United States Department of Labor
Employees' Compensation Appeals Board

D.K., Appellant	)	
and	)	**Docket No. 22-0988**
	)	**Issued: October 28, 2022**
U.S. POSTAL SERVICE, POST OFFICE, Denver, CO, Employer	)	

Appearances:
Appellant, pro se,
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On June 15, 2022 appellant filed a timely appeal from an April 13, 2022 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish a lower back condition causally related to the accepted March 4, 2020 employment incident.

FACTUAL HISTORY

On March 5, 2020 appellant, then a 57-year-old lead mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on March 4, 2020 she sustained contusions on

[1] 5 U.S.C. § 8101 *et seq*.

the lower part of both her arms when the webbing on a mail container came loose, causing her to fall on her back, while in the performance of duty. She did not stop work.

In support of her claim, appellant submitted a March 5, 2020 report from Dr. Jacqueline Ward-Gaines, Board-certified in emergency medicine, noting that appellant was seen in the emergency room. Dr. Ward-Gaines held appellant off from work until March 9, 2020.

Progress notes from a March 12, 2020 encounter with Johnie Blum, a nurse practitioner, noted that appellant reported that on March 4, 2020 she was pulling a bin half-full of mail when the latch opened causing her to fall onto her back. Appellant recounted that she remained on the floor for 20 minutes, after which her supervisor transported her to the emergency room. Ms. Blum noted that appellant reported low back pain radiating into her lower abdomen and assessed idiopathic scoliosis, kyphoscoliosis, and lumbar disc disease with radiculopathy. In a letter of even date, she held appellant off work from until April 10, 2020, pending a magnetic resonance imaging (MRI) scan.

On April 2, 2020 the employing establishment controverted the claim, contending that there was no medical diagnosis signed by a physician and no medical reason provided for holding appellant off work pending an MRI scan.

In an April 3, 2020 development letter, 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 and provided a factual questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Appellant subsequently submitted March 26, 2020 progress notes from Dr. Long Vu, Board-certified in anesthesiology and pain medicine. Dr. Vu assessed a protruding lumbar disc, discogenic low back pain, and a compression fracture of the L1 vertebra with routine healing. He opined that an annular tear and edema at L4-5 was likely the cause of appellant's pain and that she would benefit from epidural injections.

On April 10, 2020 Dr. Vu examined appellant and noted that she continued to have discogenic low back pain from severe disc degeneration at L4-5, with Modic type I endplate inflammatory changes, disc protrusion, and annular disc disruption.

Progress notes dated April 24, 2020 from Dr. Vu reiterated his prior diagnoses and noted that appellant was awaiting approval for injections.

In an April 27, 2020 response to OWCP's development questionnaire, appellant asserted that she was attempting to pull a cage half-full of mail into the staging area when a defective latch popped open as she pulled the cage toward her. She related that she fell backward three to four feet, landed flat on her back, and immediately felt intense pain in her lower back, which spread to her stomach and across her body. Appellant alleged that a fellow clerk noticed her on the ground a few seconds later and summoned management; however, she could not rise off the ground for 25 minutes due to the pain. Thereafter, she was lifted into a wheelchair and requested transport to the emergency room. Appellant related that she had no prior issues or injuries to her lower back.

By decision dated May 4, 2020, OWCP denied appellant's traumatic injury claim, finding that she had not submitted sufficient evidence to establish that the claimed events or incident occurred as alleged. Consequently, it found that she had not met the requirements to establish an injury as defined by FECA.

Appellant continued to submit evidence, including visit notes from a March 5, 2020 emergency room encounter with Dr. Ward-Gaines. Dr. Ward-Gaines noted an impression of a lumbosacral sprain, fall, and lumbar pain. X-ray results of even date of appellant's lumbar and thoracic spine noted findings of subtle scoliosis and an impression of no evidence of acute fractures.

In an April 24, 2020 note, Dr. Vu held appellant off work until April 25, 2020.

On November 6, 2020 appellant requested reconsideration of the May 4, 2020 decision.

Appellant also submitted progress notes dated April 29, 2020, in which Dr. Vu provided work restrictions and released her to work effective May 4, 2020. She also submitted a faxed request dated October 27, 2020 asking her medical provider to complete a Form CA-16.

By decision dated February 4, 2021, OWCP modified its May 4, 2020 decision to find that the evidence was sufficient to establish that the claimed incident/events occurred as alleged. The claim remained denied, however, because the evidence of record was insufficient to establish causal relationship between appellant's diagnosed lower back conditions and the accepted March 4, 2020 employment incident.

On March 30, 2021 appellant requested reconsideration of the February 4, 2021 decision and submitted additional evidence.

In a March 22, 2021 report, Dr. Vu summarized appellant's history of injury and noted that she was evaluated on March 12, 2020. He opined that the March 25, 2020 MRI scan showed an acute L1 compression fracture, a disc protrusion at L4-5 with an annular tear, and edema of the endplates. Dr. Vu opined that, based on these acute changes documented on the MRI scan, it was "reasonable to conclude" that the fall at work on March 4, 2020 "on a more probable than not basis," had caused appellant's back pain and the acute changes on the documented MRI scan. He reasoned that the findings were not chronic and were "likely a result of recent trauma or stress" on the spine. Dr. Vu further opined that falling suddenly and landing hard on her back would create sufficient force to cause disc disruption such as an annular tear and would produce enough force on the spinal column to cause inflammation at the endplates and an acute compression fracture at L1, which was seen on the MRI scan. He concluded that the MRI scan taken three weeks after the fall showed acute changes that were consistent with recent trauma to the spine, and that the force from appellant's March 4, 2020 fall onto her back "could have" caused these changes.

By decision dated April 13, 2022, OWCP denied modification of its February 4, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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,[3] 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.[4] 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.[5]

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 whether 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.[6]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[7] 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 the specific employment incident identified by the claimant.[8]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a lower back condition causally related to the accepted March 4, 2020 employment incident.

In support of her claim, appellant submitted a March 22, 2021 report in which Dr. Vu briefly summarized appellant's history of injury and noted that appellant was evaluated on

[2] *Supra* note 1.

[3] *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).

[4] *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).

[5] *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).

[6] *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).

[7] *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).

[8] *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

March 12, 2020. Dr. Vu reviewed the March 25, 2020 MRI scan results and opined that it was reasonable to conclude that the fall at work on March 4, 2020, on a more probable than not basis, had caused appellant's back pain. He further opined that the findings on the MRI scan were "likely" a result of recent trauma or stress to the spine. Dr. Vu concluded that the MRI scan taken three weeks after the fall showed acute changes that were consistent with recent trauma to the spine. The Board has held that a report is of limited probative value regarding causal relationship if it is conclusory and does not contain medical rationale explaining how a given medical condition has an employment-related cause.[9] Although he supported causal relationship, Dr. Vu did not provide sufficient medical rationale explaining the basis of his conclusory opinion that appellant's back conditions were due to the accepted March 4, 2020 employment incident.[10] Additionally, Dr. Vu's opinion that the March 4, 2020 incident "could have" and "likely" caused appellant's diagnosed conditions is speculative in nature.[11] Medical opinions that are speculative or equivocal in character are of diminished probative value.[12] Accordingly, Dr. Vu's March 22, 2021 report is insufficient to establish appellant's claim.

Appellant also submitted a March 5, 2020 report and visit notes from Dr. Ward-Gaines, noting an impression of a lumbosacral sprain, fall, and lumbar pain. Similarly, she submitted a progress notes from Dr. Vu dated March 26, and April 10, 24, and 29, 2020. However, neither Dr. Ward-Gaines nor Dr. Vu provided an opinion on causal relationship. The Board has held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship. As such, these reports are also insufficient to establish appellant's claim.[13]

Additionally, appellant submitted a March 5, 2020 x-ray report. The Board has held that diagnostic reports, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the accepted employment incident caused a diagnosed condition.[14] For this reason, this evidence is insufficient to establish appellant's claim.

[9] *See S.S.*, Docket No. 21-0763 (issued November 12, 2021); *A.G.*, Docket No. 21-0756 (issued October 18, 2021); *T.S.*, Docket No. 20-1229 (issued August 6, 2021).

[10] *R.T.*, Docket No. 17-1230 (issued May 3, 2018); *T.M.*, Docket No. 08-0975 (issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

[11] *See K.P.*, Docket No. 21-1173 (issued May 4, 2022) (physician's opinion on causal relationship was speculative in nature when couched in terms "more likely than not."). *See also S.R.*, Docket No. 18-1295 (issued March 20, 2019); *G.M.*, Docket No. 18-0989 (issued January 3, 2019); *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

[12] *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).

[13] *See D.Y.*, Docket No. 20-0112 (issued June 25, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[14] *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

The remaining evidence of record includes a March 12, 2020 report and progress notes from Ms. Blum, a nurse practitioner. However, certain healthcare providers such as nurse practitioners are not considered "physician[s]" as defined under FECA.[15] Consequently, their medical findings or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[16]

As the medical evidence of record is insufficient to establish causal relationship between her lower back conditions and the accepted March 4, 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 met her burden of proof to establish a lower back condition causally related to the accepted March 4, 2020 employment incident.

[15] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[16] Section 8101(2) of FECA provides that medical opinions can only be given by a qualified physician. This section defines a physician as 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); *H.K.*, Docket No. 19-0429 (issued September 18, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *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 J.D.*, Docket No. 21-0164 (issued June 15, 2021) (nurse practitioners are not physicians as defined under FECA).

ORDER

IT IS HEREBY ORDERED THAT the April 13, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 28, 2022
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board