

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

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| S.W., Appellant |) | |
| |) | |
| and |) | Docket No. 22-0438 |
| |) | Issued: October 13, 2022 |
| U.S. POSTAL SERVICE, POST OFFICE, Charlotte, NC, Employer |) | |
| |) | |

Appearances:
Appellant, pro se
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
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On January 31, 2022 appellant filed a timely appeal from a January 11, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established right hip and lumbar conditions causally related to the accepted February 18, 2020 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On February 28, 2020 appellant, then a 53-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained pain in the lower back and thighs due to factors of her federal employment. She noted that she first became aware of her condition on February 3, 2020 and realized its relation to her federal employment on February 18, 2020. Appellant explained that she was delivering mail and was walking back to her employing establishment vehicle when she noticed a dog nearby. When she twisted and turned to retrieve her dog spray, while backing up, she felt a sharp pain in her back and legs. Appellant alleged that she called her supervisor and continued to work as she thought the pain would stop. The employing establishment noted that appellant first reported the incident on February 18, 2020 and stopped work on that date.

On February 28, 2020 OWCP received a statement from appellant wherein she related that on Monday, February 3, 2020 she woke up with severe back and leg pain, went to work, cased her usual route, but was unable to deliver the mail. Appellant indicated that she saw her doctor several times, received pain medication, and on February 6, 2020 was cleared to work with restrictions. She noted that she returned to work for two days on light duty. Appellant noted that she saw her doctor on February 12, 2020, was cleared for work with no restrictions as of February 15, 2020, but since that date was a weekend, she returned to work on February 18, 2020. On February 18, 2020, while delivering mail, a dog startled her. By twisting, turning and back-pedaling quickly, appellant aggravated her back and legs. She related that she had not previously experienced pain to the same extent.

Dr. Shireesha Sangineni, a Board-certified family practitioner, completed a form report on February 19, 2020, which indicated that appellant would be unable to work from February 3 to 19, 2020, due to acute back pain. In a note dated February 27, 2020, she related that on February 19, 2020 appellant was seen for back pain, which was aggravated when she was chased by a dog on February 18, 2020.

In a letter dated March 3, 2020, the employing establishment controverted the claim and provided a February 28, 2020 letter from E.O., a supervisor. E.O. noted that on February 18, 2020 appellant returned to work and was showing signs of pain and difficulty with movement, but had not presented medical restrictions. She indicated that appellant proceeded to deliver her route, however, at approximately 10:30 a.m. on February 18, 2020 appellant notified E.O. that a "dog got after her and she 'tweaked' her back."

In a March 4, 2020 development letter, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. By a separate letter of even

² Docket No. 20-1346 (issued June 23, 2021).

date, OWCP also requested information from the employing establishment regarding the physical requirements of appellant's employment duties. It afforded both parties 30 days to respond.

In a March 12, 2020 statement, A.C., a supervisor, noted that appellant called out sick on February 4 and 5, 2020 and when appellant reported to work on February 7, 2020, she was walking "a little funny" and it seemed as if appellant was in pain and hunched over. She noted that when she asked appellant if everything was okay, appellant responded that she would be going a little slower than usual, but she could do the route. A.C. further indicated that on February 18, 2020 when appellant reported for work, she noticed that appellant was walking as if she was in pain, but her doctor's note had no restrictions. She noted that appellant later called and notified the employing establishment that she tweaked her back when a dog came out of nowhere and scared her, and related that she would be unable to complete her route.

On March 24, 2020 appellant responded to the OWCP development questionnaire. She related that on February 1, 2020 she delivered mail, and that night she started feeling pain in her back. Appellant explained that she thought about her day and she "did nothing out of the ordinary. The mail was not too bad and the packages were not too heavy." Appellant related that on the following Monday morning, February 3, 2020, the pain was also in her legs, and she could hardly move. She noted that she cased mail, left work, went to the doctor, received medication, and was off work for a few days. Appellant related that on February 7, 2020 she returned to work for four hours, and on February 8, 2020 her supervisor informed her to stay home until she was better. She noted that her doctor cleared her to return to work on February 15, 2020, with no restrictions, and that she returned to work on February 18, 2020. Appellant related that she was careful, cased her mail, loaded her truck with no problem, started delivering her route, and she was fine, until she was startled by a large dog and started twisting and turning around when she was backing up to reach for her dog spray. She noted that her prior injury was not on the job and she believed she had a traumatic injury on the job "because if it wasn't for that dog startling me causing me to twist and turn, I would not have reaggravated my back and leg pain." Appellant related that her job involved repetitive motion on a daily basis, which included walking, ascending and descending steps, twisting and grabbing mail, and setting and disengaging emergency brakes.

OWCP received a March 20, 2020 duty status report (Form CA-17) signed by a physical therapist. The report noted that appellant had been chased by a dog on February 18, 2020.

In a March 27, 2020 report, Dr. Sangineni advised that appellant reaggravated a prior back injury on February 18, 2020, when she was chased by a dog while delivering mail. She noted that appellant was seen on February 3, 2020 for a back injury and was cleared to return to work on February 15, 2020.

In a March 30, 2020 report, Dr. Jason Lowe, Board-certified in emergency medicine, related that appellant was seen for right hamstring pain, which began in February after she was chased by a dog at work. He noted assessments of lumbago and right hip pain. In an April 1, 2020 report, Dr. Lowe noted that he saw appellant for follow-up treatment of her right posterior thigh complaints. He advised that her symptoms were acute and traumatic and began on February 18, 2020. Dr. Lowe noted that the "symptoms began as a result of [being] chased by a dog while delivering mail." He provided an assessment of right hip pain, lumbar spondylosis, and right hamstring strain.

By decision dated April 8, 2020, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the claimed events occurred as alleged. It therefore found that the requirements had not been met to establish an injury as defined by FECA.

On June 24, 2020 appellant filed a timely appeal from the April 8, 2020 merit decision. In a June 23, 2021 decision, the Board found that the case was not in posture for decision. The Board explained that appellant claimed an occupational injury by filing a Form CA-2; however, the evidence of record alleged a traumatic injury occurring during the course of a single workday or shift. The Board found that the February 18, 2020 employment incident occurred as alleged, and remanded the case for consideration of the medical evidence as to whether the employment incident caused an injury.

OWCP continued to receive medical evidence. A June 3, 2020 magnetic resonance imaging (MRI) scan read by Dr. Scott T. McGraw, a Board-certified diagnostic radiologist, revealed degenerative disc disease (DJD) of the lumbar spine with multilevel multifactorial central and foraminal stenosis, central narrowing greatest at the L5-S1 level, with posterior disc osteophyte complex and a small right-sided annular tear with some deformity of the proximal right S1 nerve. He also noted a small, extruded disc/free disc fragment causing some deformity of the proximal right S2 nerve and multilevel foraminal stenosis, greatest bilaterally at L4-5 and right greater than left at L3-4. In an addendum dated June 22, 2020, Dr. McGraw noted an additional medical history that appellant experienced low back pain radiating down the legs with numbness and tingling after being chased by dogs on February 18, 2020.

In a July 29, 2021 decision, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a medical condition causally related to the accepted employment incident.

On September 21, 2021 appellant requested reconsideration. She noted that she had a prior injury before her February 18, 2020 incident. Appellant explained that on February 18, 2020 she twisted quickly and felt a sharp pain she had never felt before. She explained that she thereafter discovered she had degenerative disc disease; however, a pinched nerve occurred when she was "twisting trying to get away from the dog."

A November 9, 2020 report from Dr. Lowe related that appellant was seen for continuing lumbar pain, which was aggravated by daily activities. Dr. Lowe noted that appellant was last seen in May 2020 with lower back pain and pain radiating down the posterior thigh. He noted that appellant did not follow up sooner because of her treatment for vitiligo, which was ongoing until recently. Dr. Lowe diagnosed lumbago, other spondylosis lumbar region, and radiculopathy, lumbar region.

In a December 3, 2020 report, Dr. Judit A. Staneata, a physical medicine and rehabilitation specialist, noted that appellant was seen for follow up of her lumbar spine condition and presented with pain on the right side, and symptoms that occurred constantly. She examined appellant and diagnosed radiculopathy, lumbosacral region. Dr. Staneata provided a right S1 transforaminal epidural injection. In a January 15, 2021 report, she diagnosed radiculopathy, lumbosacral region, spondylosis without myelopathy of lumbosacral region, muscle spasm of back, and pain in thoracic spine. In a February 25, 2021 report, Dr. Staneata noted that appellant was seen for follow up and presented with lumbar spine pain. She assessed radiculopathy, lumbosacral region, and provided a right S1 transforaminal epidural injection. In a March 24, 2021 report, Dr. Staneata assessed

radiculopathy, lumbosacral region, and spondylosis without myelopathy of lumbosacral region. In an August 23, 2021 report, she examined appellant and reviewed the diagnostic evidence. Dr. Staneata assessed radiculopathy, lumbosacral region, and explained that “it is more likely than not, her pain is due to twisting while being chased by the dog on 02/18/20, despite her degenerative changes in her lumbar spine.” She explained that appellant also had an annular tear and disc extrusion of the L5 disc, which did not occur with degenerative changes, but “was more likely than not due to a quick motion (such as sudden twisting, turning) as annular tears and disc extrusions often occurred with injury.”

By decision dated January 11, 2022, OWCP denied modification of the July 29, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including the fact 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 period 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 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 component is whether the employee experienced the employment incident that allegedly occurred.⁷ The second component is whether the employment incident caused a personal injury.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

³ *Supra* note 1.

⁴ *See J.D.*, Docket No. 21-1422 (issued May 24, 2022); *S.S.*, Docket No. 19-1815 (issued June 26, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *S.A.*, Docket No. 19-1221 (issued June 9, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *R.K.*, Docket No. 19-0904 (issued April 10, 2020); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *Y.D.*, Docket No. 19-1200 (issued April 6, 2020); *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).

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 established a medical condition causally related to the accepted February 18, 2020 employment incident.

Dr. Sangineni completed a note dated February 27, 2020, wherein she related that on February 19, 2020 appellant was seen for back pain, which was aggravated when appellant was chased by a dog on February 18, 2020. However, the Board has held that pain is a symptom, not a diagnosis of a medical condition.¹¹ As such, this report is insufficient to meet appellant's burden of proof.

In a March 27, 2020 report, Dr. Sangineni advised that appellant reaggravated a prior back injury on February 18, 2020, when she was chased by a dog while delivering mail. She noted that appellant was seen on February 3, 2020 for the original back injury, and was cleared to return to work on February 15, 2020. Other than to note that appellant reaggravated a prior back injury, Dr. Sangineni did not provide a diagnosis. A medical report lacking a firm diagnosis is of no probative value.¹² This report, therefore, is insufficient to establish a diagnosed medical condition causally related to the accepted employment incident.

In a March 30, 2020 report, Dr. Lowe related that appellant was seen for evaluation of right upper leg pain, which began in February after she was chased by a dog at work. He noted assessments of lumbago and right hip pain. In an April 1, 2020 report, Dr. Lowe noted that the "symptoms began as a result of [being] chased by a dog while delivering mail." He provided an assessment of right hip pain, lumbar spondylosis, and right hamstring strain. In a November 9, 2020 report, Dr. Lowe diagnosed lumbago, other spondylosis lumbar region, and radiculopathy, lumbar region. Although he suggested a work-related cause for appellant's conditions, he did not provide a rationalized medical opinion relating a specific diagnosed condition to the February 18, 2020 employment incident. The Board has held that a report is of limited probative value regarding causal relationship, when it does not contain medical rationale explaining how an employment activity caused or aggravated a medical condition.¹³ Therefore, these reports are insufficient to establish appellant's traumatic injury claim.

In reports dated December 3, 2020, January 15, February 25, and March 24, 2021, Dr. Staneata diagnosed radiculopathy of lumbosacral region, spondylosis without myelopathy of lumbosacral region, muscle spasm of back, and pain in thoracic spine. These reports did not provide an opinion on the cause of appellant's conditions. The Board has long held that medical

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).

¹¹ *See J.R.*, Docket No. 21-1257 (issued April 27, 2022); *D.R.*, Docket No. 18-1408 (issued March 1, 2019); *D.A.*, Docket No. 18-0783 (issued November 8, 2018).

¹² *L.T.*, Docket No. 20-0582 (issued November 15, 2021); *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

¹³ *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value.¹⁴ Therefore, these reports from Dr. Staneata are insufficient to establish appellant's claim.

In an August 23, 2021 report, Dr. Staneata examined appellant and reviewed the diagnostic evidence. She assessed radiculopathy, lumbosacral region, and opined that "it is more likely than not, her pain is due to twisting while being chased by the dog on 02/18/20, despite her degenerative changes in her lumbar spine." Dr. Staneata also explained that appellant had an annular tear and disc extrusion of the L5 disc and opined that these conditions did not occur with degenerative changes, and that it "was more likely than not due to a quick motion (such as sudden twisting, turning) as annular tears and disc extrusions often occurred with injury." However, the Board finds that her opinion is speculative in nature, as she opined that "it is more likely than not" that appellant's condition was caused by a sudden motion such as twisting or turning, and that the diagnosed conditions of an annular tear and disc extrusion of the L5 disc were "more likely than not due to a quick motion" as these conditions "often occurred with injury." Medical opinions that are speculative or equivocal in character are of diminished probative value.¹⁵ Accordingly, the August 23, 2021 report from Dr. Staneata is insufficient to establish appellant's claim.¹⁶

OWCP also received a June 3, 2020 MRI scan report from Dr. McGraw. The Board has held that diagnostic studies, standing alone, lack probative value and are insufficient to establish a claim.¹⁷ In an addendum report dated June 22, 2020, Dr. McGraw noted an additional medical history that appellant experienced low back pain radiating down the legs with numbness and tingling after being chased by dogs on February 18, 2020; however, he did not offer his own opinion regarding causal relationship.¹⁸ As such, this evidence is insufficient to meet appellant's burden of proof.

OWCP also received a March 20, 2020 Form CA-17, from a physical therapist and notes dated February 6 and 12, and August 13, 2020 from a physician assistant. The Board has long held that certain healthcare providers, such as physician assistants and physician assistants are not considered physicians as defined under FECA.¹⁹ Their medical reports, unless cosigned by a

¹⁴ See *D.M.*, Docket No. 21-1244 (issued March 25, 2022); see *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁵ *D.B.*, Docket No. 18-1359 (issued May 14, 2019); *Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

¹⁶ See *S.S.*, Docket No. 21-0837 (issued November 23, 2021).

¹⁷ See *A.Z.*, Docket No. 21-1355 (issued May 19, 2022); *J.K.*, Docket No. 20-0591 (issued August 12, 2020); *J.P.*, *supra* note 12; *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

¹⁸ See *supra* note 14.

¹⁹ Section 8101(2) of FECA 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 Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *C.G.*, Docket No. 20-0957 (issued January 27, 2021); *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 *J.R.*, *supra* note 11; see also *K.A.*, Docket No. 18-0999 (issued October 4, 2019).

qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.²⁰ Consequently, this evidence is insufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted February 18, 2020 employment incident, the Board finds that appellant has not met her burden of proof to establish her claim.

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 established a medical condition causally related to the accepted February 18, 2020 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the January 11, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 13, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

²⁰ *K.A., id.*; *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk, id.*