United States Department of Labor
Employees' Compensation Appeals Board

K.K., Appellant	)	
and	)	**Docket No. 22-0270**
	)	**Issued: February 14, 2023**
U.S. POSTAL SERVICE, POST OFFICE, Everett, WA, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On December 9, 2021 appellant filed a timely appeal from a July 8, 2021 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 established a medical condition causally related to the accepted factors of her federal employment.

[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 decisions are incorporated herein by reference. The relevant facts are as follows.

On February 28, 2018 appellant filed a notice of recurrence (Form CA-2a) alleging that on February 4, 2018 she experienced a recurrence of a previously accepted lumbar condition.[3] She indicated that when she returned to modified duty she had restrictions on lifting, standing, bending, and twisting for approximately six months, and that she still experienced pain from her previous injury, but was able to manage her work. Appellant explained that the physical requirements to perform her duties had drastically changed once her workstation changed and that she was now required to stand or lean for prolonged periods of time, which required her to constantly reach, bend, twist, and stoop. She stopped work on February 4, 2018. On March 26, 2018 OWCP converted the recurrence claim to an occupational disease claim (Form CA-2) as appellant claimed a medical condition due to new factors of her federal employment over the course of more than one workday or shift, and assigned it OWCP File No. xxxxxx988.

Appellant submitted several medical notes under OWCP File No. xxxxxx926, which mentioned her previously accepted lumbar conditions. In a medical note dated May 19, 2009, Dr. Leslie S. Newton, a Board-certified family physician, diagnosed cervical and lumbar disc disease with chronic pain management. In a March 16, 2011 note, Dr. Laurie Kreiter, Board-certified in family medicine, noted that appellant had been taking prescribed medication for her lumbar disc disease and thoracic arthritis. A May 18, 2012 report from Dr. Praveen Mambalam, a Board-certified pain specialist, noted that appellant's low back pain began in 1983. Dr. Mambalam's physical examination of the low back demonstrated positive Kemps test on the right, decreased range of motion (ROM) in extension and lateral bending bilaterally, painful ROM in extension, tenderness over bilateral L3, L4, and L5 facet and left sacroiliac joint, positive FABER test bilaterally with left piriformis tenderness. He diagnosed chronic pain, low back pain, and piriformis syndrome. In a report dated May 23, 2016, Dr. Jennifer E. Souders, Board-certified in pain management, noted that appellant had chronic lumbar pain which "may ... be caused by facet joint degenerative changes."

In a development letter dated March 26, 2018, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

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[2] Docket No. 20-0581 (issued September 14, 2020).

[3] Appellant has three prior claims involving injuries to her back. On May 3, 2002 she filed a traumatic injury claim (Form CA-1) related to an April 29, 2002 under OWCP File No. xxxxxx948, which OWCP accepted for a lumbar strain. On September 23, 2004 appellant filed a traumatic injury claim for a September 2, 2004 back injury under OWCP File No. xxxxxx953, which OWCP also accepted for a lumbar strain. Finally, she filed a traumatic injury claim for a July 1, 2005 neck and back injury under OWCP File No. xxxxxx926, which OWCP accepted for a cervical strain and aggravation of herniated cervical disc C6-7. OWCP has administratively combined OWCP File Nos. xxxxxx926, xxxxxx948, xxxxxx953, and xxxxxx988, with OWCP File No. xxxxxx926 serving as the master file.

In a medical note dated March 14, 2018, Dr. Kreiter indicated that appellant had exacerbated her lumbar condition in relation to a change in her work environment. She recounted that she evaluated appellant from February 21 through March 14, 2018 and opined that appellant was severely limited in her ability to stand for more than 15 minutes. Dr. Kreiter recommended that appellant remain out of work until after her evaluation by a pain specialist on March 20, 2018.

In a March 20, 2018 medical report, Craig Whitfield, a physician assistant, evaluated appellant for back and right leg pain that began at work. He noted that a September 18, 2013 magnetic resonance imaging (MRI) scan revealed stable lumbar spondylosis, an L4 broad-based disc bulge, L5 mild bilateral facet hypertrophy, and S1 moderate bilateral facet hypertrophy. Mr. Whitfield diagnosed lumbago and radiculopathy of the lumbar region and recommended that appellant undergo an MRI scan for further evaluation.

In response to OWCP's development questionnaire, appellant submitted an April 4, 2018 statement in which she explained that her entire work area and process had been changed and she was now required to stand for six to eight hours per day with continuous bending, twisting, reaching, and shuffling from side to side. She stated that, due to the new work process, which began "right after the new year," her back pain increased daily until it reached a point to where she could no longer tolerate it. Appellant noted that she had no hobbies that contributed to her injury. She also provided a diagram of her work area.

An April 9, 2018 lumbar spine MRI scan revealed mild scoliosis, moderate symmetric posterior paraspinal muscle atrophy, spondylosis and facet joint osteoarthritis at L2-3, L3-4, L4-5, and L5-S1, left paracentral disc protrusion with mild cranial migration at L3-4, and chronic calcified left paracentral disc extrusion with caudal migration at L4-5.

In an April 18, 2018 medical report, Dr. Geoffrey Tyson, Board-certified in pain medicine, evaluated appellant for right-sided low back pain. He noted that an April 9, 2018 MRI scan of her lumbar spine revealed foraminal stenosis at L3-4 and L4-5. Dr. Tyson diagnosed lumbago, radiculopathy of the lumbar region, and chronic pain syndrome. He recommended that appellant undergo an intra-articular injection to treat her condition.

In an April 25, 2018 duty status report (Form CA-17) with an illegible signature, a healthcare provider diagnosed a lumbar strain and found appellant fully disabled from work.

By decision dated May 2, 2018, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that her medical condition was causally related to the accepted factors of her federal employment.

OWCP continued to receive evidence. In a May 9, 2018 medical report, Dr. Kreiter noted appellant's previous lumbar injuries dating back to 2004 relating to her federal employment. Appellant explained that her new work duties beginning on January 6, 2018 required her to perform more reaching and twisting motions. Dr. Kreiter opined that the change of the mail sorting device at work caused appellant to overuse her lumbar spine because of the increased need for reaching and stooping. She diagnosed overuse syndrome of the lower back, strain of the lumbar region, exacerbation of chronic back pain, lumbar degenerative disc disease, and lumbar

radiculopathy, and opined that appellant's conditions were directly exacerbated by the change in her work environment as she had previously been stable.

In a May 16, 2018 medical report, Dr. Tyson reevaluated appellant for her low back and right leg pain. He opined that Mr. Whitfield's previous evaluation should have provided adequate documentation for continued treatment of her injury, reproduced Mr. Whitfield's description of appellant's employment factors and symptoms, and diagnosed radiculopathy of the lumbar region, lumbago, and other chronic pain.

In a May 16, 2018 report, Dr. Kreiter provided that she had been appellant's primary care provider for 15 years and that she had reviewed the medical notes from Dr. Tyson's evaluation. She opined that there was no doubt that appellant's chronic lumbar radiculopathy was directly exacerbated by the repetitive twisting, bending, reaching, and stooping from the new equipment appellant was required to use for her work. Dr. Kreiter concluded that she did not doubt the causal relationship between appellant's current medical conditions and her change in work environment.

On June 28, 2018 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review.

By decision dated August 30, 2018, OWCP's hearing representative affirmed the May 2, 2018 decision.

On July 16, 2019 appellant requested reconsideration of OWCP's August 30, 2018 decision.

By decision dated July 29, 2019, OWCP denied appellant's request for reconsideration of the merits of her claim.

On January 21, 2020 appellant appealed to the Board.[4]

By *de novo* decision dated July 8, 2021, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that her medical condition was causally related to the accepted factors of her federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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,[5] 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

[4] By decision dated September 14, 2020, the Board set aside OWCP's July 29, 2019 decision and remanded the case with instructions to administratively combine OWCP File Nos. xxxxxx988 and xxxxxx926. On remand OWCP administratively combined the files with OWCP File No. xxxxxx926 serving as the master file.

[5] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.[6] 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.[7]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.[8]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[9] A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[10] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).[11]

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.[12]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment.

In her May 9, 2018 report, Dr. Kreiter diagnosed overuse syndrome of the lower back, strain of the lumbar region, exacerbation of chronic back pain, lumbar degenerative disc disease,

[6] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[7] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[8] *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[9] *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

[10] *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

[11] *Id.*; *Victor J. Woodhams*, *supra* note 8.

[12] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *G.T.*, Docket No. 21-0170 (issued September 29, 2021); *D.W.*, Docket No. 20-0674 (issued September 29, 2020); *V.W.*, Docket No. 19-1537 (issued May 13, 2020); *N.C.*, Docket No. 19-1191 (issued December 19, 2019); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

and lumbar radiculopathy. She explained that appellant's new work duties beginning on January 6, 2018 required her to perform more reaching, twisting, and stooping motions due to a change of the mail sorting device. Dr. Kreiter opined that these changes directly caused appellant to overuse her lumbar spine, noting that appellant had previously been stable in her work environment. She similarly opined, in a May 16, 2018 report, that there was no doubt that appellant's chronic lumbar radiculopathy was directly exacerbated by the repetitive twisting, bending, reaching, and stooping from the new equipment appellant was required to use for her work. While these reports supported causal relationship, Dr. Kreiter did not provide a pathophysiological explanation of how the accepted factors of appellant's federal employment were competent to cause the diagnosed conditions. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition was related to accepted employment factors.[13] Consequently, Dr. Kreiter's May 9 and 16, 2018 reports are insufficient to meet appellant's burden of proof to establish her claim.

In her March 14, 2018 medical note, Dr. Kreiter indicated that appellant had exacerbated her lumbar condition as a result of a change in her work environment. While she provided an affirmative opinion suggestive of causal relationship, she did not offer medical rationale sufficient to explain how appellant's employment duties resulted in or contributed to her diagnosed condition. Without explaining how appellant's employment duties caused or aggravated her condition, Dr. Kreiter's note is of limited probative value and is insufficient to meet appellant's burden of proof.[14]

In his April 18, 2018 medical report, Dr. Tyson diagnosed lumbago, radiculopathy of the lumbar region and chronic pain syndrome. Similarly, in a May 16, 2018 report, he diagnosed radiculopathy of the lumbar region, lumbago, and other chronic pain and reproduced Mr. Whitfield's March 20, 2018 description of appellant's employment factors and symptoms. However, Dr. Tyson did not offer an opinion on causal relationship in either report. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[15] For these reasons, Dr. Tyson's reports are insufficient to meet appellant's burden of proof.

Other reports Drs. Newton, Kreiter, Mambalam, and Souders, dated between May 19, 2009 and May 23, 2016 are of no probative value in establishing the claimed conditions since they predate the January 2018 onset of the implicated employment factors.[16]

[13] *J.W.*, Docket No. 18-0678 (issued March 3, 2020); *G.R.*, Docket No. 19-0940 (issued December 20, 2019); *D.L.*, Docket No. 19-0900 (issued October 28, 2019); *see also V.T.*, Docket No. 18-0881 (issued November 19, 2018); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017); *T.M.*, Docket No. 08-975 (issued February 6, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[14] *See A.P.*, Docket No. 19-0224 (issued July 11, 2019).

[15] *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[16] *See generally*, *T.G.*, Docket No. 17-17445 (issued February 5, 2018); *R.G.*, Docket No. 16-0271 (issued May 18, 2017).

Appellant submitted a Form CA-17, dated April 25, 2018, bearing an illegible signature. The Board has held that reports that are unsigned or bear an illegible signature cannot be considered probative medical evidence as the author cannot be identified as a physician.[17] Therefore, this report is also of no probative value and is insufficient to establish appellant's claim.

Appellant also submitted a March 20, 2018 medical report signed by Mr. Whitfield, a physician assistant. The Board has held that medical reports signed solely by a physician assistant, registered nurse, or medical assistant are of no probative value as such healthcare providers are not considered physicians as defined under FECA and are, therefore, not competent to provide medical opinions.[18] Consequently, their medical findings and/or opinions will not suffice for the purpose of establishing entitlement to FECA benefits.

The remaining medical evidence consisted of an April 9, 2018 MRI scan of appellant's lumbar spine. The Board has held, however, that diagnostic testing reports, standing alone, lack probative value on the issue of causal relationship as they do not address the relationship between the accepted employment factors and a diagnosed condition.[19] For this reason, this evidence is also insufficient to meet appellant's burden of proof.

As appellant has not submitted rationalized medical evidence establishing that her medical condition is causally related to the accepted factors of her federal employment, 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 medical condition causally related to the accepted factors of her federal employment.

[17] *C.S.*, Docket No. 20-1354 (issued January 29, 2021); *D.T.*, Docket No. 20-0685 (issued October 8, 2020); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[18] 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 also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *A.C.*, Docket No. 20-1510 (issued April 23, 2021) (physician assistants are not considered physicians as defined by FECA); *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).

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

ORDER

IT IS HEREBY ORDERED THAT the July 8, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 14, 2023
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