

leg (lower back pain).” Appellant submitted progress notes related to treatment for lower back pain and requests for authorization for physical therapy from Heidi Gerhke, a physician’s assistant, dated August 8 through September 5, 2012.

In a letter dated October 1, 2012, Dr. Richard Peller, Board-certified in family medicine, stated that appellant was seen by Ms. Gerhke and that he had reviewed her evaluations of appellant’s back pain and signed off in the chart. He noted that a magnetic resonance imaging scan had been discussed but was denied by OWCP.

On October 29, 2012 OWCP authorized therapeutic exercises for 36 units, electrical stimulation for 36 units, and a physical therapy evaluation for 1 unit from October 23 through December 15, 2012. It received notes from Brian Ellingworth, a physical therapist, related to appellant’s lower back pain, dated August 31 through December 27, 2012. OWCP also received physical therapy notes from Alyssa Hall, a physical therapy assistant, dated November 1 through December 24, 2012.

On October 19, 2012 Dr. Rohaan Mehta, Board-certified in physical medicine and rehabilitation, listed appellant’s work restrictions. In a narrative report dated October 19, 2012, he stated that appellant’s injury occurred when lifting a 50-pound box at work on August 7, 2012. Dr. Mehta diagnosed low back pain, sciatica and pain in the thoracic spine. He related that physical examination of appellant revealed tenderness in her thoracic and lumbar spine with mild and moderate reduction of range of motion, respectively. Appellant exhibited pain with extension, flexion, left rotation, and right rotation of the thoracic and lumbar spine. Dr. Mehta stated that she had a moderate functional impairment.

Appellant also submitted records from Advanced Pain Management indicating that she had been seen from August 9 through December 13, 2012 for back pain by Ruth Vortheims, a nurse practitioner.

On November 21, 2012 appellant filed a Form CA-7 claim for compensation from October 29 to November 16, 2012, noting that her leave without pay was intermittent. On December 5, 2012 she filed another claim for compensation from November 17 to 30, 2012, again noting intermittent disability.

By letter dated December 5, 2012, OWCP noted that her claim appeared to be a minor injury that resulted in minimal or no lost time from work. Based on the fact that the employing establishment did not controvert continuation of pay or challenge the case, payment of a limited amount of medical expenses was administratively approved without consideration of the merits of her case. Because appellant filed CA-7 forms for wage-loss compensation, it would now adjudicate her claim of injury. OWCP requested additional medical evidence as the report of record had been signed by a physician’s assistant, nurse or nurse practitioner, rather than by a physician, and that the only diagnosis provided was “pain.” It afforded appellant 30 days to submit additional evidence and to respond to its inquiries.

In a letter dated November 9, 2012, Dr. Mehta stated that appellant’s work restrictions should continue until December 9, 2012. In another letter dated December 7, 2012, he stated that her work restrictions should continue until January 9, 2013.

By decision dated January 9, 2013, OWCP denied appellant's traumatic injury claim. It found that she did not submit medical evidence providing a firm medical diagnosis from a physician in connection with the accepted incident. OWCP noted that "The only medical evidence submitted that was signed by a doctor were the work restriction slips dated October 9, November 19 and December 7, 2012 signed by Dr. Mehta, however, [he] failed to cite a diagnosed condition."

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing the essential elements of his or her claim, including the fact 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 period of FECA, that an injury³ 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.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. A fact of injury determination is based on two elements. First, 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. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.⁵ Physicians' assistants, physical therapists, physical therapy assistants and nurse practitioners do not qualify as physicians under FECA and, therefore, their medical reports do not qualify as probative medical evidence supportive of a claim for federal workers' compensation, unless such medical reports are countersigned by a physician.⁶

The Board has held that OWCP must review all evidence submitted by a claimant and received by it prior to the issuance of a final decision.⁷ Because Board decisions are final as to

² *Id.*

³ OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events of incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

⁴ *T.H.*, 59 ECAB 388, 393 (2008); *see Steven S. Saleh*, 55 ECAB 169, 171-72 (2003); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *Id.* *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

⁶ *See* 5 U.S.C. § 8101(2); *M.B.*, Docket No. 12-1695 (issued January 29, 2013) (regarding nurse practitioners); *L.S.*, Docket No. 11-210 (issued September 12, 2011) (regarding physical therapy assistants); *Vickey C. Randall*, 51 ECAB 357, 360 n.4 (2000) (regarding physical therapists); *Lyle E. Dayberry*, 49 ECAB 369, 372 (1998) (regarding physicians' assistants).

⁷ *C.M.*, Docket No. 10-2161 (issued July 25, 2011).

the subject matter appealed, it is crucial that all of the evidence relevant to that subject matter which was properly submitted to OWCP prior to the time of issuance of its final decision be addressed by OWCP.⁸

ANALYSIS

The Board finds that this case is not in posture for decision because OWCP failed to consider relevant medical evidence it received prior to the issuance of its January 9, 2013 decision.⁹

Appellant submitted evidence from Dr. Mehta in support of her claim: three work restriction letters, dated October 19, November 9 and December 7, 2012; and a medical report dated October 19, 2012. In the medical report, received on November 7, 2012, Dr. Mehta related appellant's history of injury, noting that she sustained injury when she lifted a 50-pound box at the employing establishment on August 7, 2012. He conducted a physical examination and related his findings upon examination and diagnosed her with low back pain, sciatica and pain in the thoracic spine.

In its decision dated January 9, 2013, OWCP noted that "The only medical evidence submitted that was signed by a doctor were the work restriction slips dated October 9, 2012 (sic), November 19, 2012 (sic) and December 7, 2012 signed by Dr. Mehta, however, [he] failed to cite a diagnosed condition."

The Board has duly considered the matter and notes that in the case of *William A. Couch*,¹⁰ the Board held that, when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued.¹¹ In the present case, OWCP received an October 19, 2012 narrative medical report from Dr. Mehta. By decision dated January 9, 2013, it stated that the only medical evidence submitted that was signed by a doctor were Dr. Mehta's work restriction letters. While OWCP is not required to list every piece of evidence submitted to the record, the record is clear that the narrative report of October 19, 2012 from Dr. Mehta was not reviewed.

⁸ 41 ECAB 548, 553 (1990).

⁹ In support of her claim, appellant submitted various reports from Ms. Gerhke, a certified physician's assistant; Mr. Ellingworth, a physical therapist; Ms. Vorthems, a nurse practitioner; and Ms. Hall, a physical therapy assistant. None of these reports were countersigned by a physician. Physicians' assistants, physical therapists, physical therapy assistants, and nurse practitioners do not qualify as physicians under FECA and, therefore, their reports do not qualify as probative medical evidence supportive of a claim for federal workers' compensation, unless such reports are countersigned by a physician. *See supra* note 6.

¹⁰ *Supra* note 8.

¹¹ *Supra* note 7.

As OWCP failed to address all the relevant evidence of record at the time it issued its January 9, 2013 decision, the case is remanded for a proper review of the evidence and issuance of an appropriate final decision.¹²

CONCLUSION

The Board finds this case is not in posture for decision because OWCP failed to address all the relevant evidence of record at the time it issued its January 9, 2013 decision.

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2013 decision of the Office of Workers' Compensation Programs is set aside. The case record is remanded to OWCP for further proceedings consistent with this opinion of the Board.

Issued: September 18, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

¹² See A.B., Docket No. 12-1907 (issued May 13, 2013).