

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

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S.G., Appellant )

and )

DEPARTMENT OF VETERANS AFFAIRS, )  
JOHN J. PERSHING VA MEDICAL CENTER, )  
Poplar Bluff, MO, Employer )  
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**Docket No. 24-0159  
Issued: April 8, 2024**

*Appearances:*

*Scotty Lee White*, for the appellant<sup>1</sup>

*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On December 11, 2023 appellant, through her representative, filed a timely appeal from an October 12, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

**ISSUE**

The issue is whether appellant has met her burden of proof to establish a back condition causally related to the accepted factors of her federal employment.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On October 21, 2021 appellant, then a 52-year-old nursing assistant, filed an occupational disease claim (Form CA-2) alleging that she injured her back causally related to factors of federal employment including lifting a patient from a wheelchair, with assistance from a coworker. She related that she felt a sharp pain in her back and thereafter experienced continuing and ongoing back pain when lifting and pulling patients. Appellant indicated that she first became aware of her condition on March 1, 2019 and realized its relation to her federal employment on November 21, 2020. She did not stop work.

In a development letter dated November 8, 2021, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed. OWCP also provided appellant a questionnaire for completion. In a separate development letter of even date, it requested additional information from the employing establishment, including comments from a knowledgeable supervisor. OWCP afforded both parties 30 days to submit the necessary evidence. No response was received.

By decision dated January 18, 2022, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish the implicated employment factors. Consequently, it found that the requirements to establish a claim under FECA had not been met.

On November 15, 2022 appellant, through her representative, requested reconsideration. He contended that appellant's statement was sufficient to establish the factual aspect of her claim. In a November 1, 2022 witness statement, D.L., a coworker, explained that as she and appellant were aiding a patient in standing exercises when his legs collapsed and they were required to hold him until they could place him into his wheelchair. She recounted that appellant described back pain following this incident.

By decision dated February 9, 2023, OWCP modified the January 18, 2022 decision, finding that appellant had submitted sufficient evidence to establish the alleged employment factors. However, the claim remained denied as the medical evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted employment factors. Thus, it concluded that the requirements to establish an injury as defined by FECA had not been established.

On May 16, 2023 appellant, through her representative, requested reconsideration and provided medical evidence. In an April 21, 2023 note, Dr. Stephen Nagy, a Board-certified internist, described the implicated employment factors and diagnosed lumbar radiculopathy as employment related. He reviewed diagnostic studies demonstrating degenerative disc space narrowing at L2-3 and L3-4 with multilevel facet arthropathy L4-5 foraminal stenosis, and anterolisthesis of L4 on L5.

By decision dated May 30, 2023, OWCP modified its prior decisions finding that appellant had submitted medical evidence establishing a diagnosed back condition in connection with the accepted employment factors. However, appellant's claim remained denied as she had not submitted sufficient rationalized medical evidence to establish that the accepted work factors caused or aggravated her diagnosed condition.

OWCP continued to receive medical evidence. Appellant provided a note dated March 29, 2021 from Miranda Krishna, a family nurse practitioner. On May 10, 2021 Dr. Nagy noted that he had been treating her for back pain for several years and she developed more severe pain after lifting a patient two years prior. He noted that appellant's pain now radiates into her lower extremities. Dr. Nagy subsequently completed a September 8, 2021 report, described the accepted employment factors, and opined that repetitive lifting and twisting associated with appellant's work-related duties continued to result in low back pain radiating into the gluteal area.

Appellant also provided physical therapy notes dated March 23 through April 1, 2021. She included her diagnostic studies in the record.

On July 17, 2023 appellant, through her representative, requested reconsideration. He contended that the medical evidence was sufficient to require further development by OWCP.

By decision dated October 12, 2023, OWCP denied modification.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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,<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.<sup>7</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>8</sup> The opinion of the physician must be based upon a complete

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<sup>3</sup> *Id.*

<sup>4</sup> *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).

<sup>5</sup> *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).

<sup>6</sup> *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).

<sup>7</sup> *P.L.*, Docket No. 19-1750 (issued March 26, 2020); *R.G.*, Docket No. 19-0233 (issued July 16, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett, id.*

<sup>8</sup> *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

factual and medical background, 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 factors.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a back condition causally related to the accepted factors of her federal employment.

In his April 21, May 10, and September 8, 2021 narratives, Dr. Nagy, recounted appellant's gradual onset of low back pain, which increased following a work injury when she was lifting a patient two years prior. He opined that repetitive lifting and twisting at work continued to produce pain symptoms in her low back radiating into her lower extremities and gluteal area. Dr. Nagy diagnosed lumbar radiculopathy. However, his statements that appellant's employment duties caused her claimed back condition is vague and generalized.<sup>10</sup> While these reports generally support causal relationship, Dr. Nagy did not offer medical rationale sufficient to explain how and why he believed that the accepted employment factors resulted in or contributed to the diagnosed condition.<sup>11</sup> The Board has held that without explaining how appellant's employment duties caused or aggravated her condition, an opinion on causal relationship is of limited probative value.<sup>12</sup> Thus, these reports are insufficient to meet appellant's burden of proof.

OWCP also received a report from Ms. Krishna, a family nurse practitioner and physical therapists. This Board has long held that certain healthcare providers such as physical therapists and nurse practitioners are not considered physicians as defined under FECA.<sup>13</sup> Their medical findings, reports and/or opinions, unless cosigned by a qualified physician will not suffice for purposes of establishing entitlement to FECA benefits. Consequently, these reports are also insufficient to meet appellant's burden of proof.

The remaining evidence of record consisted of various diagnostic studies. The Board has held that diagnostic studies, standing alone, lack probative value and are insufficient to establish

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<sup>9</sup> *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018).

<sup>10</sup> *J.L.*, Docket No. 23-0702 (issued October 31, 2023).

<sup>11</sup> *D.L.*, Docket No. 23-0853 (issued November 15, 2023); *E.P.*, Docket No. 22-0606 (issued March 23, 2023); *M.S.*, Docket No. 22-0586 (issued July 12, 2022).

<sup>12</sup> *D.L.*, Docket No. 23-0872 (issued November 13, 2023); *D.J.*, Docket No. 19-1301 (issued January 29, 2020); *A.P.*, Docket No. 19-0224 (issued July 11, 2019).

<sup>13</sup> 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* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *E.W.*, Docket No. 23-0873 (issued November 20, 2023) (a physical therapist is not considered a physician as defined under FECA); *E.H.*, Docket No. 23-0373 (issued July 7, 2023) (nurse practitioners are not considered physicians as defined under 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).

the claim.<sup>14</sup> Consequently, this additional evidence is insufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish a back condition causally related to the accepted employment factors, 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 back condition causally related to the accepted factors of her federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 12, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 8, 2024  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>14</sup> *J.K.*, Docket No. 20-0591 (issued August 12, 2020); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).