United States Department of Labor
Employees' Compensation Appeals Board

J.Y., Appellant	)	
and	)	**Docket No. 23-1064**
	)	**Issued: February 8, 2024**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER/FACILITY, White Plains, 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 August 7, 2023 appellant filed a timely appeal from a February 10, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted September 14, 2022 employment incident.

[1] The Board notes that, following the February 10, 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*.

[2] 5 U.S.C. § 8101 *et seq*.

FACTUAL HISTORY

On September 29, 2022 appellant, then a 42-year-old postal distribution associate, filed a traumatic injury claim (Form CA-1) alleging that on September 14, 2022 she injured her back when she placed a heavy tray of books on top of a postal container (post con) while in the performance of duty. She stopped work on September 17, 2022.

A September 20, 2022 medical note, bearing an illegible signature, indicated that appellant was prescribed medication and taken out of work.

In an October 6, 2022 development letter, OWCP advised appellant of the deficiencies of her claim. It informed 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 provide the necessary information.

OWCP thereafter received an October 5, 2022 work note by Dr. Jad Bou Monsef, a Board-certified orthopedic surgeon, who recommended that appellant remain out of work for six weeks for further evaluation of her spinal pathology and to complete physical therapy.

By decision dated November 9, 2022, OWCP denied appellant's traumatic injury claim, finding that she had not submitted sufficient evidence to establish that the September 14, 2022 incident occurred, as alleged. Therefore, it concluded that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive evidence. A September 17, 2022 radiology request form, bearing an illegible signature, noted a history of scoliosis and recent onset of weakness in the legs and hands. In a work excuse note of even date, Amanda Morris, a physician assistant recommended that appellant remain out of work through September 19, 2022.

In notes dated October 5 and 6, 2022, Dr. Monsef noted a history of a previous spinal fusion and that appellant related complaints of low back pain, which she attributed to a work injury. On physical examination, he found weakness in the upper and lower extremities. Dr. Monsef diagnosed adolescent idiopathic scoliosis and cervical myelopathy and recommended magnetic resonance imaging (MRI) scans of the cervical, thoracic, and lumbar spine.

In a November 16, 2022 follow-up report, Dr. Monsef noted that appellant related that on September 14, 2022 she lifted a box overhead and felt severe pain in her lower back. He indicated that she also experienced numbness in her toes, but was unsure when those symptoms began. Dr. Monsef performed a physical examination and opined that appellant had "an acute work-related injury and [appellant's] symptoms need to be evaluated with advanced imaging." He diagnosed adolescent idiopathic scoliosis and cervical myelopathy and again recommended MRI scans of the cervical, thoracic, and lumbar spine.

On November 28, 2022 appellant requested reconsideration of OWCP's November 9, 2022 decision.

In an undated statement, appellant indicated that on September 14, 2022 she was sweeping the second pass of mail from a machine. She noted that she came upon a big tray of books that needed to be placed on top of a post con. While lifting the tray it began to fall and, while trying to save it, appellant hurt her back.

In a medical report dated December 14, 2022, Dr. Monsef repeated the same history and examination findings and diagnosed adolescent idiopathic scoliosis and cervical myelopathy. He opined that appellant had "an acute work-related injury and [appellant's] symptoms need to be evaluated with advanced imaging." In a note of even date, Dr. Monsef indicated that her evaluation was pending completion of spinal imaging studies.

By decision dated February 10, 2023, OWCP modified the November 9, 2022 decision to find that appellant had established an incident in the performance of duty on September 14, 2022, as alleged, and that she had been diagnosed with adolescent idiopathic scoliosis and cervical myelopathy. However, the claim remained denied as the medical evidence of record was insufficient to establish that her diagnosed conditions were causally related to the accepted September 14, 2022 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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,[4] 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.[5] 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.[6]

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 that the employee must submit sufficient evidence to establish that 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 an injury which can be established only by medical evidence.[7]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[8] A physician's opinion on whether there is causal relationship between the diagnosed condition and the accepted employment incident must be based on a complete factual and medical background. Additionally, the physician's opinion must be

[3] *Id*.

[4] *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).

[5] *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).

[6] *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).

[7] *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).

[8] *L.S.*, Docket No. 19-1769 (issued July 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the specific employment incident.[9]

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 physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted September 14, 2022 employment incident.

Dr. Monsef, in his October 5 and 6, November 16, and December 14, 2022 medical reports, noted the history of the September 14, 2022 employment incident and diagnosed adolescent idiopathic scoliosis and cervical myelopathy. He indicated that appellant had "an acute work-related injury and [appellant's] symptoms need to be evaluated with advanced imaging." Dr. Monsef did not, however, offer an opinion as to whether the diagnosed conditions were causally related to the accepted 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.[11] Therefore, the reports of Dr. Monsef are insufficient to establish appellant's claim.

Appellant also submitted notes dated September 17 and 20, 2022, bearing illegible signatures. Reports that are unsigned or that bear illegible signatures cannot be considered probative medical evidence because they lack proper identification[12] as the author cannot be identified as a physician.[13]

The remaining evidence of record consisted of an out of work note by a physician assistant. Certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered qualified physicians as defined under FECA.[14] Their medical

[9] *B.C.*, Docket No. 20-0221 (issued July 10, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *See R.D.*, Docket No. 18-1551 (issued March 1, 2019).

[11] *See S.S.*, Docket No. 21-0837 (issued November 23, 2021); *J.M.*, Docket No. 19-1926 (issued March 19, 2021); *L.D.*, Docket No. 20-0894 (issued January 26, 2021); *T.F.*, Docket No. 18-0447 (issued February 5, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[12] *W.L.*, Docket No. 19-1581 (issued August 5, 2020).

[13] *D.T.*, Docket No. 20-0685 (issued October 8, 2020); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[14] 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 10 at Chapter 2.805.3a(1) (January 2013); *H.S.*, Docket No. 20-0939 (issued February 12, 2021) (physician assistants 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).

findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.[15] Consequently, this additional evidence is insufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted September 14, 2022 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 medical condition causally related to the accepted September 14, 2022 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the February 10, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 8, 2024
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

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