United States Department of Labor
Employees' Compensation Appeals Board

A.T., Appellant	)	
and	)	**Docket No. 23-0747**
	)	**Issued: September 14, 2023**
U.S. POSTAL SERVICE, PLANETARIUM POST OFFICE, New York, NY, Employer	)	

Appearances:
Appellant, pro se
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 May 1, 2023 appellant filed a timely appeal from a February 8, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted June 11, 2022 employment incident.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the February 8, 2023 decision, OWCP received additional evidence. 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*.

FACTUAL HISTORY

On June 17, 2022[3] appellant, then a 60-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on June 11, 2022 she injured her lower back as a result of lifting, bending, pulling, and carrying heavy letter trays from a postal container to mail routes while in the performance of duty. She stopped work on June 13, 2022.

In support of her claim, appellant submitted a June 13, 2022 statement noting that on Saturday, June 11, 2022 she injured her back while delivering mail trays. She informed her supervisor that she injured her back and would be leaving, and she was not offered alternate duties or advised to file an accident report or seek medical attention.

In a June 14, 2022 note, Dr. Arielle Fenig, a Board-certified anesthesiologist and pain management practitioner, held appellant off work through June 16, 2022.

In a June 16, 2022 work status report, Dr. Maxim Tyorkin, a Board-certified orthopedic surgeon, noted that appellant was totally disabled, held her off work, and diagnosed lumbar radiculopathy. A June 16, 2022 physical therapy prescription from an unidentified healthcare provider noted a diagnosis of lumbar radiculopathy.

In a June 17, 2022 attending physician's report (Form CA-20), Dr. Tyorkin noted that appellant injured her lower back while handling mail and repeatedly bending. He diagnosed lumbar derangement and checked a box marked "Yes" to indicate a belief that the condition was caused or aggravated by an employment activity.

In a July 12, 2022 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the evidence necessary to establish her claim, provided her with a questionnaire for her completion, and afforded her 30 days to submit the requested evidence.

Thereafter, OWCP received a March 9, 2022 statement in which T.W., an employing establishment supervisor, related that, on that date, another employee had provided a physician's note advising that appellant stay off her feet. Subsequently, that employee was assigned to process letters while appellant was assigned to process parcels, which caused appellant to complain that she was also in pain due to back problems and that she was departing to go home. After a discussion, appellant decided to remain at work.

In an April 1, 2022 e-mail, an employing establishment supervisor, C.E., related that appellant's performance needed to be addressed as she was consistently late and that on that date she did not assist the team, remained in the letter section, and left a tray of letters unprocessed.

In a June 16, 2022 visit note, Dr. Tyorkin noted that appellant was injured on June 11, 2022 due to repetitive bending while handling mail. He diagnosed lumbar derangement, opined that her injuries were causally related to her work activities, and that, within a reasonable degree of medical certainty, her work accident was the cause of her injuries.

[3] Appellant filed an additional Form CA-1 on June 22, 2022.

A July 14, 2022 magnetic resonance imaging (MRI) scan report of appellant's lumbar spine noted an impression of bulging disc at L2-3 without stenosis, L3-4 and transitional L5-S1 level with thecal sac impingement, and L4-5 with bilateral foraminal impingement upon exiting L4 roots, as well as superimposed left foraminal herniation component, further impinging upon exiting left L4 root and mild bilateral foraminal stenosis. OWCP also received an illegible July 14, 2022 note from a healthcare provider.

In July 17 and August 15, 2022 duty status reports (Form CA-17), Dr. Fenig noted that appellant injured herself performing heavy lifting on June 11, 2022 and was completely disabled.

In a July 19, 2022 visit note, Dr. Fenig related that appellant presented for lower back pain arising from a June 11, 2022 back injury in which she experienced severe back pain while lifting heavy trays as a postal clerk. She diagnosed low back pain and indicated that appellant's presenting complaint had a direct causal relationship to the June 11, 2022 injury.

In an August 15, 2022 Form CA-20, Dr. Fenig noted that appellant was injured on June 11, 2022 while performing heavy lifting at work, diagnosed lower back pain, and found her completely temporarily disabled. She checked a box marked "Yes" to indicate her opinion that the condition was caused or aggravated by an employment activity.

By decision dated August 24, 2022, OWCP accepted that the June 11, 2022 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish causal relationship between her diagnosed medical conditions and the accepted June 11, 2022 employment incident.

On September 3, 2022 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which she subsequently withdrew in an October 4, 2022 statement indicating that she wished, instead, to seek reconsideration of the August 24, 2022 decision.

OWCP continued to receive evidence, including a September 14, 2022 Form CA-20 from Dr. Fenig relating that appellant injured her back on June 11, 2022 while repeatedly bending to handle mail. Dr. Fenig diagnosed lumbar radiculopathy and checked a box marked "Yes" to indicate that the condition was caused or aggravated by an employment activity, noting that appellant was injured by lifting, pushing, pulling, and bending to grab heavy objects.

In September 14 and October 3, 2022 notes, Dr. Fenig diagnosed lumbar radiculopathy, noted appellant's physical restrictions, and related that appellant remained completely disabled due to back injuries sustained on June 11, 2022.

In a September 26, 2022 e-mail, appellant related that she had requested an appeal and reconsideration of OWCP's prior decision, but had not received a response.

On September 29, 2022 appellant withdrew her request for a hearing before an OWCP hearing representative in lieu of her request for reconsideration.

OWCP subsequently received an October 3, 2022 Form CA-17 from Dr. Fenig noting that appellant was injured on June 11, 2022 due to heavy lifting and remained completely disabled.

By letter dated October 7, 2022, OWCP accepted appellant's request to withdraw her hearing request.

By decision dated October 19, 2022, OWCP denied modification of its August 24, 2022 decision.

Thereafter, OWCP received an unsigned, undated statement in which appellant noted that she was instructed to perform mail handler duties despite being employed as a clerk, which led to a dispute with her supervisor. Appellant asserted that she was experiencing personal difficulties and that only one supervisor was aware that she had been in an automobile accident last year.

In an October 20, 2022 statement, appellant related that she injured her back while lifting, currently required therapy, and had followed all of OWCP's instructions.

In an October 25, 2022 statement, appellant related that she worked for four hours, that her shift began at 1:00 a.m., and that she cased letters until 2:30 a.m.

OWCP also received a November 16, 2022 Form CA-17 from Dr. Fenig providing a June 11, 2022 date of injury and finding that appellant remained completely disabled.

On December 2, 2022 appellant requested reconsideration of the October 19, 2022 decision and submitted additional evidence.

In visit notes dated November 1, 2022 and January 3, 2023, Dr. Fenig noted that appellant injured her back on June 11, 2022 while lifting heavy trays as a mail clerk. She diagnosed low back pain and indicated that appellant had a prior lower back injury due to an automobile accident on March 31, 2022 after which she made a full recovery. Dr. Fenig opined that appellant's injuries were causally related to her work activities and the June 11, 2022 injury.

OWCP also received a January 9, 2023 Form CA-17 from Dr. Fenig noting a finding of low back pain, a June 11, 2022 date of injury, and indicating that appellant remained completely disabled.

By decision dated February 8, 2023, OWCP denied modification of its October 19, 2022 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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,[5] 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

[4] *Supra* note 1.

[5] *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 he or she actually experienced the employment incident at the time, 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 nature of the relationship between the diagnosed condition and the specific employment incident identified by the claimant.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted June 11, 2022 employment incident.

In a June 17, 2022 Form CA-20, Dr. Tyorkin diagnosed lumbar derangement and checked a box marked "Yes" to indicate a belief that the condition was caused or aggravated by an employment activity. Similarly, in August 15 and September 14, 2022 CA-20 forms, Dr. Fenig diagnosed lower back pain and lumbar radiculopathy, and checked a box marked "Yes" to indicate her belief that the condition was caused by an employment activity. While Drs. Fenig and Dr. Tyorkin provided an affirmative opinion which supported causal relationship, they did not provide a pathophysiological explanation as to how the accepted incident caused or contributed to appellant's diagnosed conditions.[11] The Board has held that when a physician's opinion as to the cause of a condition consists only of a checkmark on a form, without supporting explanation or

[6] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[7] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *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).

[10] *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

[11] *Id.*; *J.G.*, Docket No. 20-0009 (issued September 28, 2020).

rationale, that opinion is of diminished probative value and is insufficient to establish a claim.[12] Therefore, the above evidence is insufficient to establish appellant's claim.

Appellant also submitted September 14 and October 3, 2022 notes from Dr. Fenig diagnosing lumbar radiculopathy and a June 16, 2022 work status report from Dr. Tyorkin diagnosing lumbar radiculopathy. The Board has consistently held that pain is a symptom and not a compensable medical diagnosis.[13] The Board has also held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship. As such, these reports are insufficient to establish the claim.[14]

In visit notes dated July 19 and November 1, 2022 and January 3, 2023, Dr. Fenig diagnosed low back pain and indicated that appellant's injuries were causally related to her June 11, 2022 injury. The Board has held that a medical report lacking a firm diagnosis is of no probative value regarding causal relationship.[15] Moreover, medical evidence that merely states a conclusion, but does not offer a medically sound and rationalized explanation by the physician of how the accepted employment incident or factors physiologically caused or aggravated the diagnosed conditions, is of limited probative value on the issue of causal relationship.[16] As such, this evidence is insufficient to meet appellant's burden of proof.

Similarly, in a June 16, 2022 visit note, Dr. Tyorkin diagnosed lumbar derangement, and indicated that appellant's injuries were causally related to her work activities and that, within a reasonable degree of medical certainty, her work accident was the cause of her injuries. However, a medical opinion without adequate rationale is insufficient to establish causal relationship.[17] Dr. Tyorkin's report is therefore insufficient to establish causal relationship.

OWCP also received a June 14, 2022 note and Forms CA-17 dated July 17, 2022 through January 9, 2023, in which Dr. Fenig held appellant off work and noted that she was injured on June 11, 2022 due to heavy lifting. None of this evidence included an opinion on causal relationship. As noted, medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value. As such, Dr. Fenig's remaining reports are insufficient to establish appellant's claim.[18]

[12] *See A.C.*, Docket No. 21-0087 (issued November 9, 2021); *O.M.*, Docket No. 18-1055 (issued April 15, 2020); *Gary J. Watling*, 52 ECAB 278 (2001); *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

[13] *See B.T.*, Docket No. 22-0022 (issued May 23, 2022); *S.L.*, Docket No. 19-1536 (issued June 26, 2020); *B.P.*, Docket No. 12-1345 (issued November 13, 2012).

[14] *See D.Y.*, Docket No. 20-0112 (issued June 25, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[15] *Id*.

[16] *J.B.*, Docket No. 21-0011 (issued April 20, 2021); *A.M.*, Docket No. 19-1394 (issued February 23, 2021).

[17] *Id*.

[18] *See supra* note 14.

Appellant also submitted a June 16, 2022 physical therapy prescription. However, certain healthcare providers such as physician assistants, nurses, nurse practitioners, physical therapists, and social workers are not considered physicians as defined under FECA.[19] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[20]

Additionally, appellant submitted an illegible July 14, 2022 note from a healthcare provider. However, the Board has long held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.[21]

The remaining medical evidence of record includes a July 14, 2022 MRI scan report. The Board has held that diagnostic reports, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the accepted employment incident caused a diagnosed condition.[22] Thus, this evidence is also insufficient to establish the claim.

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted June 11, 2022 employment incident, the Board finds that appellant has not met her burden of proof.[23]

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 June 11, 2022 employment incident.

[19] Section 8101(2) 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* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (September 2020); *A.M.*, Docket No. 20-1575 (issued May 24, 2021) (physical therapists are not physicians as defined by FECA); *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).

[20] *See id.*

[21] *L.B.*, Docket No. 21-0353 (issued May 23, 2022); *T.D.*, Docket No. 20-0835 (issued February 2, 2021); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

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

[23] *See T.J.*, Docket No. 19-1339 (issued March 4, 2020); *F.D.*, Docket No. 19-0932 (issued October 3, 2019); *D.N.*, Docket No. 19-0070 (issued May 10, 2019); *R.B.*, Docket No. 18-1327 (issued December 31, 2018).

ORDER

IT IS HEREBY ORDERED THAT the February 8, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 14, 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