United States Department of Labor
Employees' Compensation Appeals Board

N.F., Appellant	)	
and	)	**Docket No. 25-0430**
	)	**Issued: May 7, 2025**
U.S. POSTAL SERVICE, POST OFFICE, Melville, NY, Employer	)	

Appearances:
Paul Kalker, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 27, 2025 appellant, through counsel, filed a timely appeal from a March 4, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.

[1] 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.

[2] 5 U.S.C. § 8101 *et seq*.

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted September 5, 2023 employment incident.

FACTUAL HISTORY

On September 7, 2023 appellant, then a 37-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 5, 2023 she felt a pop in her back when lifting flats into a bin while in the performance of duty. On the reverse side of the claim form, the employing establishment contended that she injured her back over the weekend and not at work.

In a September 5, 2023 letter, Gina M. Sottile, a certified registered physician assistant, held appellant off work until further notice. In a separate note of even date, she diagnosed acute midline low back pain with bilateral sciatica.

On September 14, 2023 the employing establishment issued an authorization for examination and/or treatment (Form CA-16), noting that there was doubt whether appellant's condition had been caused by an injury in the performance of duty.

A September 16, 2023 magnetic resonance imaging (MRI) scan reported mild-to-moderate lower lumbar discogenic spondylosis, L3-4 posterior paracentral disc fissure, and L5-S1 right posterior paracentral disc protrusion contributing to significant lateral recess stenosis with possible right-sided S1 radiculopathy.

In a duty status report (Form CA-17) dated September 20, 2023, Dr. Salvatore J. Palumbo, a neurosurgeon, noted appellant's September 5, 2023 history of injury and diagnosed L4-5, L5-S1 herniated disc, which he attributed to the injury with a checkmark. The form indicated that appellant was temporarily totally disabled.

In a report dated September 28, 2023, Dr. Palumbo recounted that appellant had two to three weeks of severe back pain following a work-related lifting incident. On physical examination, he reported some mild discomfort on palpation of midline and bony elements of the lumbar spine, mildly tender paraspinal regions, intact sensation to light touch, and normal motor examination. A review of an MRI scan revealed L3-S1 moderately advanced degenerative disc changes, L4-5 central disc herniation with mild lateral recess stenosis, right L5-S1 paracentral disc herniation with more moderate encroachment into the lateral recess, and mild displacement of the transversing S1 nerve root. Dr. Palumbo explained that appellant's low back pain radiating into the lower extremities, was greater on the left, and was consistent with lumbar radiculopathy.

In a September 29, 2023 report, Dr. Eric K. Fanaee, a Board-certified anesthesiologist with a subspeciality in pain medicine, noted that appellant's pain began on September 5, 2023 when she lifted a heavy pallet. On physical examination he found that appellant had difficulty rising from a sitting position; slow, wide, and antalgic gait, no paralumbar muscle spasms; tenderness on palpation of lower lumbar, left sacroiliac joint, and bilateral sciatic notches; and bilateral negative straight leg raising. Dr. Fanaee reviewed an MRI scan and diagnosed herniated nucleus pulposus,

lumbar degenerative disc disease, and lumbar radiculitis. He attributed appellant's low back pain and bilateral lower extremity pain to her September 5, 2023 employment incident.

In an October 5, 2023 attending physician's report, Part B of a Form CA-16, Dr. Palumbo noted a lifting incident of work, diagnosed herniated discs, and checked a box marked "Yes" noting that the condition was caused by the employment incident. He indicated that appellant was temporarily totally disabled.

In a November 9, 2023 note, Dr. Palumbo diagnosed lumbar spine disc herniations with moderate stenosis, noting she was seen for follow-up for back and lower extremity pain.

Dr. Fanaee, in a November 28, 2023 report, recounted appellant's history of injury, and related appellant's physical examination findings, including diminished bilateral L4-5 sensation and tenderness throughout the lumbar sacral region. He noted that appellant had not worked since September due to her employment injury. Dr. Fanaee diagnosed sacroiliitis, lumbar radiculopathy, lumbar herniated disc, and lumbar degenerative disc disease. In an attending physician's report (Form CA-20) of even date, he diagnosed L4-5 and L5-S1 disc herniations, which he attributed to the September 5, 2023 employment incident. Dr. Fanaee explained that lifting correlated to lumbar herniations. He found appellant totally disabled from work commencing September 5, 2023, with an anticipated return to work on March 5, 2024.

In a development letter dated February 6, 2024, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish the claim and provided a questionnaire for her completion. OWCP afforded appellant 60 days to respond.

In a February 22, 2024 report, Dr. Fanaee reiterated his examination findings and diagnoses. He attributed appellant's pain to lifting a heavy pallet on September 5, 2023 at work.

In a follow-up letter dated March 4, 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 February 6, 2024 letter to submit the requested necessary 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.

In response to OWCP's March 4, 2024 letter, appellant submitted physical therapy notes dated March 8 and 20, 2024 from Thomas Tilton, a physical therapist.

In a March 18, 2024 report, Dr. Palumbo reported that appellant continued her struggle with bilateral low back paraspinous pain, greater on the right than the left, and some right buttock discomfort. He diagnosed mild lateral recess stenosis at L4-5 and some mild-to-moderate degenerative disc changes. On physical examination, Dr. Palumbo reported no focal motor deficits and 2+ reflexes.

By decision dated April 8, 2024, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the employment incident occurred as she described. It noted that she had neither responded to its February 6, 2024 development questionnaire, nor provided information clarifying the alleged September 5, 2023 employment

incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

Dr. Fanaee, in an April 15, 2024 report, diagnosed back pain, and related that appellant had undergone L4-5 lumbar epidural steroid injection that day.

In a progress note dated June 13, 2024, Dr. Fanaee again noted appellant's history of injury and history of lower back pain radiating to the lower extremities. He provided examination findings, including limited lumbar range of motion (ROM), and diagnosed sacroiliitis, lumbar herniated disc, lumbar radiculopathy, and lumbar degenerative disc disease.

Dr. Fanaee, in a form report of even date, diagnosed lumbar radiculitis and noted that appellant was totally disabled from work. He reported that her pain was not improving and impacted her energy.

In a July 1, 2024 form report, Dr. Fanaee noted an injury date of June 5, 2023, checked "No" to the question of whether appellant could return to work, and indicated by checkmark that appellant had 100 percent temporary impairment. He also checked "Yes" to the question of whether the complaints were consistent with the history of injury.

On January 14, 2025 appellant requested reconsideration.

OWCP thereafter received an August 6, 2024 progress note, wherein Dr. Palumbo reported that appellant presented with intractable right lower extremity pain and new onset foot weakness. A review of imaging studies revealed an L5 large herniated disc with severe neural compression.

In an August 7, 2024 operative report, Dr. Palumbo noted that he performed right L5 hemilaminectomy and L5-S1 discectomy surgery on that date. He further noted that appellant had presented in the emergency room with intractable back and leg pain with new onset foot weakness. Review of an MRI scan showed L5-S1 large, extruded disc fragment with severe neural compression.

By decision dated March 4, 2025, OWCP modified its prior decision to find that appellant had established that the September 5, 2023 employment incident occurred, as alleged. However, the claim remained denied as the medical evidence of record was insufficient to establish causal relationship between a diagnosed condition and the accepted September 5, 2023 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

[3] *Id.*

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. 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 causal relationship between a specific condition and an employment incident 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 the accepted employment incident.[9]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted September 5, 2023 employment incident.

In support of her claim, appellant submitted medical reports from Dr. Fanaee. In the September 29, 2023 note, Dr. Fanaee attributed appellant's low back and bilateral extremity pain to the accepted September 5, 2023 employment incident. In a November 28, 2023 Form CA-20, he diagnosed L4-5 and L5-S1 disc herniations, which he attributed to the accepted September 5, 2023 employment incident. Dr. Fanaee explained that the lumbar herniations correlated with the lifting on September 5, 2023. Similarly, in a February 22, 2024 report, he attributed appellant's pain to lifting a heavy pallet on September 5, 2023. Dr. Fanaee, however, did not provide sufficient rationale to support his conclusions. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining

[4] *H.K.*, Docket No. 24-0020 (issued October 24, 2024); *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] *H.K.*, *id.*; *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] *H.K.*, *id.*; *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] *H.K.*, *id.; 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] *H.K.*, *id.*; *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] *H.K.*, *id.*; *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).

how a given medical condition/disability was causally related to the accepted employment incident.[10] This evidence is therefore insufficient to establish the claim.

In a September 28, 2023 report, Dr. Palumbo reported two to three weeks of severe back pain following a work-related incident. He also reported diagnoses of L3-S1 moderately advanced degenerative disc changes, L4-5 central disc herniation with mild lateral recess stenosis, right L5-S1 paracentral disc herniation with some moderate encroachment into the lateral recess, mild displacement of the transversing right S1 nerve root based on review of an MRI scan. Dr. Palumbo opined that appellant's low back pain radiating into the lower extremities, greater on the left, was consistent with lumbar radiculopathy. However, he did not provide sufficient rationale to support his conclusion. As explained above, 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.[11] This evidence is therefore insufficient to establish the claim.

In a July 1, 2024 medical form report, Dr. Fanaee noted an injury date of June 5, 2023 and checked "Yes" to the question of whether the complaints were consistent with the history of injury. The Board has held that an opinion on causal relationship with an affirmative check mark, without more by way of medical rationale, is insufficient to establish the claim.[12] The

The record also contains a Form CA-17 dated September 20, 2023, and an October 5, 2023 attending physician's report, Part B of a Form CA-16, wherein Dr. Palumbo diagnosed L4-5 and L5-S1 herniated discs internal derangement. Dr. Palumbo noted with a checkmark "Yes" that the diagnosed conditions were caused by the accepted employment incident. However, as previously noted, the Board has held that an opinion on causal relationship with an affirmative check mark, without more by way of medical rationale, is insufficient to establish the claim.[13] As such, these reports are insufficient to establish the claim.

OWCP also received an April 15, 2024 report and a June 13, 2024 form report from Dr. Fanaee, which listed diagnoses of lumbar radiculitis, sacroiliitis, lumbar herniated disc, and lumbar degenerative disc disease. In medical reports from November 9, 2023, March 18, and August 6 and 7, 2024, Dr. Palumbo diagnosed lumbar disc herniations with moderate stenosis, mild later L4-5 stenosis, some mild-to-moderate degenerative disc changes, and L5 large, herniated disc with severe neural compression. In an August 7, 2024 operative report, he noted that he performed right L5 hemilaminectomy and L5-S1 discectomy surgery on that date. However, neither physician offered an opinion on causal relationship. The Board has held that

[10] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[11] *See id.*

[12] *Id.*

[13] *See F.M.*, Docket No. 23-0977 (issued February 6, 2024); *J.H.,* Docket No. 23-0159 (issued August 1, 2023); *C.S.,* Docket No. 18-1633 (issued December 30, 2019); *D.S.,* Docket No. 17-1566 (issued December 31, 2018); *Lillian M. Jones,* 34 ECAB 379, 381 (1982).

medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value.[14] These reports are therefore insufficient to establish the claim.

Appellant also submitted documents signed by a physician assistant and physical therapist. The Board has long held that certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered physicians as defined under FECA.[15] Their medical findings, reports and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[16]]

OWCP also received an MRI scan. The Board has held that diagnostic reports, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the accepted employment incident caused a diagnosed condition.[17]

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted September 5, 2023 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 5, 2023 employment incident.[18]

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[14] *C.R.,* Docket No. 23-0330 (issued July 28, 2023); *K.K.,* Docket No. 22-0270 (issued February 14, 2023); *S.J.,* Docket No. 19-0696 (issued August 23, 2019); *M.C.,* Docket No. 18-0951 (issued January 7, 2019); *L.B.,* Docket No. 18-0533 (issued August 27, 2018); *D.K.,* Docket No. 17-1549 (issued July 6, 2018).

[15] 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) (May 2023); *L.S.,* Docket No. 19-1231 (issued March 30, 2021) (a physician assistant and nurse practitioner are not considered physicians as defined under FECA); *R.L.,* Docket No. 19-0440 (issued July 8, 2019) (a physical therapist is not considered a physician 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).

[16] *Id.*

[17] *A.D.*, Docket No. 25-0153 (issued January 31, 2025); *H.K.*, *supra* note 4; *J.K.,* Docket No. 20-0591 (issued August 12, 2020); *A.B.,* Docket No. 17-0301 (issued May 19, 2017).

[18] The Board notes that the employing establishment issued a September 14, 2023 Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *S.G.*, Docket No. 23-0552 (issued August 28, 2023); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the March 4, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 7, 2025
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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