United States Department of Labor
Employees' Compensation Appeals Board

S.J., Appellant	)	
and	)	**Docket No. 22-0891**
	)	**Issued: September 30, 2022**
U.S. POSTAL SERVICE, POST OFFICE, Columbia, SC, Employer	)	

Appearances:
Wayne Johnson, 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, Deputy Chief Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On May 30, 2022 appellant filed a timely appeal from a December 1, 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 neck or lower back condition causally related to the accepted October 3, 2019 employment incident.

FACTUAL HISTORY

On October 7, 2019 appellant, then a 44-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 3, 2019 she injured her head, neck, collarbones, left shoulder, back, and right toe when she fell while in the performance of duty. She explained that she tripped over a bumper guard attached to the loading dock while unloading her mail truck at the loading dock, striking her head on a pole and landing on the concrete with her left knee and back, causing right collar ligament damage, lower extremity pain, and blurred vision. Appellant stopped work on that date.

A visit summary from October 3, 2019 noted that Dr. Glen Beckner, a Board-certified emergency medicine physician, treated appellant in the emergency room. Appellant reported that she had tripped over a parking block, fell, and hit her head, resulting in head pain, blurred vision, and pain in her neck, back, ankle, and left knee. Dr. Beckner diagnosed multiple contusions.

On October 5, 2019 Dr. Christopher Olson, a Board-certified emergency medicine physician, examined appellant during a follow up in the emergency room. He noted that she reported falling several days prior and presented with complaints of neck pain, headache, back pain, and left leg pain. Dr. Olson diagnosed a head injury and musculoskeletal pain and prescribed medication. In a note of even date, he held appellant off work until October 10, 2019 and noted that she would need to be evaluated by workers' compensation.

In an October 10, 2019 work capacity evaluation (Form OWCP-5c), Dr. David Garrell, a Board-certified internist, provided work restrictions until appellant was seen by neurology. In a letter and neurology referral of even date, he provided an assessment of postconcussional syndrome and held her off of work until October 12, 2019.

On October 19, 2019 appellant accepted a modified-duty work assignment as a modified rural carrier.

In an October 31, 2019 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 afforded her 30 days to submit the necessary evidence.

OWCP received an October 29, 2019 challenge statement from T.A., an employing establishment postmaster, controverting appellant's claim. T.A. asserted that following a report of the employment incident she personally checked on appellant, who advised that appellant was doing "ok, just a little bruised" with some pain. She noted that she observed no scratches or knitting on appellant's pant legs or scrapes or scratches on her elbows or shoulder. T.A. concluded that she did not believe that appellant fell and hit her head in the way she described. In an email statement of even date, M.C., an employing establishment employee, noted that he observed appellant sitting on the tire rise of a truck as he was exiting T.A.'s office. He asked if she was ok

and she advised that she had fallen when she walked out of the back of the truck and tripped on the rubber backing. M.C. noted that appellant repeatedly declined medical treatment, presented with no visible injury, and that there were no witnesses to the alleged fall. He concluded that the alleged fall was not plausible given the layout of the dock.

By decision dated December 3, 2019, OWCP accepted that the October 3, 2019 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that she had not submitted medical evidence containing a medical diagnosis from a qualified physician in connection with the accepted employment incident. Consequently, OWCP found that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive evidence. December 6, 2019 consultation notes from Dr. John A. Nicholson, a Board-certified physical medicine and rehabilitation physician, indicated that appellant presented with complaints of ongoing headaches, neck pain, and low back pain as a result of tripping over a bumper and falling on her left side while unloading her work truck. Appellant explained that she previously experienced back pain, but following the employment incident her pain worsened. On physical examination, she was found to have tenderness and guarding in the cervical and lumbar spine and decreased sensation in the extremities. Dr. Nicholson diagnosed cervical and lumbar radiculopathy and further noted a medical history significant for Chiari malformation type I.

On December 31, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held telephonically on April 17, 2020.

By decision dated July 27, 2020, OWCP's hearing representative modified the December 3, 2019 decision to find that appellant had established a diagnosed medical condition; however, the claim remained denied as the evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted October 3, 2019 employment incident.

On July 27, 2021 appellant, through counsel, requested reconsideration and submitted additional evidence, including a progress note dated December 6, 2019 from Dr. Nicholson, wherein he related appellant's ongoing complaints of headaches and neck and back pain, as well as his diagnoses of cervical and lumbar radiculopathy and Chiari malformation type I.

OWCP also received an October 11, 2019 witness statement from appellant's coworker, Q.B., indicating that, on the day of the employment incident, he heard the sound of a fall, went back to investigate, and observed appellant laying in the back of her postal vehicle. When Q.B. asked her what had happened, she related that she tripped and fell.

By decision dated December 1, 2021, OWCP denied modification of the July 27, 2020 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 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.[7]

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 the specific employment incident identified by the claimant.[9]

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.[10]

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[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).

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

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *M.S.*, Docket No. 19-0913 (issued November 25, 2019).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a neck or lower back condition causally related to the accepted October 3, 2019 employment incident.

In support of her claim, appellant submitted consultation and progress notes from Dr. Nicholson dated December 6, 2019. Dr. Nicholson noted that she presented with complaints of neck and back pain radiating into her upper and lower left extremities as a result of falling on her left side after tripping over a loading dock bumper while unloading her truck. He diagnosed cervical and lumbar radiculopathy and noted a prior medical history of Chiari malformation type I and preexisting back pain. However, Dr. Nicholson did not provide an opinion on causal relationship. The Board has held that a medical report that does not offer an opinion on causal relationship is of no probative value and, thus, is insufficient to establish the claim.[11] Thus, Dr. Nicholson's December 6, 2019 notes are insufficient to establish her claim.

Appellant also submitted Dr. Beckner's October 3, 2019 visit summary diagnosing a fall and multiple contusions and Dr. Olson's October 5, 2019 visit summary diagnosing a head injury and musculoskeletal pain. Additionally, she submitted an October 10, 2019 Form OWCP-5c, neurology referral, and letter in which Dr. Garrell assessed postconcussional syndrome and recommended work restrictions. However, none of this evidence provides 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.[12]

As appellant has not submitted rationalized medical evidence establishing that her neck and lower back conditions are causally related to the accepted October 3, 2019 employment incident, the Board finds that she 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 neck or lower back condition causally related to the accepted October 3, 2019 employment incident.

[11] *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).

[12] *Id*.

ORDER

IT IS HEREBY ORDERED THAT the December 1, 2021 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

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

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