United States Department of Labor
Employees' Compensation Appeals Board

U.S., Appellant	)	
and	)	**Docket No. 22-0461**
	)	**Issued: March 13, 2023**
U.S. POSTAL SERVICE, MID-ISLAND MAIL PROCESSING & DISTRIBUTION CENTER, Melville, NY, Employer	)	

Appearances:
Paul Kalker, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On February 1, 2022 appellant, through counsel, filed a timely appeal from a December 14, 2021 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.[3]

[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 December 14, 2021 decision, OWCP received additional evidence. 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 August 22, 2020 employment incident.

FACTUAL HISTORY

On August 22, 2020 appellant, then a 53-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on that day she injured her head, lip, and left ankle when she was struck by a post con while in the performance of duty. She stopped work that day. In an August 22, 2020 e-mail, L.H., a supervisor and employing establishment official, related that on that day appellant was turning a post con around and the person driving the motorized vehicle did not see her and struck the post con. She acknowledged that the post con hit appellant's head, lip and left ankle.

On August 22, 2020 the employing establishment issued an authorization for examination and/or treatment (Form CA-16). L.H. described appellant's injuries as head and left ankle injuries.

Appellant was seen by a nurse and a physician assistant in an emergency department on August 22, 2020. The history of injury was noted as a head injury at work by machinery with no loss of consciousness or open wound with small superficial cut to upper lip and headache. Appellant also reported that she twisted her ankle. Dr. Karoly Vollmer, an osteopathic physician Board-certified in family practice, provided a primary diagnosis of head injury with secondary diagnoses of facial contusion and left ankle strain. A computerized tomography (CT) scan of appellant's brain noted a clinical indication of head injury and small soft tissue swelling in the right supraorbital region; the left ankle x-ray revealed no acute fracture or dislocation.

In August 24, September 10 and 21, October 6, and October 20, 2020 duty status reports (Form CA-17), Dr. Jared Hertz, an osteopath and internal medicine specialist, noted appellant's August 22, 2020 history of injury. He provided diagnoses of right periorbital ecchymosis (raccoon eye), head concussion, head trauma, lumbar pain, herniated nucleus pulpous lumbosacral spine, left foot pain, and right second digit pain, and opined that appellant could not return to work.

In an August 24, 2020 attending physician's report, Part B of the Form CA-16, Dr. Hertz noted that appellant was injured at work on August 22, 2020 with a subsequent emergency room visit. He diagnosed periorbital ecchymosis and lumbar pain which he opined, with a checkmark "No," was not caused or aggravated by appellant's employment activity. Dr. Hertz also opined that appellant was partially disabled from August 22 through September 10, 2020.

In an August 24, 2020 radiology order for a CT scan maxillofacial/sinus, Dr. Hertz noted that appellant had an injury to the right orbit. The August 27, 2002 CT scan maxi facial bones was negative for facial bone fracture; the August 27, 2020 lumbar spine magnetic resonance imaging (MRI) scan reported findings of disc bulging/herniation at L3-L4, L4-L5, and L5-S1 with bilateral facet arthropathy, encroachment of exiting nerves at L4 nerve root, and foraminal narrowing; and the September 5, 2020 x-ray of right second digit finger was reported as normal.

In a September 17, 2020 report, Dr. Salvatore M. Zavarella, an osteopathic physician, Board-certified in neurosurgery, reported that appellant was involved in a work-related incident whereby she was hit by a large cart and fell back on her lumbar spine. He indicated that she

developed significant bruising around her right eye with severe paralumbar pain on the left side radiating down her left lower extremity with progressive symptoms. Dr. Zavarella opined that appellant had severe left paralumbar pain and left lower extremity radiculopathy, which correlated with her lumbar spine MRI scan findings. Treatment options were discussed.

A September 29, 2020 lumbar spine x-ray noted mild levoscoliosis; mild multilevel lumbar degenerative changes, and moderate L3-L4 degenerative changes.

On October 23, 2020 appellant filed a claim for compensation (Form CA-7) for disability from work for the period October 7 through 23, 2020.

In an October 28, 2020 development letter, OWCP informed appellant of the type of factual and medical evidence necessary to establish her claim, and provided a questionnaire for her completion. It also requested a narrative medical report from appellant's treating physician, which contained a detailed description of findings and a diagnosis, explaining how the claimed employment incident caused, contributed to, or aggravated her medical conditions. OWCP provided 30 days for a response.

In response, OWCP received August 22 and November 23, 2020 statements from appellant, and an undated statement from C.Z., the motorized vehicle operator, which described the August 22, 2020 employment incident and appellant's injuries.

OWCP also received a September 13, 2020 referral from Dr. Zavarella for physical therapy and physical therapy notes dated September 22 and 23, 2020.

In CA-17 forms dated November 3, November 17, and December 1, 2020, Dr. Hertz noted an August 22, 2020 date of injury and held appellant off work for diagnosed conditions of right periorbital ecchymosis, lumbar/cervical pain, lumbar disc disease, neuropathy of feet, and herniated nucleus pulpous lumbosacral spine.

In an October 19, 2020 report, Dr. Jaspreet S. Toor, an osteopathic physician specializing in anesthesiology, diagnosed lumbosacral neuritis. He also indicated that he had provided an interlaminar epidural steroid injection.

In a November 2, 2020 state form report, Dr. Robert Pisciotta, a chiropractor, noted the history of appellant's August 22, 2020 employment injury. He diagnosed segmental and somatic dysfunction of lumbar region, segmental and somatic dysfunction of cervical region, lumbago with left-sided sciatica, and other intervertebral disc degeneration, lumbar region. In a November 19, 2020 report, Dr. Pisciotta noted the August 22, 2020 employment injury,[4] presented examination findings, which included positive orthopedic tests, and discussed treatment.

In a November 23, 2020 progress report, Dr. Hertz noted that appellant was seen for a work-related injury on August 24, 2020 and was treated for head, right index finger, and lower back, neck and left ankle pain. He indicated that diagnostic testing studies revealed herniated and bulging discs. Dr. Hertz opined that appellant was unable to work.

[4] Appellant related that she was standing behind a post at work when a driver of a "prime mover" hit the post she was standing behind. The post hit her in the face, which created a contusion by her eye and split her lip, and she fell to the floor striking her neck and back on the prime mover and landed on the floor from the force of the impact.

By decision dated December 4, 2020, OWCP denied appellant's traumatic injury claim, finding that she had not established a medical condition causally related to the accepted August 22, 2020 employment incident.

On April 5, 2021 appellant, through counsel, requested reconsideration.

OWCP received an August 27, 2020 lumbar spine MRI scan report and physical therapy reports.

Progress reports from Dr. Toor dated September 22, November 3 and 23, and December 22, 2020 were received. In the September 22, 2020 report, Dr. Toor noted that appellant had past medical history of hypertension, depression and chronic pain complicated by opioid use. He noted that on August 22, 2020 she had lower back and left lower extremity pain after a work-related incident, when she was hit by a large cart at work and fell backwards and landed on a machine on her back. Dr. Toor provided examination findings and his review of a lumbar MRI scan. He diagnosed lumbar radiculopathy and lumbar degenerative disc disease and recommended that she proceed with an interlaminar midline L5-S1 epidural steroid injection.

In reports dated November 17, December 1 and 15, 2020 and in numerous form reports, Dr. Hertz opined that appellant was totally disabled and would continue under his care for lumbar pain. In a December 11, 2020 state form report, he noted that he examined appellant on August 24, 2020 for injuries sustained in the August 22, 2020 employment incident. Dr. Hertz noted appellant's history of injury and indicated that she had contusion/hematoma of eye and lip; laceration and swelling and bruising of face, eye, finger, neck, ankle and back, as well as torn ligaments, tendon or muscle of neck, ankle and back. He diagnosed sprain of unspecified parts of lumbar spine and pelvis, cervicalgia and traumatic compartment syndrome of right lower extremity. Dr. Hertz opined, with "Yes" checkmarks, that appellant's complaints were consistent with the history of the injury but marked a check box "No" that the objective findings were not consistent with the history of injury. On January 24, 2021 he indicated that appellant could return to full-duty work.

Progress notes dated November 23 and December 22, 2020, and January 9, 2021 from Dr. Zavarella indicated that appellant had severe degenerative disc disease at the L3-L4 level with a rotatory scoliosis and left greater than right foraminal stenosis. He advised that she was a candidate for surgery as she had failed multimodal conservative therapy. Appellant decided to pursue alternative treatments.

By decision dated December 14, 2021, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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,[6] that an injury was sustained in the performance of duty, as alleged, and that

[5] *Supra* note 2.

[6] *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).

any disability or medical condition for which compensation is claimed is causally related to the employment injury.[7] 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.[8]

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.[9] There are two components involved in establishing fact of injury. 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 must submit evidence, in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[10]

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.[11] 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 factor(s) identified by the employee.[12]

Pursuant to OWCP's procedures, no development of a claim is necessary where the condition reported is a minor one, which can be identified on visual inspection by a lay person (*e.g.*, burn, laceration, insect sting, or animal bite).[13] No medical report is required to establish a minor condition such as a contusion.[14]

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[7] *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).

[8] *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).

[9] *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *S.P.*, 59 ECAB 184 (2007).

[10] *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).

[11] *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).

[12] *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).

[13] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.800.6a (June 2011). *See also* Chapter 2.805.3c (January 2013); *A.J.*, Docket No. 19-1289 (issued December 31, 2019).

[14] *Id.*; *see B.C.*, Docket No. 20-0498 (issued August 27, 2020) (the Board accepted lumbar contusion as causally related to the accepted employment incident); *S.H.*, Docket No. 20-0113 (issued June 24, 2020) (the Board accepted a right ankle contusion as causally related to the accepted employment incident); *M.A.*, Docket No. 13-1630 (issued June 18, 2014).

ANALYSIS

The Board finds that appellant has met her burden of proof to establish contusions of the face, and right eye, as well as a laceration of her lip causally related to the accepted August 22, 2020 employment incident.

In the August 22, 2021 emergency department report, Dr. Vollmer, noted appellant's history of injury and diagnosed a facial contusion and a superficial cut to the lip. In his report dated September 17, 2021, Dr. Zavarella, noted bruising around appellant's right eye. The Board finds that appellant's facial and right eye contusions, and her lip lacerations are visible injuries. Appellant promptly reported the injury and no dispute exists as to the occurrence of the injury. Therefore, no further development of the medical evidence is necessary for acceptance of the claim for these conditions.[15] The case will, therefore, be remanded for payment of medical expenses and any attendant disability for these diagnoses.

Appellant, however, has not met her burden of proof to establish that her other diagnosed medical conditions were causally related to the accepted August 22, 2020 employment incident.

In the August 22, 2020 report, Dr. Vollmer noted additional diagnoses of head injury and left ankle strain. However, he did not explain a pathophysiological process of how the accepted employment incident caused or contributed to such conditions. A medical opinion that does not offer a medically sound and rationalized explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions is of limited probative value.[16] Thus, his report is insufficient to meet appellant's burden of proof.

In several reports from August 24, 2020 forward, Dr. Hertz noted the history of the August 22, 2020 injury and provided diagnoses of head concussion, head trauma, lumbar pain, herniated nucleus pulpous lumbosacral spine, left foot pain, and right second digit pain. In his reports, he offered no opinion as to the cause of such diagnoses.[17] In his August 24 and December 11, 2020 reports, Dr. Hertz diagnosed medical conditions but offered contradictory and conclusory opinions as to the causal relationship of such conditions. In an August 24, 2020 report, he diagnosed periorbital ecchymosis (raccoon eye) and lumbar pain which he opined with a checkmark was not caused or aggravated by appellant's employment activity. In his December 11, 2020 state form report, Dr. Hertz noted that he examined appellant on August 24, 2020 for injuries sustained in August 22, 2020 employment incident and that she had contusion/hematoma of eye and lip; laceration and swelling and bruising of face, eye, finger, neck ankle and back and torn ligament, tendon or muscle of neck, ankle and back. He diagnosed sprain of unspecified parts of lumbar spine and pelvis, cervicalgia and traumatic compartment syndrome of right lower extremity. Dr. Hertz opined, with appropriate checkmarks, that appellant's complaints were consistent with the history of the injury but the objective findings were not. The Board has additionally held that when a physician's opinion on causal relationship consists only of a checkmark on a form, without further explanation or rationale, that opinion is of diminished

[15] *Id*.

[16] *J.B., id*.

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

probative value and is insufficient to establish a claim.[18] As Dr. Hertz's opinions are contradictory in parts, unclear and unexplained, his opinions are of little probative value.

In reports dated September 17, 2020 through January 9, 2021, Dr. Zavarella noted the history of the August 22, 2020 work incident and diagnosed several lumbosacral conditions. In his September 17, 2020 report, he indicated that appellant developed severe paralumbar pain on the left side radiating down her left lower extremity with progressive symptoms. Dr. Zavarella diagnosed severe left paralumbar pain and left lower extremity radiculopathy, which correlated with the MRI scan findings of the lumbar spine. In subsequent reports dated November 23, December 22, 2020 and January 9, 2021, he indicated that appellant has severe degenerative disc disease at the L3-L4 level with a rotatory scoliosis and left greater than right foraminal stenosis and that she was a surgical candidate. Several reports were also received from Dr. Toor from September 22 through December 22, 2022, which also noted the history of the August 22, 2020 work incident and diagnosed back conditions. In his September 22, 2020 report, Dr. Toor noted that appellant had a past medical history of chronic pain. He provided diagnoses of lumbar radiculopathy, lumbar degenerative disc disease, and lumbosacral neuritis. However, neither Dr. Zaverella nor Dr. Toor offered an opinion as to the causal relationship of appellant's conditions. A medical report that does not render an opinion on causal relationship is of no probative value and, thus, is insufficient to establish the claim.[19]

The record also contains November 2 and 19, 2020 reports from Dr. Pisciotta, a chiropractor. However, a chiropractor is only considered a physician for purposes of FECA if he or she diagnoses subluxation based upon x-ray evidence.[20] Dr. Pisciotta did not diagnose subluxation as demonstrated by x-ray to exist. Therefore, these reports do not constitute competent medical evidence.[21]

Appellant also submitted progress reports from physical therapists. Certain healthcare providers such as physical therapists, nurses, physician assistants, and social workers are not considered physicians as defined under FECA.[22] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.

[18] *C.G.*, Docket No. 20-1092 (issued September 22, 2021); *O.M.*, Docket No. 18-1055 (issued April 15, 2020); *Gary J. Watling*, 52 ECAB 278 (2001).

[19] *T.D.*, Docket No. 19-1779 (issued March 9, 2021); *L.B.*, *supra* note 17; *D.K.*, *supra* note 17.

[20] Section 8101(2) of FECA provides that the term physician includes 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 M.J.*, Docket No. 20-1263 (issued September 14, 2021); *T.T.*, Docket No. 18-0838 (issued September 19, 2019); *Thomas W. Stevens*, 50 ECAB 288 (1999); *George E. Williams*, 44 ECAB 530 (1993).

[21] *M.J.*, *id.*; *C.S.*, Docket No. 19-1279 (issued December 30, 2019).

[22] Section 8101(2) of FECA provides that the term 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); *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). *See also R.L.*, Docket No. 19-0440 (issued July 8, 2019) (a physical therapist is not considered a physician under FECA).

OWCP also received multiple diagnostic reports to include x-rays, MRI, and CT scans. The Board has held, however, that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the accepted employment injury caused the diagnosed conditions.[23]

As the medical evidence of record is insufficient to establish causal relationship between appellant's additional diagnosed conditions and the accepted employment injury, 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 met her burden of proof to establish a facial/head contusion and lip injury causally related to the accepted August 22, 2020 employment incident. The Board further finds that she has not met her burden of proof to establish additional diagnosed medical conditions causally related to the accepted August 22, 2020 employment injury.[24]

[23] *See T.H.,* Docket No., 21-0935 (issued February 24, 2022); *J.P.*, Docket No. 19-0216 (issued December 13, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

[24] The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *C.B.*, Docket No. 19-1882 (issued April 1, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the December 14, 2021 decision of the Office of Workers' Compensation Programs is reversed in part and affirmed in part. The case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: March 13, 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