United States Department of Labor
Employees' Compensation Appeals Board

I.P., Appellant	)	
and	)	**Docket No. 24-0121**
	)	**Issued: March 11, 2024**
U.S. POSTAL SERVICE, STOW POST OFFICE, Stow, OH, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On November 20, 2023 appellant filed a timely appeal from an August 17, 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 to consider the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish a recurrence of the need for medical treatment commencing April 15, 2022, causally related to her accepted June 28, 2019 employment injury.

[1] The Board notes that, following the August 17, 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 July 1, 2019 appellant, then a 46-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on June 28, 2019 she injured her lower back and developed headaches as a result of a truck striking her postal vehicle while she was in the performance of duty. She stopped work on that date and returned to full-duty work on July 22, 2019. OWCP accepted the claim for lumbosacral, thoracic, and cervical strains.

On April 21, 2022 appellant filed a notice of recurrence (Form CA-2a) alleging a recurrence of the need for medical treatment on April 15, 2022 causally related to the accepted June 28, 2019 employment injury. She noted that she continued to experience symptoms related to her accepted June 28, 2019 conditions.

In an April 22, 2022 note, Dr. Ghassan Faris Haddad, an internist, described appellant's June 28, 2019 employment injury, and recounted her continuous symptoms of numbness and tingling in the cervical and lumbar areas. He diagnosed cervicalgia and lumbar sprain.

In a development letter dated May 5, 2022, OWCP informed appellant of the deficiencies of her recurrence claim. It advised her of the type of additional factual and medical evidence needed, and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

On June 23, 2022 appellant completed OWCP's development questionnaire. She denied any additional injuries and attributed her ongoing back and neck conditions to her accepted employment injury.

In a June 20, 2022 report, Dr. Haddad, described appellant's June 28, 2019 employment injury and accepted conditions. He recounted her continuing symptoms of cervical and lumbar pain. On physical examination Dr. Haddad found severe pain and tenderness in appellant's cervical spine around the paraspinal muscles, and in her lumbar spine severe tenderness on the right paraspinal area with normal, but painful range of motion. He reported that her neurologic system was intact and her gait was normal. Dr. Haddad explained that appellant had been complaining of severe pain since the date of injury, and opined that based on a September 20, 2019 magnetic resonance imaging (MRI) scan her accepted lumbar conditions should be expanded to include facet arthropathy. He further found that an October 10, 2019 cervical MRI scan, demonstrated that her accepted cervical conditions should be expanded to include degenerative disc disease.

By decision dated October 24, 2022, OWCP denied appellant's recurrence claim, finding that the evidence of record was insufficient to establish a worsening of the accepted work-related conditions.

In a narrative statement dated June 16, 2023, appellant described her duties as a window clerk including scanning all the parcels which resulted in pain in the back of her neck down to her shoulder on the right side with headaches. She opined that some of these job duties contributed to her head and neck pain.

On June 21, 2023 appellant requested reconsideration before OWCP. She also provided notes from a physical therapist, and a June 23, 2023 note from James M. Bowen, a physician assistant.

By decision dated August 17, 2023, OWCP denied modification.

LEGAL PRECEDENT

The United States shall furnish to an employee who is injured while in the performance of duty the services, appliances, and supplies prescribed or recommended by a qualified physician that the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability, or aid in lessening the amount of any monthly compensation.[3]

A recurrence of a medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage.[4] An employee has the burden of proof to establish that he or she sustained a recurrence of a medical condition that is causally related to his or her accepted employment injury without intervening cause.[5]

If a claim for recurrence of medical condition is made more than 90 days after release from medical care, a claimant is responsible for submitting a medical report supporting a causal relationship between his or her current condition and the original injury in order to meet his or her burden.[6] To meet this burden the employee must submit medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, supports that the condition is causally related and supports his or her conclusion with sound medical rationale.[7] Where no such rationale is present, medical evidence is of diminished probative value.[8]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of the need for medical treatment commencing April 15, 2022, causally related to her accepted June 28, 2019 employment injury.

[3] 5 U.S.C. § 8103(a); *J.B.*, Docket No. 23-0660 (issued October 12, 2023).

[4] 20 C.F.R. § 10.5(y).

[5] *J.B.*, *supra* note 3; *W.B.*, Docket No. 22-0985 (issued March 27, 2023); *S.P.*, Docket No. 19-0573 (issued May 6, 2021); *M.P.*, Docket No. 19-0161 (issued August 16, 2019); *E.R.*, Docket No. 18-0202 (issued June 5, 2018).

[6] Federal (FECA) Procedural Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4b (June 2013); *see also M.F.*, Docket No. 21-1221 (issued March 28, 2022); *J.M.*, Docket No. 09-2041 (issued May 6, 2010).

[7] *S.P.*, *supra* note 5; *A.C.*, Docket No. 17-0521 (issued April 24, 2018); *O.H.*, Docket No. 15-0778 (issued June 25, 2015).

[8] *M.F.*, *supra* note 6; *M.P.*, *supra* note 5; *Michael Stockert*, 39 ECAB 1186 (1988).

Appellant filed a Form CA-2a alleging continuing back and neck pain due to her June 28, 2019 employment injury. In support of this claim, she provided April 22 and June 20, 2022 reports from Dr. Haddad diagnosing cervicalgia and lumbar sprain, and opining that she had sustained lumbar facet arthropathy and cervical condition degenerative disc disease due to her accepted employment injury. Dr. Haddad failed to provide an opinion on causal relationship between the recurrent need for medical treatment and the accepted employment injury. The Board has held that a medical report 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.[9] Thus, these reports are insufficient to establish her recurrence claim.[10]

The record also contains a September 20, 2019 lumbar MRI scan and an October 10, 2019 cervical MRI scan. The Board has held that reports of diagnostic tests, standing alone, lack probative value as they do not provide an opinion as to whether the accepted employment factors caused the diagnosed condition.[11] Thus, this evidence is insufficient to establish appellant's recurrence claim.

Appellant also submitted a report by a nurse practitioner and notes from a physical therapist. The Board has held that certain healthcare providers such as nurse practitioners, physical/occupational therapists, and social workers are not considered physicians as defined under FECA and, therefore, are not competent to provide a medical opinion. Therefore, this evidence is insufficient to establish appellant's recurrence claim.[12]

As the medical evidence of record is insufficient to establish a recurrence of the need for medical treatment commencing April 15, 2022 causally related to her accepted employment injury, 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 recurrence of the need for medical treatment commencing April 15, 2022, causally related to her accepted June 28, 2019 employment injury.

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

[10] *Id.*

[11] *W.T.*, Docket No. 23-0323 (issued August 15, 2023); *V.Y.*, Docket No. 18-0610 (issued March 6, 2020); *G.S.*, Docket No. 18-1696 (issued March 26, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

[12] Section 8101(2) of FECA 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 supra* note 6 at Chapter 2.805.3a(1) (January 2013); *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); *see also L.S.*, Docket No. 19-1768 (issued March 24, 2020) (nurse practitioners and physical therapists are not considered physicians under FECA).

ORDER

IT IS HEREBY ORDERED THAT the August 17, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 11, 2024
Washington, DC

Patricia H. Fitzgerald, Deputy 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