues and set forth her work restrictions. He noted that she developed post-traumatic lumbago following the December 6, 2016 employment injury and that she was only able to work several hours when she returned to work on January 3, 2017. However, Dr. Purewal did not offer an opinion addressing whether appellant's diagnosed lumbar condition and disability status were caused or aggravated by the January 3, 2017 employment incident. The Board has held that a medical report is of no probative value if it does not offer an opinion as to whether the accepted employment incident caused or aggravated the claimed condition.[20] For these reasons, the Board finds that the medical evidence from Dr. Purewal is insufficient to establish appellant's claim.

Likewise, Dr. Rinnier's May 19, 2017 prescriptions notes did not provide an opinion on causal relationship. He diagnosed lumbago and lumbar herniated pulpous, ordered physical therapy to treat the diagnosed conditions and appellant's core strength, and placed her off work for one month until her next evaluation. Dr. Rinnier did not offer an opinion as to whether appellant's diagnosed lumbar and thoracic spine conditions and disability status were causally related to the January 3, 2017 employment incident.[21] Thus, this evidence is insufficient to meet appellant's burden of proof.

Appellant submitted Dr. Swartz' March 15, 2017 MRI scan of the lumbar spine. The Board has held, however, that diagnostic studies, standing alone, lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.[22] For this reason, Dr. Swartz' MRI scan report is insufficient to establish appellant's burden of proof.

Appellant also submitted July 17, 2019 and September 30, 2020 form reports and an October 1, 2020 prescription from nurse practitioners. However, certain healthcare providers such

[19] *S.A., id.*; *K.O.*, Docket No. 18-1422 (issued March 19, 2019); *see E.P.*, Docket No. 18-0194 (issued September 14, 2018).

[20] *G.J.*, Docket No. 21-0528 (issued February 1, 2022); *L.E.*, Docket No. 19-0470 (issued August 12, 2019); *M.J.*, Docket No. 18-1114 (issued February 5, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[21] *Id.*

[22] *A.O.*, Docket No. 21-0968 (issued March 18, 2022); *M.B.*, Docket No. 19-1638 (issued July 17, 2020); *T.S.*, Docket No. 18-0150 (issued April 12, 2019).

as nurse practitioners, are not considered physicians as defined under FECA.[23] Consequently, these reports will not suffice for purposes of establishing entitlement to FECA benefits.[24]

The remaining medical evidence of record consists of reports dated December 11, 2016, June 27, 2019, and January 16, 2020 by unidentifiable health care providers. The Board has held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.[25] Thus, these reports are also insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence establishing that her lumbar or thoracic conditions causally related to the accepted January 3, 2017 employment incident, the Board finds that she has not met her burden of proof to establish her claim.

On appeal counsel contends that Dr. Purewal's reports are sufficient to establish that the January 3, 2017 employment incident aggravated appellant's previously accepted December 6, 2016 employment-related conditions. As discussed above, however, appellant has not submitted rationalized medical evidence establishing that her previously accepted conditions were aggravated by the January 3, 2017 employment incident, and thus, 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 lumbar or thoracic conditions causally related to the accepted January 3, 2017 employment incident.

[23] 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).

[24] *See M.O.*, Docket No. 21-1068 (issued March 1, 2022); *M.T.*, Docket No. 21-0783 (issued December 27, 2021); *R.M.*, Docket No. 21-0602 (issued March 10, 2022); *M.C.*, Docket No. 19-1074 (issued June 12, 2020) (nurse practitioners are not considered physicians under FECA).

[25] *R.O.*, Docket No. 21-0473 (issued January 31, 2022); *C.M.*, Docket No. 21-0004 (issued May 24, 2021); *T.D.*, Docket No. 20-0835 (issued February 2, 2021); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the July 28, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 5, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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