

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

C.F., Appellant)	
)	
and)	Docket No. 22-0806
)	Issued: July 12, 2023
U.S. POSTAL SERVICE, ONAGA POST)	
OFFICE, Onaga, KS, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 28, 2022 appellant filed a timely appeal from January 14 and April 14, 2022 merit decisions of the Office of Workers' Compensation Programs (OWCP).¹ 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 a back condition causally related to the accepted factors of her federal employment.

¹ The Board finds that as OWCP reviewed the merits of the claim, the April 14, 2022 decision constitutes a merit decision. *See B.S.*, Docket No. 13-2010 (issued September 26, 2014) (The Board explained that the determination of whether evidence submitted by appellant suffices to establish an element of his claim, rather than whether the standard for reconsideration has been met, constitutes a merit review).

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 30, 2020 appellant, then a 61-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained acute back and hip pain causally related to factors of her federal employment including lifting up to 70 pounds on a consistent basis. She noted that she first became aware of her condition and realized its relation to factors of her federal employment on September 18, 2020. Appellant stopped work on that date.

A magnetic resonance imaging (MRI) scan of appellant's lumbar spine was obtained on September 25, 2020. It demonstrated a sequestered disc fragment of the left anterior epidural space behind L4, compressing the L4 nerve root and following into the left foramen; far lateral disc protrusion at L3-4 with left foraminal stenosis; and additional mild central stenosis at L4-5 from degenerative changes.

Appellant also submitted a work release note dated September 24, 2020, wherein Debra Rezac, a certified advanced practice nurse practitioner, held appellant off work until October 5, 2020.

In a development letter dated October 28, 2020, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of medical evidence needed, and afforded her 30 days to respond.

Appellant submitted a September 23, 2020 report, wherein Ms. Rezac noted that appellant developed back pain in the week prior to September 18, 2020 while lifting, twisting, bending, and carrying heavy mail and packages weighing up to 60 pounds at work. Ms. Rezac also noted that appellant had fallen twice due to leg weakness and instability. Appellant's diagnosis was listed as lumbar pain with radiation down the left leg and left leg weakness. In a November 10, 2020 report, Ms. Rezac related that she had been appellant's primary care provider for many years. She opined that appellant's back injury and the abnormalities visualized on MRI were the result of the heavy lifting, bending, and twisting required by her job. Ms. Rezac also noted that appellant's recent symptoms began after a day of work, and she had never experienced similar symptoms in the past. In a note dated December 1, 2020, she related that appellant should be excused from work through January 7, 2020. On January 6, 2021 Ms. Rezac related that appellant could return to work on January 8, 2021 for four hours a day with restrictions.

OWCP also received physical therapy notes dated October 14, 2020.

By decision dated January 14, 2021, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that her diagnosed condition was causally related to the accepted factors of her federal employment.

In a January 20, 2021 form report, Dr. Thomas Walsh, a Board-certified orthopedic surgeon, noted that appellant's condition began on September 18, 2020. He described her condition as back injury with sequestered disc fragment compromising the thecal sac and L4 nerve root causing leg weakness. Dr. Walsh listed appellant's restrictions as no lifting greater than 15 pounds and no twisting.

On February 3, 2021 Dr. Walsh co-signed Ms. Rezac's November 10, 2020 and January 6, 2021 reports.

On February 3, 2021 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

In a report dated February 18, 2021, Dr. James McAtee, Board-certified in orthopedic sports medicine, examined appellant for complaints of low back pain. He noted that appellant had a history of chronic back pain and underwent two epidural steroid injections in November 2020. Dr. McAtee noted that appellant's work duties included significant lifting and carrying with frequent bending and stretching. He opined that without a specific injury, it was likely that her work was the prevailing factor for her conditions, as she had a sudden onset of pain on September 18, 2020. Dr. McAtee explained that her duties including repetitive lifting and carrying were the predominant factors for her current back issues. On physical examination of the lumbar spine, he observed minimal central, paraspinal, and sacroiliac joint tenderness to palpation and range of motion to 80 degrees of flexion and 20 degrees of extension with moderate discomfort. Dr. McAtee diagnosed chronic low back pain with acute onset low back pain secondary to a work-related event. He opined within a reasonable degree of medical certainty that her low back pain, as a prevailing factor, was related to her work.

By decision dated May 12, 2021, the hearing representative affirmed OWCP's January 14, 2021 decision, finding that appellant had not submitted sufficient evidence to establish causal relationship between her diagnosed medical conditions and the accepted factors of her federal employment.

OWCP thereafter received a report dated January 18, 2021 from Dr. Walsh. Dr. Walsh reviewed appellant's history of injury and noted that appellant had experienced lower back discomfort for years and usually saw a chiropractor for treatment. On September 18, 2020 appellant handled several large boxes at work, and experienced increased back pain that evening. Dr. Walsh opined that appellant's back problems and disc disease resulted from an injury that occurred around her workday on September 18, 2020. On physical examination of the lumbar spine, he observed mild tenderness to palpation of the lumbar spine region. Dr. Walsh reviewed appellant's September 25, 2020 MRI scan of her lumbar spine and diagnosed lumbar disc disease.

On October 22, 2021 appellant, through her then-representative, requested reconsideration and submitted additional evidence.

In a report dated October 5, 2021, Dr. McAtee noted that appellant's history of injury dated back many years, and that she had undergone extensive treatment including physical therapy, chiropractic care, activity modification, oral anti-inflammatory medicines, and modalities. He reviewed the September 25, 2020 MRI scan and noted that her work duties included bending, stooping, twisting, and lifting heavy objects. Dr. McAtee opined that these activities "created her back pain and most likely have contributed to the advanced spondylosis in her lumbar spine." He opined that "[s]pecifically, the disc herniation with the sequestered disc fragment at L4-5 must have occurred while bending over and picking up a heavy object at work." Dr. McAtee further opined that within a reasonable degree of medical certainty appellant's work activities over many

years were the prevailing factor in her current diagnosis of L4-5 disc herniation and spondylosis of the lumbar spine.

By decision dated January 14, 2022, OWCP denied modification of its May 12, 2021 decision. It found that Dr. Walsh's January 18, 2021 letter was not sufficiently well-rationalized to support that her diagnosed conditions were caused or aggravated by factors of her federal employment.

On January 21, 2022 appellant, through her then-representative, again requested reconsideration and resubmitted Dr. McAtee's October 5, 2021 report.

By decision dated April 14, 2022, OWCP denied modification. It noted that while the October 5, 2021 letter from Dr. McAtee was not listed in the prior merit decision, it had been reviewed, and there was no medical opinion in the report that would change the finding.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 of FECA, 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.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (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) rationalized medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁵

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁶ 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

³ *Id.*

⁴ *C.K.*, Docket No. 19-1549 (issued June 30, 2020); *R.G.*, Docket No. 19-0233 (issued July 16, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *L.D.*, Docket No. 19-1301 (issued January 29, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁶ *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors.⁷

ANALYSIS

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

On January 18, 2021 Dr. Walsh opined that appellant's back problems and disc disease resulted from an injury that occurred around her workday on September 18, 2020. He diagnosed lumbar disc disease. The Board has held that a medical opinion is of limited probative value if it is conclusory in nature.⁸ This report is, therefore, insufficient to establish causal relationship.⁹

In a form report dated January 20, 2021, Dr. Walsh noted that appellant's condition began on September 18, 2020. He described her condition as back injury with sequestered disc fragment compromising the thecal sac and L4 nerve root causing leg weakness. Dr. Walsh did not provide an opinion regarding causal relationship. The Board has held that medical reports lacking an opinion regarding causal relationship are insufficient to establish appellant's claim.¹⁰

On February 3, 2021 Dr. Walsh co-signed Ms. Rezac's November 10, 2020 and January 6, 2021 reports. The January 6, 2021 report did not address causal relationship. As noted above, the Board has held that medical reports lacking an opinion regarding causal relationship are insufficient to establish appellant's claim.¹¹ The November 10, 2020 report addressed causal relationship by relating that appellant's back injury and the abnormalities visualized on MRI scan were the result of heavy lifting, bending and twisting required by her job. It also noted that appellant's recent symptoms began after a day of work, and she had never experienced similar symptoms in the past. However, this opinion was not supported by medical rationale explaining how appellant's work duties caused her claimed conditions. Without explaining how, physiologically, the specific movements involved in appellant's job caused, contributed to, or aggravated the specific diagnosed conditions, this opinion is of limited probative value and insufficient to establish the claim.¹²

In reports dated February 18 and October 5, 2021, Dr. McAtee opined that without a specific injury, it was likely that appellant's work activities, including bending, stooping, twisting,

⁷ *D.J.*, Docket No. 19-1301 (issued January 29, 2020).

⁸ *C.M.*, Docket No. 19-0360 (issued February 25, 2020).

⁹ *C.D.*, Docket No. 20-0762 (issued January 13, 2021).

¹⁰ See *L.K.*, Docket No. 21-1155 (issued March 23, 2022); *T.S.*, Docket No. 20-1229 (issued August 6, 2021); *J.M.*, Docket No. 19-1169 (issued February 7, 2020); *A.L.*, 19-0285 (issued September 24, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹¹ *Id.*

¹² See *T.F.*, Docket No. 20-0260 (issued June 12, 2020); *D.J.*, Docket No. 18-0694 (issued March 16, 2020); *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *K.O.*, Docket No. 18-1422 (issued March 19, 2019).

and lifting heavy objects over the course of many years were the prevailing factor for her conditions, of L4-5 disc herniation and spondylosis of the lumbar spine. He diagnosed chronic low back pain with acute onset low back pain secondary to a work-related event. However, this opinion was not supported by sufficient medical rationale explaining how and why appellant's work duties caused her claimed conditions.¹³ Thus, this evidence is of limited probative value and is insufficient to establish the claim.

An MRI scan of appellant's lumbar spine was obtained on September 25, 2020. The Board has held that diagnostic test reports, standing alone, lack probative value as they do not provide an opinion on causal relationship between the claimed employment factors and a diagnosed condition.¹⁴

Appellant submitted reports from a nurse practitioner and a physical therapist. The Board has held that medical reports signed solely by nurses or physical therapists lack probative value, as they are not considered physicians as defined under FECA and, therefore, are not competent to provide a medical opinion.¹⁵

As the medical evidence of record is insufficient to establish causal relationship between appellant's claimed conditions and the accepted factors of her federal employment, 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.

CONCLUSION

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

¹³ *Id.*

¹⁴ *Id.*

¹⁵ 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* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *L.T.*, Docket No. 19-0145 (issued June 3, 2019) (a nurse practitioner is not considered a physician as defined under FECA); *T.H.*, Docket No. 18-1736 (issued March 13, 2019) (neither a nurse practitioner nor a physical therapist is considered a physician as defined under FECA); *see also 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).

ORDER

IT IS HEREBY ORDERED THAT the January 14 and April 14, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 12, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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