

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

_____)	
L.B., Appellant)	
)	
and)	Docket No. 23-0099
)	Issued: July 26, 2023
U.S. POSTAL SERVICE, POST OFFICE, Columbia, SC, Employer)	
_____)	

Appearances: *Case Submitted on the Record*
Lawrence Keitt, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On October 31, 2022 appellant, through counsel, filed a timely appeal from a September 9, 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 a lumbar condition causally related to the accepted November 20, 2020 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 November 23, 2020 appellant, then a 46-year-old postal rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 20, 2020 she sustained a lumbar strain when lifting large packages from the floor while in the performance of duty. She stopped work on November 20, 2020 and returned on November 23, 2020.

Appellant provided a November 20, 2020 narrative statement, relating that on that date she was casing mail and proceeded to pick up a large package, barely managing to place it in the bin. She explained that when she picked up a second large package, she felt a “very sharp pain” in her back. Appellant explained that a coworker asked if she needed help, but at this point “it was already too late.”

By development letter dated November 23, 2020, OWCP requested additional information from appellant. It provided a questionnaire for her completion seeking further information about the claimed employment incident. OWCP also requested that appellant submit a medical report from her attending physician explaining how her federal employment caused, contributed to, or aggravated her medical condition. It afforded her 30 days to submit the requested information.

OWCP received work status reports dated November 20 and December 7, 2020 from Dr. Herold Nazon, a family medicine specialist. These reports noted diagnoses of lumbar strain and degenerative lumbar disc disease and provided work restrictions.

November 20, 2020 x-rays of appellant’s spine revealed lumbar disease, with disc narrowing at several levels and osteophyte formation and slight anterior slippage at L4-5.

OWCP received November 23 and December 9, 2020 offers of modified duty. On December 13, 2020 appellant refused the modified work offer.

In a December 3, 2020 letter, the employing establishment controverted the claim, contending that causal relationship had not been established.

On December 13, 2020 appellant completed OWCP’s development questionnaire. She described her work injury and explained that, after she had lifted two large parcels, a third parcel weighed between 70 to 85 pounds, and when she went down to lift it, she felt a sharp pain which rushed through her back. Appellant denied any prior similar symptoms to her lumbar spine and indicated that she had no treatment for her spine prior to November 20, 2020. She noted that her physician diagnosed a lumbar strain and degenerative disc disorder. Appellant provided a December 12, 2020 statement, advising that when she returned to work on November 23, 2020 D.B. instructed her to case mail, despite her work restrictions. Appellant also noted that the breakroom chair did not properly support her lumbar spine.

In a December 22, 2020 report, Dr. Christopher M. Stanley, a Board-certified family practitioner, noted that appellant was injured at work on November 20, 2020 when she was lifting packages at work. He examined her and diagnosed left lumbar radiculopathy, lumbar degenerative disc disease, lumbar facet arthropathy, and accident at workplace. Dr. Stanley ordered a magnetic resonance imaging (MRI) scan of appellant’s lumbar spine.

By decision dated January 7, 2021, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish a lumbar condition causally related to the accepted November 20, 2020 employment incident.

OWCP received a work capacity evaluation (Form OWCP-5c) dated December 30, 2020, as well as January 19 and July 14, 2021 work restriction forms from Dr. Stanley. Dr. Stanley diagnosed lumbar strain and provided work restrictions.

On August 12, 2021 appellant requested reconsideration.

OWCP received a January 19, 2021 Form OWCP-5c signed by Dr. Stanley, which indicated that appellant suffered a work injury causing lumbar strain. In a January 26, 2021 report, Dr. Stanley did not note her history of injury. He opined that appellant's condition appeared to stem from a work-related injury. Dr. Stanley indicated that an incident appeared to have occurred at work and the incident appeared to have arisen during the performance of her normal duty. He concluded that appellant's injury appeared to be causally related to the employment incident.

In an August 11, 2021 work restriction form, Dr. Arthur B. Jordan, a Board-certified family practitioner, diagnosed lumbar degenerative disease and released appellant to work on August 12, 2021 without restrictions.

By decision dated October 26, 2021, OWCP denied modification of the January 7, 2021 decision.

On June 13, 2022 appellant requested reconsideration.

In a May 18, 2022 report, Dr. Stanley noted appellant's date of injury as November 20, 2020 and opined that her "lumbar spine symptoms were caused by the aforementioned accident." He explained that his diagnoses at the initial appointment included left ulnar radiculopathy, lumbar degenerative disease, and lumbar facet arthropathy. Dr. Stanley noted that appellant clearly stated that she was "injured at work on [November 20, 2020]." He explained that he ordered conservative treatment and a lumbar spine MRI scan. Dr. Stanley examined appellant and diagnosed degenerative disc changes at L2-3 and L3-4, and potentially some pressure effect on the right L3 root in the foramen at L3-4, with no canal stenosis at any level and no disc herniation. He opined that "this injury is correlated to the workplace accident on November 20, 2020. The initial diagnoses indicate chronic pathology initially, but after the MRI [scan], confirmed L3 nerve root pathology, which could have been caused by the workplace accident. The chronic conditions, combined with the L3 nerve root abnormality, appeared to be exacerbated by the workplace accident."

By decision dated September 9, 2022, OWCP denied modification of the October 26, 2021 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,³ 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.⁵

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁶ The second component is whether the employment incident caused a personal injury.⁷

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.⁹ 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).¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a lumbar condition causally related to the accepted November 20, 2020 employment incident.

OWCP received work status reports dated November 20 and December 7, 2020 from Dr. Nazon, which noted diagnoses of lumbar strain and degenerative lumbar disc disease. These reports, however, offered no opinion regarding causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is

³ See *O.R.*, Docket No. 20-1518 (issued November 17, 2022); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *L.S.*, Docket No. 19-1769 (issued July 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁵ *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).

⁶ *B.P.*, Docket No. 16-1549 (issued January 18, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

¹⁰ *B.C.*, Docket No. 20-0221 (issued July 10, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

of no probative value.¹¹ For this reason, the Board finds that Dr. Nazon's reports are insufficient to establish appellant's claim.

OWCP also received several reports from appellant's treating physician, Dr. Stanley. In reports dated December 30, 2020 and January 19 and July 14, 2021, Dr. Stanley similarly noted her diagnosis of lumbar strain, but offered no opinion regarding causal relationship. As previously noted, a medical report lacking an opinion regarding causal relationship is insufficient to establish appellant's claim.¹²

In a December 22, 2020 report and January 19, 2021 Form OWCP-5c, Dr. Stanley noted that appellant suffered a work injury. He diagnosed lumbar strain. However, Dr. Stanley did not provide an opinion on causal relationship. As previously noted, a medical report lacking an opinion regarding causal relationship is insufficient to establish appellant's claim.¹³

In a January 26, 2022 report, Dr. Stanley indicated that appellant's condition appeared to stem from a work-related injury. The Board has held that medical opinions that are speculative or equivocal are of diminished probative value.¹⁴ Therefore, this evidence is insufficient to establish the claim.

In a May 18, 2022 report, Dr. Stanley opined that appellant's "lumbar spine symptoms were caused by the aforementioned accident." He noted that she clearly stated that she was "injured at work on [November 20, 2020]." Dr. Stanley explained that a lumbar spine MRI scan revealed degenerative disc changes at L2-3 and L3-4, and potentially some pressure effect on the right L3 root in the foramen at L3-4, with no canal stenosis at any level and no disc herniation. He opined that "this injury is correlated to the workplace accident on November 20, 2020.... The chronic conditions, combined with the L3 nerve root abnormality, appeared to be exacerbated by the workplace accident." Dr. Stanley's opinion is conclusory in nature as he did not explain with rationale how the accepted incident physiologically caused appellant's diagnosed conditions.¹⁵ Therefore, this evidence is insufficient to meet appellant's burden of proof.

In an August 11, 2021 report, Dr. Jordan diagnosed lumbar degenerative disease, but did not provide an opinion regarding causal relationship. As previously noted, 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 and is insufficient to establish appellant's claim.¹⁶

¹¹ *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).

¹² *Id.*

¹³ *Id.*

¹⁴ *See C.C.*, Docket No. 22-0609 (issued October 25, 2022); *H.A.*, Docket No. 18-1455 (issued August 23, 2019).

¹⁵ *B.P.*, Docket No. 21-0872 (issued December 8, 2021); *L.S.*, Docket No. 20-0570 (issued December 15, 2020); *E.H.*, Docket No. 19-1352 (issued December 18, 2019); *E.C.*, Docket No. 17-1645 (issued June 11, 2018).

¹⁶ *Supra* note 11.

The Board notes that appellant submitted diagnostic reports, including x-rays of the lumbar spine. The Board has held, however, that diagnostic test reports, standing alone, lack probative value as they do not provide an opinion on causal relationship between an employment incident, and a diagnosed condition.¹⁷ Thus, this evidence is also insufficient to establish the claim.

As appellant has not submitted rationalized medical evidence establishing a lumbar condition causally related to the accepted November 20, 2022 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a lumbar condition causally related to the accepted November 20, 2020 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the September 9, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 26, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁷ *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).