United States Department of Labor
Employees' Compensation Appeals Board

M.M., Appellant	)	
and	)	**Docket No. 20-1649**
	)	**Issued: January 4, 2023**
U.S. POSTAL SERVICE, POST OFFICE, Jackson, MS, Employer	)	

Appearances:
Bob Waller, 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
JANICE B. ASKIN, Judge

JURISDICTION

On September 21, 2020 appellant, through counsel, filed a timely appeal from an April 21, 2020 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish a lumbar condition causally related to the accepted August 13, 2018 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 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 September 21, 2018 appellant, then a 56-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on August 13, 2018[3] she experienced pain in her lower back, radiating down her left leg after picking up sacks of mail to move from the floor to a table. She stopped work on August 31, 2018 and returned to work on September 18, 2018.

In a September 28, 2018 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 her with a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In medical reports dated September 28 to October 5, 2018, Dr. Charles Mobley, a chiropractor, related that on August 31, 2018 appellant injured her back when lifting a sack of mail at work and described the symptoms that followed. On evaluation, Dr. Mobley diagnosed segmental and somatic dysfunction of the lumbar region, segmental and somatic dysfunction of the pelvic region, a muscle strain of the fascia and tendon of the lower back, unspecified neuralgia and neuritis, as well as myalgia. In his October 1, 2018 medical report and an attached medical note, he advised that appellant was unable to return to work at the time. In his October 5, 2018 report, Dr. Mobley observed that she actually injured her back on August 13, 2018, but used August 31, 2018 on her report as it was the date the report was filled out. He suggested that appellant see him two times a week for treatment of her conditions.

In an October 5, 2018 attending physician's report (Form CA-20), Dr. Mobley related appellant's history of injury and diagnosed a lumbosacral strain. He checked a box marked "Yes" to indicate his opinion that her condition was caused or aggravated by her federal employment and made suggestions concerning the treatment for her condition.

In response to OWCP's development questionnaire, appellant submitted an October 9, 2018 statement wherein she provided further details regarding the alleged employment incident. She explained that the sacks of mail that she lifted that day weighed between 60 and 70 pounds and she identified the coworkers who she spoke to regarding her injury. Appellant stated that she had no previous injuries or prior symptoms related to her low back pain and also detailed her history of treatment and provided notes from Dr. Mobley's September 28, 2018 medical evaluation.

In a report dated October 9, 2018, appellant informed Dr. Mobley that she was still experiencing mild pain in her back and left thigh. Dr. Mobley detailed his treatment of her back symptoms and advised that she remain off work.

In duty status reports (Form CA-17) dated October 9 and 11, 2018, Dr. Mobley diagnosed a lumbosacral sprain/strain and identified August 31, 2018 as the date of injury. He also provided work restrictions.

[3] Appellant's claim form noted August 31, 2018 as the date of injury; however, the record indicates that August 13, 2018 is the correct date of injury.

In an October 12, 2018 medical report, appellant informed Dr. Mobley that she was now experiencing pain in her right buttocks rather than her left. Dr. Mobley stated that there may be some lumbar disc involvement and recommended that she perform no bending or lifting.

In an October 15, 2018 medical report, Dr. Michael Patterson, a Board-certified orthopedic surgeon, evaluated appellant for a lifting injury she experienced at work when she was lifting bags of mail from the floor to a counter. On review of an x-ray of her lumbar spine, he diagnosed low back pain, mechanical back pain, and bilateral leg pain. Dr. Patterson recommended that appellant undergo a magnetic resonance imaging (MRI) scan for further evaluation. In a medical note of even date, he advised that she was unable to work.

By decision dated November 2, 2018, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish a diagnosis in connection with the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

On November 26, 2018 appellant requested reconsideration of OWCP's November 2, 2018 decision.

In a November 16, 2018 diagnostic report, Dr. Ashwin Prabhu, Board-certified in internal medicine, conducted an MRI scan of appellant's lumbar spine, finding mild degenerative changes, predominantly characterized by facet atrophy as well as a tiny left foraminal disc extrusion at L2-3.

In a November 20, 2018 medical note, Dr. Patterson provided an addendum to his previous report, stating that the MRI scan of appellant's lumbar spine showed no evidence of a tumor or infection and no areas of severe compression of the neurological structures.

By decision dated January 23, 2019, OWCP affirmed its November 2, 2018 decision.

On April 30, 2019 appellant requested reconsideration of OWCP's January 23, 2019 decision.

By decision dated May 14, 2019, OWCP denied appellant's request for reconsideration of the merits of her claim.

On August 27, 2019 appellant, through counsel, requested reconsideration of OWCP's January 23, 2019 decision.

OWCP subsequently received an August 20, 2018 report, wherein Susan Sullivan, a registered nurse, noted that appellant visited the emergency department with complaints of back pain. Ms. Sullivan related that appellant's symptoms began a week prior when she picked up something heavy at work. In a diagnostic report of even date, Dr. Richard Hosch, a diagnostic radiologist, performed an x-ray of appellant's lumbar spine, observing no acute radiographic abnormality of the lumbar spine.

On November 26, 2018 Dr. Patterson referred appellant to physical therapy for treatment of her intervertebral disc disorder with radiculopathy. In a report of even date, Jack Douglas, a physical therapist, provided a plan of care for her physical therapy treatment.

In a December 28, 2018 diagnostic report, Dr. Price Halford, a Board-certified radiologist, performed an x-ray scan of appellant's right shoulder, finding degenerative change in the right acromioclavicular joint. In a separate diagnostic report of even date, he performed an x-ray of her cervical spine, noting mild lower cervical spondylosis with no evidence of instability.

Appellant submitted physical therapy notes dated November 26, 2018 through January 4, 2019 in which Mr. Douglas detailed his treatment related to her lumbar condition.

In a January 10, 2019 medical report, Clif Davis, a physician assistant, evaluated appellant for low back pain and observed diagnoses of lumbar region other intervertebral disc degeneration and cervical region radiculopathy. He advised that she could return to full-duty work on January 14, 2019.

In an April 16, 2019 medical report, Dr. Bradley Hall, a Board-certified neurosurgeon, diagnosed chronic left-sided low back pain without sciatica, lumbar spondylosis, lumbar degenerative disc disease, lumbar radiculopathy, and lumbar disc displacement without myelopathy. Appellant informed him of her August 2018 employment injury in which she experienced left-sided back pain after lifting heavy boxes and that she was subsequently held out of work from September 2018 to January 2019.

In a May 21, 2019 medical report, Dr. Barbara Barnard, Board-certified in physical medicine and rehabilitation, evaluated appellant for worsening back pain she first experienced at work during August 2018 while lifting a sack. She noted diagnoses of lumbar degenerative disc disease, a lumbar herniated nucleus pulposus, and lumbar radicular pain. In a subsequent June 5, 2019 medical report, Dr. Barnard noted that she administered an epidural steroid injection to treat appellant's symptoms related to appellant's lumbar conditions.

In a June 6, 2019 note, Tammy Stringer, a medical assistant, related that appellant experienced 80 percent pain relief following her injection.

In a June 25, 2019 medical report, Dr. Barnard related appellant's complaint that she still experienced pain and that squatting and bending at work worsened her pain. She diagnosed lumbar degenerative disc disease, a lumbar herniated nucleus pulposus, and lumbar radicular pain.

In a September 24, 2019 medical report, Dr. Barnard observed that appellant was still experiencing pain in her back. She diagnosed lumbar degenerative disc disease, lumbar herniated nucleus pulposus, lumbar radicular pain, and weakness of both lower extremities. Dr. Barnard advised that appellant undergo an MRI scan and a left lumbar medial branch block procedure.

On October 2, 2019 Dr. Barnard performed a lumbar medial branch nerve block procedure in order to treat appellant's diagnosed lumbar degenerative disc disease, lumbar radicular pain, and lumbar spondylosis without myelopathy.

In an October 10, 2019 diagnostic report, Dr. Richard McCarthy, a Board-certified radiologist, performed an x-ray scan of appellant's lumbar spine, finding degenerative changes, and osteoporosis.

On October 23, 2019 Dr. Barnard performed a L2, L3, L4, and L5 medial branch radiofrequency ablations to treat appellant's lumbar spondylosis without myelopathy.

By decision dated November 22, 2019, OWCP modified its January 23, 2019 decision to find that appellant met her burden of proof to establish the diagnosed condition of mild lumbar degenerative disc disease in connection with the accepted August 31, 2018 employment incident. The claim remained denied, however, because the medical evidence of record was insufficient to establish causal relationship between her diagnosed lumbar condition and the accepted August 13, 2018 employment incident.

On January 30, 2020 appellant, through counsel, requested reconsideration of OWCP's November 22, 2019 decision.

In a December 31, 2019 medical report, appellant informed Dr. Barnard that she was experiencing 80 to 90 percent relief from her back pain. Dr. Barnard recounted the history of the August 13, 2018 employment incident and diagnosed a lumbar herniated nucleus pulposus and lumbar spondylosis. She also observed that appellant was still experiencing difficulties at work related to her conditions.

By decision dated April 21, 2020, OWCP affirmed its November 22, 2019 decision.

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,[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 must first be determined whether fact of injury has been established.[7] First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.[8] Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[9]

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

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

[6] *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).

[7] *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

[8] *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence sufficient to establish such causal relationship.[10] The opinion of the physician must be based on a complete factual and medical background, 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 factors identified by the claimant.[11]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a lumbar condition causally related to the accepted August 13, 2018 employment incident.

In his October 15, 2018 medical report, Dr. Patterson observed that appellant sustained an injury at work when she was lifting bags of mail from the floor to a counter. On examination, he diagnosed low back pain, mechanical back pain, and bilateral leg pain. 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.[12] Dr. Patterson's report, therefore, is insufficient to establish appellant's claim.

Dr. Patterson's remaining medical evidence consisted of a November 20, 2018 addendum in which he provided that an MRI scan of appellant's lumbar spine revealed no evidence of a tumor or infection and no areas of severe compression of the neurological structures. As noted above, 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.[13] For this reason, Dr. Patterson's remaining medical evidence is insufficient to meet appellant's burden of proof.

Similarly, in medical reports dated from May 21 to December 31, 2019, Dr. Barnard diagnosed lumbar degenerative disc disease, a lumbar herniated nucleus pulposus, and lumbar radicular pain. She administered an epidural steroid injection and performed a nerve block procedure and L2, L3, L4, and L5 medial branch radiofrequency ablation procedures on October 2 and 23, 2018, respectively. Dr. Barnard also provided progress updates on appellant's symptoms related to her lumbar conditions. As stated above, 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.[14] For this reason, Dr. Barnard's medical evidence is insufficient to meet appellant's burden of proof.

In Dr. Hall's April 16, 2019 report, he diagnosed chronic left-sided low back pain without sciatica, lumbar spondylosis, lumbar degenerative disc disease, lumbar radiculopathy, and lumbar disc displacement without myelopathy. As stated previously, medical evidence that does not offer

[10] *K.V.*, Docket No. 18-0723 (issued November 9, 2018).

[11] *I.J.*, 59 ECAB 408 (2008).

[12] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[13] *Id*.

[14] *Id*.

an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[15] For this reason, Dr. Hall's April 16, 2019 medical report is insufficient to meet appellant's burden of proof.

Appellant submitted a series of diagnostic reports dated from August 20, 2018 to October 10, 2019 from Drs. Hosch, Prabhu, Halford, and McCarthy where she underwent x-ray and MRI scans of her lumbar spine. The Board has held, however, that diagnostic tests, standing alone, lack probative value on the issue of causal relationship as they do not address the relationship between accepted employment factors and a diagnosed condition.[16] For this reason, these diagnostic reports are insufficient to meet appellant's burden of proof.

Appellant also provided medical reports dated from September 28 to October 12, 2018 from Dr. Mobley, a chiropractor. However, this evidence does not constitute probative medical evidence as a chiropractor is only considered a physician for purposes of FECA if he or she diagnoses subluxation based upon x-ray evidence.[17] As Dr. Mobley did not diagnose a spinal subluxation based upon x-ray evidence, he is not considered a physician as defined under FECA and his reports do not constitute competent medical evidence.[18]

The remaining medical evidence consist of reports dated from August 20, 2018 to January 10, 2019 signed by a nurse practitioner, physician assistant, and physical therapist. The Board has consistently held that certain healthcare providers such as physician assistants, registered nurses, physical therapists, and social workers are not considered physicians as defined under FECA.[19] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[20]

As appellant has not submitted rationalized medical evidence establishing that her lumbar conditions are causally related to the accepted August 13, 2018 employment incident, the Board finds that she has not met her burden of proof to establish her claim.

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[15] *Id*.

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

[17] Section 8101(2) of FECA provides that the term physician include chiropractors only if the treatment consists of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. 5 U.S.C. § 8101(2). *See T.T.*, Docket No. 18-0838 (issued September 19, 2019); *Thomas W. Stevens*, 50 ECAB 288 (1999); *George E. Williams*, 44 ECAB 530 (1993).

[18] *C.S.*, Docket No. 19-1279 (issued December 30, 2019).

[19] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[20] *Id*. at § 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." *Id*. at § 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). *See also T.W.*, Docket No. 19-1412 (issued February 3, 2020); *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); *D.H.*, Docket No. 18-0072 (issued January 21, 2020) (physical therapists are not considered physicians under FECA).

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 lumbar condition causally related to the accepted August 13, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the April 21, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 4, 2023
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