

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

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G.R., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Birmingham, AL, Employer)

) **Docket No. 22-1200**

) **Issued: June 5, 2023**

Appearances:

*Alan J. Shapiro, Esq., for the appellant*¹

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

JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On August 16, 2022 appellant, through counsel, filed a timely appeal from a July 7, 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.³

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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.*

³ The Board notes that following the July 7, 2022 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted September 18, 2020 employment incident.

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On November 23, 2020 appellant, then a 40-year-old assistant rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 18, 2020 she injured her lower back when a chair she was sitting in suddenly dropped while in the performance of duty.⁵ Appellant did not stop work.

In a November 30, 2020 development letter, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

OWCP subsequently received a September 18, 2020 emergency room report by Dr. Anita Lumpkin, an osteopathic physician Board-certified in emergency and internal medicine, who described the September 18, 2020 employment incident and noted that appellant had a history of back injury. Dr. Lumpkin provided examination findings and assessed degenerative disc disease at L5-S1.

In a September 21, 2020 return to work note, Dr. George Thomas, a family medicine specialist, reported that appellant was seen in his office on that date and could return to work on September 28, 2020.

OWCP also received a letter dated July 2, 2020, wherein Dr. Thomas noted appellant's June 23, 2019 and April 19, 2020 back injuries. He explained that a lumbar spine magnetic resonance imaging (MRI) scan demonstrated increased loss in disc height in L5-S1, a mild broad-based disc bulge, and mild left foraminal narrowing.

In a November 2, 2020 letter, Dr. Thomas noted appellant's April 19, 2020 back injury and indicated that she was seen in his office on September 18, 2020 because she had injured her back again. He reported that she was referred to the hospital for evaluation.

By decision dated January 5, 2021, OWCP accepted that the September 18, 2020 employment incident occurred as alleged and that a medical condition was diagnosed; however, it

⁴ Docket No. 21-1196 (issued March 16, 2022).

⁵ OWCP assigned the present claim OWCP File No. xxxxxx425. Appellant has a previously accepted traumatic injury claim related to a June 23, 2019 employment incident. OWCP assigned that claim OWCP File No. xxxxxx684 and accepted it for lumbar back strain. Appellant also previously filed a traumatic injury claim under OWCP File No. xxxxxx088 for a back injury related to an April 19, 2020 employment incident.

denied her claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed condition and the accepted employment incident.

On January 14, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on April 12, 2021.

In a report dated January 27, 2021, Dr. Timothy Holt, an orthopedic surgeon, indicated that appellant was evaluated for low back pain that radiated down her legs. He noted the previous June 23, 2019 and April 19, 2020 back injuries and described the September 18, 2020 employment incident. On physical examination of appellant's back, Dr. Holt observed positive straight leg raise, cram, and Lasegue sign testing bilaterally. He assessed lumbar radiculopathy, cervicalgia, lumbar spine instabilities, and intervertebral disc displacement of the lumbar region.

In a procedure note dated February 3, 2021, Dr. Vella noted that appellant underwent a lumbar discogram, which showed findings of lumbar pain and degenerative disc disease.

On April 21, 2021 appellant underwent anterior lumbar interbody fusion at L5-S1 and discectomy.

In a May 26, 2021 letter and May 27, 2021 report, Dr. Holt described the September 18, 2020 work incident and reported that it was "most likely" an aggravation of the preexisting injury. He noted diagnoses of lumbar radiculopathy, other spinal instabilities of the lumbar region, other intervertebral disc displacement in the lumbar region, and other disc degeneration in the lumbar spine.

In a June 22, 2021 decision, OWCP's hearing representative affirmed the January 5, 2021 decision.

OWCP subsequently administratively combined OWCP File Nos. xxxxxx088, xxxxxx425, and xxxxxx684, with the latter designated as the master file.

Appellant appealed to the Board. By decision dated March 16, 2022, the Board affirmed the June 22, 2021 decision.⁶

Appellant submitted Dr. Thomas' July 2, 2020 letter with an addendum note dated March 22, 2022. Dr. Thomas indicated that on September 18, 2020 appellant was at work when she "felt her disc move and developed numbness and tingling in the hands and weakness in the legs." He reported that she was not able to stand to be fully evaluated, and was referred to the hospital.

On April 1, 2022 appellant requested reconsideration.

Appellant submitted a September 18, 2020 report by Dr. Shabnam Guard, a Board-certified family practitioner, who indicated that appellant was at work on that date when she felt the disc in her back move, and developed numbness and tingling in her hands and weakness in the legs. She reported that she could not examine appellant's lumbar spine because appellant was in a lot of pain

⁶ *Supra* note 4.

and was unable to stand. Dr. Guard diagnosed respiratory disease screening, depression screening, obesity, backache, and unsteady gait.⁷

In a report dated January 4, 2022, Dr. Alan M. Babb, a Board-certified emergency medicine physician, indicated that appellant was evaluated for chronic back pain. He noted that she suffered a stroke with speech deficit a few months after her lumbar fusion surgery in April 2021. On physical examination, Dr. Babb observed normal straight leg reflex and anterior flexion to 60 degrees. He diagnosed chronic low back pain, stroke with speech disorder, and hypertension. Dr. Babb reported that the “cause of her current back pain is unknown.”

In a psychology report dated January 6, 2022, Dr. Marnie Smith Dillon, a licensed clinical psychologist, diagnosed speech sound disorder and other adverse effects of medication. She recounted that appellant injured her lower back, and had a stroke after surgery in April 2021.

By decision dated July 7, 2022, OWCP denied modification of its prior decision.⁸

LEGAL PRECEDENT

An employee seeking benefits under FECA⁹ 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,¹⁰ 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.¹¹ 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.¹²

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, OWCP must first determine whether fact of injury has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. Second, the employee

⁷ In a June 1, 2022 statement, appellant explained that she had a typographical error in her injury statement as she wrote September 17, 2020 instead of September 18, 2020. She clarified that she notified management on September 18, 2020.

⁸ OWCP noted that it was denying modification of the Board’s March 16, 2022 decision. However, OWCP has no jurisdiction to review a Board decision. The decisions and orders of the Board are final as to the subject matter appealed and such decisions and orders are not subject to review, except by the Board. *See* 20 C.F.R. § 501.6(d). Appellant had 30 days from the date of the Board’s March 16, 2022 decision to file a petition for reconsideration with this Board of its decision. *Id.* at § 501.7. *See also C.M.*, Docket No. 19-1211 (issued August 5, 2020); *B.B.*, Docket No. 14-0464 (issued June 4, 2014).

⁹ *Supra* note 2.

¹⁰ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

¹¹ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

¹² *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *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).

must submit sufficient evidence to establish that the employment incident caused a personal injury.¹³

To establish causal relationship between a diagnosed condition, as well as any attendant disability claimed, and the accepted employment incident, the employee must submit rationalized medical opinion evidence.¹⁴ 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 employee.¹⁵

In a case in which 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.¹⁶

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a lumbar condition causally related to the accepted September 18, 2020 employment incident.

Initially, the Board notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of OWCP's June 22, 2021 decision, which was considered by the Board in its March 16, 2022 decision. Findings made in prior Board decisions are *res judicata* absent further merit review by OWCP under section 8128 of FECA.¹⁷

In a March 22, 2022 addendum note, Dr. Thomas related that on September 18, 2020 appellant was at work when she felt her disc move and developed numbness and tingling in the hands and weakness in the legs. While he accurately described the September 18, 2020 employment incident, he did not provide an opinion on causal relationship between the specific employment incident and her diagnosed lumbar conditions. The Board has held that medical evidence that does not offer an opinion on causal relationship is of no probative value.¹⁸ This report, therefore, is insufficient to meet appellant's burden of proof.

In a September 18, 2020 report, Dr. Guard indicated that appellant was at work on that day when she felt the disc in her back move and developed numbness and tingling in her hands and

¹³ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁴ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *see also Robert G. Morris*, 48 ECAB 238 (1996).

¹⁵ *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

¹⁷ *G.B.*, Docket No. 19-1448 (issued August 21, 2020); *E.B.*, Docket No. 17-1497 (issued March 19, 2019); *Robert G. Burns*, 57 ECAB 657 (2006).

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

weakness in the legs. She reported that she could not examine appellant's lumbar spine and diagnosed respiratory disease screening, depression screening, obesity, backache, and unsteady gait. However, Dr. Guard failed to offer an opinion on causal relationship. Likewise, in a January 6, 2022 report, Dr. Dillon did not provide an opinion on the cause of appellant's speech sound disorder. As noted above, the Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹⁹ Thus, the Board finds that these reports are insufficient to meet appellant's burden of proof.

In a January 4, 2022 report, Dr. Babb indicated that appellant was evaluated for chronic back pain. He conducted an examination and diagnosed chronic low back pain, stroke with speech disorder, and hypertension. Dr. Babb reported that the "cause of her current back pain is unknown." As he does not provide an opinion on causal relationship, this report is also of no probative value.²⁰

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted September 18, 2020 employment incident, the Board finds that appellant 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 September 18, 2020 employment incident.

¹⁹ *Id.*

²⁰ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the July 7, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 5, 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