

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

R.P., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS, VA)
PITTSBURGH HEALTHCARE SYSTEM,)
Pittsburgh, PA, Employer)

Docket No. 23-0638
Issued: November 30, 2023

Appearances:

Alan J. Shapiro, Esq., for the appellant¹
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 March 28, 2023 appellant, through counsel, filed a timely appeal from a March 7, 2023 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.

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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted January 29, 2020 employment incident.

FACTUAL HISTORY

This case has previously been before the Board. The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.³ The relevant facts are as follows.

On January 30, 2020 appellant, then a 49-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on January 29, 2020 she injured her shoulder blades, neck, and right arm when she was struck by an elevator door when attempting to board an elevator while in the performance of duty. She noted that, following the incident, she experienced soreness between her shoulder blades, a stiff neck, and soreness from the top of her right arm to her elbow. Appellant did not stop work.

In medical reports dated January 31 through May 1, 2020, Dr. Raja Chakrapani, Board-certified in internal medicine, noted that appellant was hit by elevator doors on January 29, 2020. He related that she experienced pain in her right shoulder, hips, and right elbow. Dr. Chakrapani diagnosed a right shoulder sprain, recommended that appellant perform light-duty work, and referred her to physical therapy.

OWCP also received physical therapy reports dated March 4 through April 29, 2020, detailing appellant's treatment for diagnoses of a lumbar strain, a contusion of the left hip, trigeminal neuralgia of the right side of the face and a strain of the left shoulder.

In a May 20, 2020 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In an April 22, 2020 diagnostic report, Dr. Kurian Puthenpurayil, a Board-certified radiologist, performed an x-ray scan of appellant's right shoulder which revealed degenerative changes, but no acute fracture or malalignment. In a separate diagnostic report of even date, he performed an x-ray scan of her cervical spine, which revealed a reversal of a normal lordosis and no acute fracture.

In medical reports dated from April 17 through June 12, 2020, Dr. Chakrapani noted that appellant was still experiencing pain in her right shoulder and hip and diagnosed a cervical sprain, a right shoulder injury, a neck sprain, and a hip injury.

In a June 15, 2020 response to OWCP's development questionnaire, appellant asserted that she was stunned, lightheaded and unable to respond to questions for a few seconds following the January 29, 2020 incident. She recounted that she eventually got off the elevator and reported the

³ Docket No. 21-0474 (issued April 5, 2022).

incident to her assistant manager. Appellant described the incident as the equivalent of being hit by a car. She noted that when she arrived home, she noticed pain from her right and left scapula up to her neck, as well as right shoulder pain. Appellant indicated that she previously experienced a neck strain two years prior.

By decision dated June 22, 2020, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed medical conditions and the accepted January 29, 2020 employment incident.

OWCP continued to receive evidence. In a March 20, 2020 diagnostic report, Dr. Stuart Silverman, a Board-certified neurologist, performed electromyography and nerve conduction study (EMG/NCV) scans of appellant's right upper extremity, noting that all of the results were within normal limits.

Appellant submitted physical therapy reports dated May 4 to June 24, 2020, in which reflected that she continued to receive treatment for her diagnosed lumbar strain, contusion of the left hip, strain of the left shoulder and trigeminal neuralgia of the right side of the face.

In a June 26, 2020 medical report, Dr. Chakrapani observed that appellant was still experiencing neck pain and diagnosed a right-sided neck sprain. He recommended that she continue her physical therapy treatment.

On July 21, 2020 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In an April 15, 2020 medical report, Dr. Chakrapani observed that appellant was experiencing right hand swelling, neck pain and a burning sensation in her right upper extremity. He diagnosed a right shoulder injury.

In a July 10, 2020 duty status report (Form CA-17), Dr. Chakrapani diagnosed neck, right shoulder, and hip pain due to the accepted January 29, 2020 employment incident and advised that appellant could work with light-duty work restrictions.

In a July 28, 2020 diagnostic report, Dr. Amitesh Prasad, a Board-certified radiologist, performed a magnetic resonance imaging (MRI) scan of appellant's cervical spine, demonstrating a disc osteophyte complex with disc protrusions most pronounced at C5-C6 and foraminal encroachment at C4-C5 and C5-C6. An MRI scan of the brain of even date demonstrated no acute intracranial abnormality.

In a September 25, 2020 diagnostic report, Dr. Jeffery Towers, a Board-certified diagnostic radiologist, performed an MRI scan of appellant's lumbar spine, demonstrating multilevel foraminal encroachment.

Appellant submitted physical therapy reports dated July 1 through September 30, 2020 in which she continued to receive treatment for her diagnosed lumbar strain, contusion of the left hip, strain of the left shoulder, and trigeminal neuralgia of the right side of the face.

A telephonic hearing was held on October 9, 2020.

In a July 13, 2020 medical report, Dr. Benjamin Smolar, a Board-certified neurologist, recounted the events of the January 29, 2020 employment incident where appellant was hit by an elevator door and subsequently experienced pain in her left shoulder, both sides of her neck, and her right arm. On evaluation he diagnosed paresthesia and cervical disc disorder.

In progress notes dated September 21 and 28, 2020, Dr. Patrick Smith, a Board-certified orthopedic surgeon, evaluated appellant for pain and symptoms she was experiencing in her neck, back, and right arm after being hit by an elevator in January 2020. He observed that an x-ray and MRI scan of her lumbar spine revealed advanced stenosis at L4-L5 with spondylolisthesis. Dr. Smith diagnosed L4-L5 spondylolisthesis and spinal stenosis, cervical pain, and ecchymosis. He opined that it seemed as if appellant's conditions were aggravated by the January 29, 2020 employment incident and that her condition was likely causing her symptoms of pain in her lower back and hips.

Appellant submitted additional physical therapy reports dated October 5 to November 30, 2020.

By decision dated January 4, 2021, the hearing representative affirmed OWCP's June 22, 2020 decision.

On February 8, 2021 appellant, through counsel, appealed OWCP's January 4, 2021 decision to the Board. By decision dated April 5, 2022,⁴ the Board affirmed the January 4, 2021 decision.

OWCP continued to receive evidence. Physical therapy reports dated December 9, 2020 through January 6, 2021 described treatment for a lumbar sprain.

In a February 15, 2021 Form CA-17, Dr. Smith diagnosed spondylolisthesis with stenosis due to injury and released appellant to return to light-duty work. In a form of even date, he advised that she required leave from work for mild-to-moderate stenosis at L5-6 and advanced stenosis at L4-5 with spondylolisthesis.

In a May 14, 2021 medical report, Dr. Smith opined that the January 29, 2020 employment injury caused a "jarring" of appellant's lower back and aggravated her preexisting, underlying spinal stenosis and spondylolisthesis. He opined that her current symptoms were related to the employment injury because she was asymptomatic prior to the incident.

On June 6, 2022 appellant, through counsel, requested reconsideration.

By decision dated August 17, 2022, OWCP denied modification of its January 4, 2021 decision.

On February 27, 2023 appellant, through counsel, requested reconsideration of OWCP's August 17, 2022 decision.

⁴ *Id.*

In support of the request, counsel submitted a February 7, 2023 narrative report by Dr. Smith, who noted that appellant had preexisting conditions of spondylolisthesis and lumbar stenosis, which were aggravated by the January 29, 2020 employment incident. He indicated that she was asymptomatic and not receiving any treatment for her preexisting conditions prior to January 29, 2020. Dr. Smith opined that appellant's current symptoms and treatment were, therefore, related to the January 29, 2020 employment incident.

By decision dated March 7, 2023, OWCP denied modification of the August 17, 2022 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,⁵ that the claim was timely filed within the applicable time limitation period 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.⁶ 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.⁷

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is whether the employee actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁸

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁹ 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

⁵ *K.R.*, Docket No. 20-0995 (issued January 29, 2021); *A.W.*, Docket No. 19-0327 (issued July 19, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *J.B.*, Docket No. 20-1566 (issued August 31, 2021); *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).

⁸ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.¹⁰

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.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted January 29, 2020 employment incident.

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of the January 4, 2021 decision because the Board considered that evidence in its April 5, 2022 decision. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹²

In his May 14, 2021 and February 7, 2023 medical reports, Dr. Smith diagnosed an aggravation of preexisting, underlying spinal stenosis and spondylolisthesis. He noted that the January 29, 2020 employment incident caused a jarring of appellant's lower back. Dr. Smith explained that her current symptoms were related to the employment injury because she was asymptomatic prior to the incident. However, he did not provide a sufficiently rationalized medical opinion explaining a pathophysiological process of how or why the accepted employment incident caused or contributed to the diagnosed conditions.¹³ A medical opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury, but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.¹⁴ Additionally, in any case where 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 medical evidence must provide a rationalized medical opinion

¹⁰ *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *J.L.*, Docket No. 20-0717 (issued October 15, 2020).

¹² *A.D.*, Docket No. 20-0553 (issued April 19, 2021); *M.D.*, Docket No. 19-0510 (issued August 6, 2019); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

¹³ *J.D.*, Docket No. 19-1953 (issued January 11, 2021); *J.C.*, Docket No. 18-1474 (issued March 20, 2019); *M.M.*, Docket No. 15-0607 (issued May 15, 2015); *M.W.*, Docket No. 14-1664 (issued December 5, 2014).

¹⁴ *See R.S.*, Docket No. 16-1469 (issued December 8, 2016); *D.R.*, Docket No. 16-0411 (issued June 10, 2016); *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹⁵ This evidence is, therefore, insufficient to establish the claim.

In his February 15, 2021 form reports, Dr. Smith diagnosed spondylolisthesis with stenosis due to injury. However, these reports do not provide an opinion regarding causal relationship between the diagnosed conditions and the January 29, 2020 employment incident. 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.¹⁶ These reports, therefore, are insufficient to establish appellant's claim.

The remaining evidence of record consists of physical therapy reports. Certain healthcare providers such as physical therapists are not considered qualified physicians as defined under FECA.¹⁷ Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.¹⁸

As appellant has not submitted rationalized medical evidence to establish a medical condition causally related to the accepted January 29, 2020 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 medical condition causally related to the accepted January 29, 2020 employment incident.

¹⁵ *R.W.*, Docket No. 19-0844 (issued May 29, 2020); *A.M.*, Docket No. 19-1138 (issued February 18, 2020); *A.J.*, Docket No. 18-1116 (issued January 23, 2019).

¹⁶ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁷ 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 also supra* note 11 at Chapter 2.805.3a(1) (January 2013); *C.G.*, Docket No. 20-0957 (issued January 27, 2021); *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).

¹⁸ *K.A.*, Docket No. 18-0999 (issued October 4, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk, id.*

ORDER

IT IS HEREBY ORDERED THAT the March 7, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 30, 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