United States Department of Labor
Employees' Compensation Appeals Board

S.C., Appellant	)	
and	)	**Docket No. 25-0155**
	)	**Issued: January 16, 2025**
DEPARTMENT OF THE ARMY, MADIGAN ARMY MEDICAL CENTER, JOINT BASE LEWIS-McCHORD, WA, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 2, 2024, appellant filed a timely appeal from an August 30, 2024 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 diagnosed medical condition in connection with the accepted February 15, 2024 employment incident.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the August 30, 2024 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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 April 4, 2024, appellant, then a 42-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on February 15, 2024 she sustained a lumbar injury when she was caring for a bed-ridden patient while in the performance of duty. She did not immediately stop work.

Appellant received treatment from Dr. Kaelyn E. Voss, a chiropractor, from February 26 through June 12, 2024, for soreness at the lumbosacral junction. She reported that on February 15, 2024 she was caring for a bed-ridden patient and was required to clean up bodily fluids on four occasions during her shift when she noticed an increase in soreness at the lumbosacral junction. Appellant requested assistance with the patient; however, none was provided. Dr. Voss diagnosed thoracic and lumbar sprain/strain and discogenic and facet-related signs and symptoms, segmental dysfunction of the thoracic and lumbar region, lumbar facet syndrome, and other intervertebral disc displacement of the lumbar region.

Appellant submitted reports dated March 15 through June 5, 2024 from Cori Lizarraga, a licensed massage therapist.

In an June 25, 2024 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 60 days to submit the necessary evidence.

OWCP received additional evidence. Appellant submitted a June 17, 2024 report from Ms. Lizarraga.

In a follow-up letter dated July 16, 2024, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the June 25, 2024 letter to submit the requested supporting evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

Appellant submitted an August 16, 2024 report from Ms. Lizarraga.

Dr. Voss treated appellant in follow up on July 10, 25 and August 2, 8, 2024 for her work-related injury on February 15, 2024. Appellant reported improvement in her lumbar, thoracic spine, and sacroiliac joint. Dr. Voss diagnosed thoracic and lumbar sprain/strain, discogenic signs and symptoms at the lumbosacral junction, segmental dysfunction of the thoracic and lumbar region, lumbar facet syndrome, and other intervertebral disc displacement of the lumbar region.

By decision dated August 30, 2024, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a medical diagnosis in connection with the accepted February 15, 2024 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

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. First, 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. Second, the employee must submit sufficient evidence to establish that the employment incident caused an injury.[7]

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence.[8] 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 incident identified by the employee.[9]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition in connection with the accepted February 15, 2024 employment incident.

In support of her claim, appellant submitted reports from Dr. Voss, a chiropractor, who diagnosed thoracic and lumbar sprain/strain, discogenic and facet-related signs and symptoms, segmental dysfunction of the thoracic and lumbar region, lumbar facet syndrome, and other intervertebral disc displacement. Section 8101(2) of FECA provides that chiropractors are

[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.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *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).

[9] *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).

considered physicians "only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary."[10] Thus, where x-rays do not demonstrate a subluxation (a diagnosis of a subluxation based on x-rays has not been made), a chiropractor is not considered a "physician," and his or her reports cannot be considered as competent medical evidence under FECA.[11] As such, Dr. Voss is not considered a physician as she did not diagnose a spinal subluxation demonstrated by x-ray.[12] Thus, Dr. Voss' opinion is not considered competent medical evidence under FECA.[13]

Appellant further submitted reports from a licensed massage therapist. The Board has long held that certain healthcare providers such as massage therapists are not considered physicians as defined under FECA.[14] Consequently, their medical reports will not suffice for purposes of establishing entitlement to FECA benefits.

As the medical evidence of record is insufficient to establish a diagnosed medical condition in connection with the accepted February 15, 2024 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 diagnosed medical condition in connection with the accepted February 15, 2024 employment incident.

[10] 5 U.S.C. § 8101(2); *see also* section 10.311 of the implementing federal regulations provides: "(c) A chiropractor may interpret his or her x-rays to the same extent as any other physician. To be given any weight, the medical report must state that x-rays support the finding of spinal subluxation. OWCP will not necessarily require submittal of the x-ray, or a report of the x-ray, but the report must be available for submittal on request."

[11] *See Susan M. Herman*, 35 ECAB 669 (1984).

[12] *Id.*; *see also I.D.*, Docket No. 25-0021 (issued November 20, 2024).

[13] *Id.*

[14] Section 8101(2) of FECA provides as follows: "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); *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); *see also L.G.*, Docket No. 19-1616 (issued March 10, 2020) (massage therapists are not considered physicians under FECA).

ORDER

IT IS HEREBY ORDERED THAT the August 30, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 16, 2025
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