

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

_____)	
E.C., Appellant)	
)	
and)	Docket No. 22-0604
)	Issued: September 30, 2022
U.S. POSTAL SERVICE, BUSHWICK STATION, Brooklyn, NY, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On March 18, 2022 appellant, through counsel, filed a timely appeal from a January 25, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 lumbar or bilateral hand conditions causally related to the accepted June 8, 2021 employment incident.

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 an 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.*

FACTUAL HISTORY

On June 9, 2021 appellant, then a 43-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that day she injured her lower back and experienced right and left hand pain and cramping and could not move after she bent down to pick up a bucket of flats while in the performance of duty. On the reverse side of the claim form, D.M., a supervisor, controverted appellant's claim, contending that she did not use proper lifting techniques. She noted that appellant's legs were straight, and she did not bend over. D.M. indicated that appellant stopped work on the date of injury and has not returned.

In an accompanying letter dated June 9, 2021, appellant related that she had cased 10 bundles of books as instructed by a supervisor and when she bent down to pick up a heavy bucket her back went out and she dropped the bucket and screamed. She noted that she asked a coworker to call for an ambulance because she was unable to move or stand up straight. Appellant further noted that another supervisor called for an ambulance and when it arrived, she was placed into a wheelchair and escorted out of the office by emergency medical service personnel.

Appellant was treated on June 8, 2021 by Dr. Shannon Pickup, Board-certified emergency medicine specialist, who provided an impression of lower back and hand pain.

OWCP subsequently received additional medical evidence. In letters dated June 10 and July 1, 2021, Dr. Marc Cohen, an attending pain medicine specialist, opined that appellant was disabled and unable to return to work from June 10 to July 15, 2021.

In a development letter dated July 16, 2021, OWCP advised appellant of the deficiencies in her claim. It requested that appellant submit additional factual and medical evidence and provided a questionnaire for her completion. In a separate development letter of even date, it requested that the employing establishment provide additional information, including a statement from an official superior regarding its safety regulation for lifting techniques, enforcement of the regulation, and what disciplinary action was taken against employees for violation of the regulation, and witness statements from employees addressing the circumstances of the claimed injury and their knowledge of the lifting regulation. OWCP afforded both parties 30 days to submit the necessary evidence.

OWCP subsequently received additional medical evidence from Dr. Cohen. In a July 13, 2021 duty status report (Form CA-17), Dr. Cohen noted that appellant related a history of an injury to her back on June 8, 2021, indicating that her back gave out and she could not move. He diagnosed lumbar radiculopathy due to injury. Dr. Cohen advised that appellant could not return to work and listed her work restrictions.

In a July 15, 2021 letter, Dr. Cohen advised that appellant was disabled and unable to return to work from July 15 through September 15, 2021.

OWCP also received an additional Form CA-17 dated July 16, 2021 from Dr. Cohen in which he noted that appellant was examined on July 15, 2021, and reiterated appellant's history of injury on June 8, 2021, his prior diagnosis of lumbar radiculopathy due to injury, and opinion that appellant could not return to work.

By letter dated August 3, 2021, the employing establishment responded to OWCP's development letter. It provided e-mails dated July 30, 2021 and undated statements from D.M. who indicated that she witnessed appellant failing to use proper lifting techniques on June 8, 2021. D.M. noted that appellant stood with her knees straight as she bent to lift a half-full bucket. She also noted that she did not ask for assistance. D.M. related that every new employee received training on proper lifting techniques. She submitted a document which outlined proper lifting techniques for all postal employees.

On August 10, 2021 appellant responded to OWCP's development letter. She noted the dates she received medical treatment and her diagnosis of lumbar radiculopathy.

OWCP, by decision dated September 3, 2021, accepted that the June 8, 2021 employment incident occurred as alleged, but denied appellant's claim, finding that she had not provided rationalized medical evidence supporting causal relationship between her accepted employment incident and her diagnosed medical conditions.

On September 25, 2021 appellant requested reconsideration.

Thereafter, OWCP received reports dated June 30 and July 28, 2021 from Dr. Raz Winiarsky, a Board-certified orthopedic surgeon. Dr. Winiarsky, noted a history of the accepted June 8, 2021 employment incident and appellant's complaint of left hand pain. He discussed examination findings and provided an assessment of left upper limb carpal tunnel syndrome (CTS). Dr. Winiarsky found that appellant's injuries, current disability from work, and need for treatment were causally related to the accepted employment incident.

OWCP also received medical evidence from Dr. Steven Horowitz, a Board-certified physiatrist and an interventional pain management specialist. In reports dated August 17 and September 15, 2021, Dr. Horowitz noted a history of the accepted June 8, 2021 employment history and appellant's complaint of low back pain. He provided examination findings and diagnosed low back pain, lumbar radiculopathy, and lumbar spondylolisthesis without myelopathy or radiculopathy. Dr. Horowitz opined that appellant's injuries, current disability from work, and need for treatment were causally related to the accepted employment incident.

In a September 15, 2021 letter, Dr. Horowitz continued to note that appellant was disabled and unable to return to work. He indicated that she was unable to work from September 15 to October 26, 2021.

Dr. Michael Horowitz, a Board-certified general and hand surgeon, in an August 18, 2021 report, related a history of the June 8, 2021 employment incident. He noted appellant's complaint of left-hand numbness and tingling. Dr. Horowitz reported examination findings and provided assessments of CTS, bilateral upper limbs. Based on appellant's history and the development of her worsening symptoms and progression of her symptoms during her work activities, he concluded that these symptoms were directly causally related to her employment at the employing establishment.

A September 1, 2021 lumbar spine magnetic resonance imaging (MRI) scan report from Dr. Michael Greene, a Board-certified diagnostic radiologist, provided an impression of a posterior central focal herniation causing impingement upon the anterior thecal sac and left neural foramen at the L4-L5 level and contact with the anterior bilateral L5 nerve roots. Dr. Greene also provided

an impression of a posterior central focal herniation causing impingement upon the anterior thecal sac and bilateral neural foramina at the L5-S1 level and contact with the anterior bilateral S1 nerve roots.

By decision dated October 15, 2021, OWCP denied modification of the September 25, 2021 decision.

On October 26, 2021 appellant requested reconsideration. In support of her request, she submitted an October 26, 2021 medical report from Dr. Steven Horowitz in which he reiterated his prior diagnoses of low back pain, lumbar radiculopathy, and lumbar spondylolisthesis without myelopathy or radiculopathy and his opinion on causal relationship.

OWCP, by decision date January 25, 2022, denied modification of the October 15, 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 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,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 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.⁷

³ *Id.*

⁴ *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).

⁵ *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).

⁶ *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).

⁷ *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).

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁸ 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.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish lumbar or bilateral hand conditions causally related to the accepted June 8, 2021 employment incident.

In support of her claim, appellant submitted Dr. Pickup's June 8, 2021 report in which she provided an impression of lower back and hand pain. The Board has held that pain is a symptom and not a compensable medical diagnosis.¹⁰ For this reason, Dr. Pickup's report is insufficient to establish appellant's claim.

Appellant also submitted reports dated June 30 and July 28, 2021 from Dr. Winiarsky. Dr. Winiarsky provided an assessment of left upper limb CTS. He opined that appellant's condition, current disability from work, and need for treatment were causally related to the June 8, 2021 employment incident. While Dr. Winiarsky provided an affirmative opinion suggestive of causal relationship, he failed to provide medical rationale explaining the basis of his opinion. Without explaining, physiologically, how the specific employment incident or employment factors caused or aggravated the diagnosed condition, Dr. Winiarsky's opinion on causal relationship is of limited probative value and insufficient to establish appellant's claim.¹¹

In his July 13 and 16, 2021 CA-17 form reports, Dr. Cohen diagnosed lumbar radiculopathy due to the June 8, 2021 employment incident and found that appellant was totally disabled from work, but did not explain how the accepted employment incident physiologically caused appellant's diagnosed condition and disability.¹² Dr. Cohen's remaining June 10 and July 1 and 15, 2021 reports found that appellant was totally disabled from work for the period June 10 through September 15, 2021, but do not address the issue of causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's

⁸ *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).

⁹ *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).

¹⁰ *See B.T.*, Docket No. 22-0022 (issued May 23, 2022); *S.L.*, Docket No. 19-1536 (issued June 26, 2020); *D.Y.*, Docket No. 20-0112 (issued June 25, 2020).

¹¹ *See B.T., id.; J.G.*, Docket No. 21-1334 (issued May 18, 2022); *C.W.*, Docket No. 21-1204 (issued March 11, 2022); *A.W.*, Docket No. 19-0327 (issued July 19, 2019); *M.D.*, Docket No. 18-0195 (issued September 13, 2018); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

¹² *Id.*

condition is of no probative value on the issue of causal relationship.¹³ For these reasons, the Board finds that Dr. Cohen's reports are insufficient to establish appellant's claim.

Similarly, Dr. Steven Horowitz, in his August 17, September 15, and October 26, 2021 reports, diagnosed low back pain, lumbar radiculopathy, and lumbar spondylolisthesis without myelopathy or radiculopathy, and opined that appellant's diagnosed conditions, continued disability from work, and need for further treatment were causally related to the June 8, 2021 employment incident. However, he failed to offer medical rationale explaining how bending down to pick up a heavy bucket of flats either caused or aggravated appellant's diagnosed conditions. As previously noted, a medical opinion should offer a medically-sound explanation of how the specific employment incident physiologically caused the diagnosed condition.¹⁴ Dr. Horowitz' remaining September 15, 2021 report found that appellant was totally disabled from work for the period September 15 through October 26, 2021. However, his report did not contain a history of injury, a medical diagnosis, or an opinion regarding causal relationship. As this report does not offer an opinion regarding the cause of an employee's condition it is of no probative value.¹⁵ For these reasons, the Board finds that Dr. Horowitz' reports are insufficient to establish appellant's claim.

Dr. Michael Horowitz, in an August 18, 2021 report, opined that appellant's bilateral upper limb CTS was directly causally related to her employment. Although he indicated that appellant's bilateral CTS was work related, he failed to provide medical rationale explaining how the June 8, 2021 employment incident physiologically caused the diagnosed condition. As such, the Board finds that Dr. Horowitz' opinion on causal relationship is of limited probative value and insufficient to establish appellant's claim.¹⁶

Appellant submitted Dr. Greene's September 1, 2021 lumbar spine MRI scan report. The Board has held that diagnostic studies, standing alone, are of limited probative value as they do not address whether the employment incident caused any of the diagnosed conditions.¹⁷

As appellant has not submitted rationalized medical evidence to establish lumbar or bilateral hand conditions causally related to the accepted June 8, 2021 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.

¹³ *J.H.*, Docket No. 20-1414 (issued April 5, 2022); *S.W.*, Docket No. 19-1579 (issued October 9, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *See supra* note 10.

¹⁷ *J.G.*, Docket No. 21-1334 (issued May 18, 2022); *J.P.*, Docket No. 19-0216 (issued December 13, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish lumbar or bilateral hand conditions causally related to the accepted June 8, 2021 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the January 25, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 30, 2022
Washington, DC

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

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

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