United States Department of Labor
Employees' Compensation Appeals Board

D.A., Appellant	)	
and	)	**Docket No. 23-1065**
	)	**Issued: January 22, 2024**
U.S. POSTAL SERVICE, FORT POINT POST OFFICE, Boston, MA, Employer	)	

Appearances:
Appellant, *pro se*
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On August 7, 2023 appellant filed a timely appeal from a June 1, 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted January 24, 2020 employment incident.

[1] 5 U.S.C. § 8101 *et seq*.

FACTUAL HISTORY

This case has previously been before the Board.[2] The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On February 5, 2020 appellant, then a 48-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on January 24, 2020 she injured her lower back while in the performance of duty. She explained that she experienced a sharp pain in her lower back as well as numbness in her legs with spasms when lifting a heavy mail bin. Appellant stopped work on the alleged date of injury.

In a January 24, 2020 report, Christina C. Cheng, a physician assistant, noted that appellant presented with acute back pain after lifting a heavy postal bin full of mail at work. Appellant asserted that she had no prior back injury or surgery. Ms. Cheng diagnosed acute bilateral back pain.

In a January 24, 2020 report, Kelley J. Burke, a registered nurse, related that appellant was bending over to pick up something when she experienced a tight pull and numbness.

In a January 24, 2020 emergency room report, Dr. Paul D. Biddinger, Board-certified in emergency medicine, noted that appellant presented with back pain after lifting a heavy box of mail at work. He observed that she experienced severe low back pain that radiated down into her legs, as well as a tingling sensation in her legs. Dr. Biddinger conducted a physical examination and diagnosed acute bilateral back pain. An after-visit summary of even date reiterated his diagnosis of acute bilateral back pain.

In a February 10, 2020 medical report, Dr. Bonnie A. Southworth, Board-certified in internal medicine, reported that appellant experienced persistent lower back pain and muscle spasms. She observed that appellant had pain and stiffness when lying down. Dr. Southworth conducted a physical examination and diagnosed back pain.

In an undated attending physician's report (Form CA-20), Dr. Southworth, described appellant's injury as occurring as a result of lifting a large, heavy postal bin full of mail on January 24, 2020 when she experienced acute lower back pain and spasms. She diagnosed acute lower back pain. Dr. Southworth checked a box "Yes" indicating that appellant's condition was caused or aggravated by the employment incident. In a Form CA-20 dated February 13, 2020, Dr. Southworth reiterated her findings and diagnosis.

A February 28, 2020 magnetic resonance imaging (MRI) scan of the lumbar spine revealed bilateral neural foraminal narrowing as well as narrowing of the bilateral lateral recesses with involvement of the transiting L5 nerve roots and mild spinal canal narrowing at the L4-5 level. It also demonstrated a progression of mild right neural foraminal narrowing as well as mild left neural foraminal narrowing at the L3-4 level.

[2] Docket No. 21-1002 (issued April 17, 2023).

In an April 22, 2020 note, Dr. Southworth related that appellant had persistent back pain and could not sit or stand for any length of time or lift any heavy objects.

By decision dated April 30, 2020, OWCP accepted that the January 24, 2020 employment incident occurred as alleged, but denied appellant's claim, finding that she had not submitted medical evidence containing a medical diagnosis in connection with her accepted employment incident. It concluded therefore that the requirements had not been met to establish an injury as defined under FECA.

In a January 27, 2020 duty status report (Form CA-17), Dr. Southworth diagnosed lower back pain.

In an April 8, 2020 form report, Dr. Southworth diagnosed persistent low back pain.

In a May 11, 2020 medical report, Dr. Zacharia Isaac, Board-certified in physical medicine and rehabilitation, noted that appellant's pain started on January 24, 2020 during a work-related incident. He related that she experienced severe flare-up of pain in her low back with associated buttock numbness that radiated down to the sacral region. Dr. Isaac indicated that appellant was treated in the emergency room and was no longer working. He also indicated that she subsequently underwent physical therapy treatments. Dr. Isaac reviewed appellant's February 28, 2020 MRI scan of the lumbar spine and diagnosed spondylosis of lumbar region without myelopathy or radiculopathy and exacerbation of low back pain with associated degenerative changes of the disc at the L4-5 level and facet arthropathy at the L4-5 and L5-S1 levels. Dr. Isaac opined that her low back pain was exacerbated after the accepted January 24, 2020 employment incident. He explained that compounding issues included deconditioning of appellant's core muscles, overweight, and physically demanding job. Dr. Isaac recommended that she remain off work.

A July 15, 2020 x-ray of appellant's lumbar spine revealed mild degenerative changes of the cervical spine and transitional lumbar anatomy without evidence of instability on flexion and extension views.

On December 2, 2020 appellant requested reconsideration.

By decision dated March 2, 2021, OWCP denied modification of the April 30, 2020 decision.

In an August 26, 2020 progress report, Dr. Isaac reiterated his findings and diagnoses.

In a December 14, 2020 progress report, Dr. Isaac noted that appellant's symptoms worsened with movement or sitting, and at nighttime. He indicated that her symptoms decreased with heat or side laying. Dr. Isaac conducted a physical examination and diagnosed sacroiliitis and exacerbation of low back pain with associated degenerative changes of the disc at the L4-5 level and facet arthropathy at the L4-5 and L5-S1 levels. He again opined that appellant's low back pain was exacerbated after her accepted January 24, 2020 employment incident and explained that compounding issues included deconditioning of her core muscles, overweight, and physically demanding job.

In a February 24, 2021 progress report, Dr. Isaac reiterated his findings and diagnosed exacerbation of low back pain with associated degenerative changes of the disc at the L4-5 level and facet arthropathy at the L4-5 and L5-S1 levels versus S1 joint dysfunction. He again opined that appellant's low back pain was exacerbated after her accepted January 24, 2020 employment incident and again explained that compounding issues included her physically demanding job.

On April 7, 2021 appellant requested reconsideration.

By decision dated June 3, 2021, OWCP denied modification of the March 2, 2021 decision.

On June 21, 2021 appellant filed a timely appeal to the Board from OWCP's June 3, 2021 decision to the Board. By decision dated April 17, 2023, the Board found that appellant had met her burden of proof to establish diagnoses of spondylosis of the lumbar region without myelopathy or radiculopathy, sacroiliitis, degenerative changes of the disc at the L4-5 level, and facet arthropathy at the L4-5 and L5-S1 levels.[3] The Board further found that the case was not in posture for decision as to whether her diagnosed medical conditions were causally related to the accepted January 24, 2020 employment incident. The Board remanded the case for consideration of the medical evidence with regard to the issue of causal relationship, to be followed by issuance of a *de novo* decision of OWCP.

By decision dated June 1, 2023, OWCP denied modification of the denial of appellant's claim, finding that she had not submitted sufficient medical evidence to establish causal relationship between the accepted January 24, 2020 employment incident and her diagnosed medical conditions.

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 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]

[3] *Id.*

[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).

[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).

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 and place, and in the manner alleged. The second component is whether the employment incident caused an injury and can be established only by medical evidence.[8]

The medical evidence required to establish a 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 specific employment factors identified by the employee.[10]

In a 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.[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 24, 2020 employment incident.

In support of her claim, appellant submitted reports from Dr. Isaac. In his May 11, 2020 medical report, Dr. Isaac noted that her pain started on January 24, 2020 during a work-related incident. He related that appellant experienced severe flare-up of pain in her low back with associated buttock numbness that radiated down to the sacral region. Dr. Isaac diagnosed spondylosis of lumbar region without myelopathy or radiculopathy and exacerbation of low back pain with associated degenerative changes of the disc at the L4-5 level and facet arthropathy at the L4-5 and L5-S1 levels. He opined that appellant's low back pain was exacerbated after the accepted January 24, 2020 employment incident. Dr. Isaac also explained that a compounding issue included her physically demanding job. On August 26, 2020 he reiterated his findings and diagnoses. On December 14, 2020 and February 24, 2021 Dr. Isaac opined that appellant's low

[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] *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); *see also L.S.*, Docket No. 18-0518 (issued February 19, 2020).

back pain was exacerbated after her accepted January 24, 2020 employment incident and again noted her physically demanding job as a compounding issues.

The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was causally related to the accepted employment incident. The Board has held that 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.[12] Dr. Isaac did not support his medical opinion with sufficient rationale differentiating appellant's preexisting conditions from the current condition. The Board has explained that such rationale is especially important in a case involving a preexisting condition.[13] While Dr. Isaac provided an opinion that appellant's diagnosed conditions were related to a work incident on January 24, 2020 he did not provide sufficient medical rationale explaining how the conditions were related to the accepted incident. As such, these reports are insufficient to establish her claim.[14]

On January 24, 2020 Dr. Biddinger diagnosed acute bilateral back pain. In reports dated from January 27 through April 22, 2020 Dr. Southworth diagnosed back pain. The Board notes that, under FECA, the assessment of pain is not considered a compensable medical diagnosis, as pain merely refers to a symptom of an underlying condition.[15] For this reason, the above-noted reports of Drs. Biddinger and Southworth are insufficient to establish appellant's claim.

Appellant submitted reports signed by a physician assistant dated January 24, 2020; and signed by a registered nurse of the same date. However, the Board has held that medical reports signed by a nurse, a physical therapist, or a physician assistant are of no probative value, because these medical providers are not considered physicians as defined under FECA.[16] As such, these reports are of no probative value.

The diagnostic reports of record, including an MRI scan and an x-ray, also do not constitute probative medical evidence. The Board has held that diagnostic tests, standing alone, lack

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

[13] *Id*.

[14] *B.S.*, Docket No. 22-0102 (issued May 19, 2022); *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-56 (2006); *D'Wayne Avila*, 57 ECAB 642, 649 (2006).

[15] *J.L.*, Docket No. 20-1662 (issued October 7, 2022); *D.B.*, Docket No. 21-0550 (issued March 7, 2022).

[16] Section 8101(2) provides that a 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); *A.M.,* Docket No. 20-1575 (issued May 24, 2021) (physical therapists are not physicians as defined by FECA); *M.J.*, Docket No. 19-1287 (issued January 13, 2020) (physician assistants are not considered physicians as defined under FECA); *T.K.*, Docket No. 19-0055 (issued May 2, 2019) (nurses are not considered physicians as defined under FECA); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants, and physical therapists are not competent to render a medical opinion under FECA).

probative value on the issue of causal relationship as they do not provide an opinion on causal relationship.[17]

As appellant has not submitted rationalized medical evidence establishing a medical condition causally related to the accepted January 24, 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 24, 2020 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the June 1, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 22, 2024
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

[17] *See C.F.*, Docket No. 18-1156 (issued January 22, 2019); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).