

**United States Department of Labor
Employees' Compensation Appeals Board**

_____)	
R.M., Appellant)	
)	
and)	Docket No. 17-1656
)	Issued: January 16, 2018
U.S. POSTAL SERVICE, POST OFFICE,)	
Yorktown Heights, NY, Employer)	
_____)	

Appearances:
Robert D. Siano, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 25, 2017 appellant, through counsel, filed a timely appeal from a February 14, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP).² Pursuant to

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 Together with her appeal request, appellant submitted a timely request for oral argument pursuant to 20 C.F.R. § 501.5(b). After exercising its discretion, by order dated November 17, 2017, the Board denied the request as appellant's arguments on appeal could be adequately addressed in a decision based on a review of the case as submitted on the record. *Order Denying Request for Oral Argument*, Docket No. 17-1656 (issued November 17, 2017).

the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.⁴

ISSUE

The issue is whether appellant has met her burden of proof to establish that her diagnosed low back conditions are causally related to the accepted January 26, 2016 employment incident.

FACTUAL HISTORY

On January 29, 2016 appellant, then a 37-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on January 26, 2016 she sustained a right-sided lumbar strain/sprain due to lifting mail and loading it into a postal vehicle. She stopped work on January 27, 2016.

In a February 4, 2016 attending physician's report (Form CA-20), Dr. Antonio Mancarella, an attending chiropractor, listed the date of injury as January 26, 2016 and the history of injury as loading mail trays into the back of a truck. He diagnosed segmental dysfunction of the right lumbar region and lumbar ligament and myofascial sprain/strain. Dr. Mancarella checked a box marked "Yes," indicating that the diagnosed conditions were caused or aggravated by the described employment activity and found that appellant was disabled from work from February 3, 2016 until an undetermined date. In a February 4, 2016 duty status report (Form CA-17), he recommended various work restrictions, including no lifting more than five pounds.

In a March 1, 2016 letter, OWCP requested that appellant submit additional evidence in support of her claim, including a physician's opinion supported by a medical explanation as to how the reported work incident(s) caused or aggravated a medical condition. It requested that she complete and return an attached questionnaire which posed various questions regarding the circumstances of her claimed employment injury and the course of her medical treatment.

Appellant submitted a March 17, 2016 statement in response to OWCP's March 1, 2016 letter. She indicated that on January 26, 2016 she was loading a mail tray into a truck at work and felt a sharp pain in her lower right back. Appellant described the medical treatment she received after the January 26, 2016 employment incident.

Appellant submitted the findings of a March 8, 2016 magnetic resonance imaging (MRI) scan of her full spine which contained an impression of L4-5 central herniated nucleus pulposus with resultant mild central canal stenosis, anatomic facet alignment, and C5-6 cervical disc displacement.

³ 5 U.S.C. § 8101 *et seq.*

⁴ The record provided the Board includes evidence received after OWCP issued its February 14, 2017 decision. 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. 20 C.F.R. § 501.2(c)(1). Therefore, evidence not before OWCP at the time of the February 14, 2017 decision cannot be considered by the Board for the first time on appeal. *Id.*

In a March 17, 2016 report, Dr. Niraj Sharma, an attending Board-certified physical medicine and rehabilitation physician, indicated that appellant reported that she heard a pop in her back when she lifted a mail tray (weighing about 30 pounds) at work on January 26, 2016. She detailed the findings of the physical examination she conducted on March 17, 2016, including a positive right straight leg raise test, and she diagnosed low back pain with right sacroiliac joint dysfunction and right lumbosacral radiculopathy. Dr. Sharma recommended that appellant undergo a right sacroiliac joint steroid injection.⁵ In a New York State doctor's initial report dated March 17, 2016, she listed the date of injury as January 26, 2016 and the history of injury as lifting a mail tray weighing about 30 pounds. Dr. Sharma diagnosed radiculopathy and spinal stenosis of the lumbar region, sacrococcygeal disorders, and low back pain, and checked a box marked "Yes" indicating that the described incident was the competent medical cause of appellant's condition. She advised that appellant was disabled until an unknown date.

In a January 27, 2016 report, Dr. Michael A. Rizzi, an attending Board-certified internist, noted that appellant reported she felt pain when she bent down to pick up a mail tray at work on January 26, 2016. Appellant reported that the pain occasionally radiated into her right leg. Dr. Rizzi detailed findings from the physical examination he conducted and diagnosed lumbar sprain and probable radiculopathy. On March 22, 2016 he reported physical examination findings and diagnosed sciatica and sacroiliac joint pain.

Appellant also submitted additional reports of Dr. Mancarella from March 2016.

In an April 7, 2016 decision, OWCP denied appellant's claim for a work-related traumatic injury on January 26, 2016. It accepted the occurrence of an employment incident on January 26, 2016 as alleged. However, OWCP further determined that appellant failed to submit rationalized medical evidence establishing causal relationship between the accepted January 26, 2016 employment incident and the diagnosed low back conditions.

On November 28, 2016 appellant, through counsel, requested reconsideration of OWCP's April 7, 2016 decision. In a July 29, 2016 statement, counsel argued that the previously submitted evidence established appellant's claim for a January 26, 2016 employment injury. He also asserted that enclosed new evidence further supported appellant's claim.⁶

In an April 25, 2016 report, Dr. Sharma reported that appellant reported that she heard a pop in her back when she lifted a mail tray (weighing about 30 pounds) at work on January 26, 2016. She detailed the findings of the physical examination she conducted on April 25, 2016 and diagnosed low back pain with right sacroiliac joint dysfunction and right lumbosacral radiculopathy. In a New York State doctor's progress report dated March 17, 2016, Dr. Sharma advised that appellant was disabled from work until an unknown date.

In a June 24, 2016 report, Dr. Rizzi noted that he initially saw appellant on January 27, 2016 at which time she complained of suffering a back injury the prior day while loading mail on her truck at work. Appellant reported that she twisted to the left while lifting mail trays and

⁵ In a March 17, 2016 note, Dr. Sharma indicated that appellant was unable to return to work. She noted that she would reevaluate appellant in four weeks.

⁶ Appellant submitted an undated statement in which a coworker advised that she told him on January 26, 2016 that she injured her back on that date due to lifting a mail tray.

experienced an acute popping sensation and discomfort in her right low back and buttocks area. Dr. Rizzi described appellant's medical treatment with several medical providers, noting that diagnostic testing showed a herniated nucleus pulposus at L4-5. He indicated that upon the examination on June 24, 2016 appellant had some right upper buttock tenderness, straight leg raise testing was negative, and the sensory examination was grossly preserved. Dr. Rizzi noted that appellant could not return to work because she could not stay in a stationary position or engage in bending or lifting. He indicated, "At this point, I feel that her mechanism of injury is as above (sic) related to her lifting mail trays on January 26, 2016."

Appellant also submitted additional reports of Dr. Mancarella dated between March and December 2016.

In a February 14, 2017 decision, OWCP denied modification of its April 7, 2016 decision. It found that appellant failed to submit rationalized medical evidence establishing a traumatic injury due to the accepted January 26, 2016 employment incident.

LEGAL PRECEDENT

A claimant seeking benefits under FECA⁷ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.⁸

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁹ The second component is whether the employment incident caused a personal injury.¹⁰ An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.¹¹

A "physician," as defined under FECA, includes a chiropractor only to the extent that his or her reimbursable services are limited to treatment consisting of manual manipulation of the

⁷ *Supra* note 3.

⁸ 20 C.F.R. § 10.115(e), (f); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁹ *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹⁰ *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

¹¹ *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

spine to correct a subluxation as demonstrated by x-ray.¹² OWCP's regulations define "[s]ubluxation" as incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae, which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays.¹³

ANALYSIS

OWCP accepted that the January 26, 2016 employment incident occurred, as alleged, but further determined that appellant failed to submit rationalized medical evidence establishing that her diagnosed low back conditions were causally related to the accepted January 26, 2016 employment incident.

The Board finds that appellant has not met her burden of proof to establish a traumatic injury due to an accepted January 26, 2016 employment incident.

In a report dated March 17, 2016, Dr. Sharma listed the date of injury as January 26, 2016 and the history of injury as lifting a mail tray weighing about 30 pounds. She diagnosed radiculopathy and spinal stenosis of the lumbar region, sacrococcygeal disorders, and low back pain and checked a box marked "Yes" indicating that the described incident was the competent medical cause of appellant's condition. Dr. Sharma advised that appellant was disabled until an unknown date.

The Board has held that when a physician's opinion on causal relationship consists only of checking "Yes" to a form question, without more by the way of medical rationale, that opinion has little probative value and is insufficient to establish causal relationship. Appellant's burden includes the necessity of furnishing an affirmative opinion from a physician who supports his or her conclusion with sound medical reasoning.¹⁴ As Dr. Sharma did no more than check a box marked "Yes" to a form question, her opinion on causal relationship is of little probative value and is insufficient to discharge appellant's burden of proof for a January 26, 2016 employment injury. She did not describe the January 26, 2016 employment incident in any detail, nor did she explain the medical process through which this incident could have caused or aggravated the conditions she diagnosed.

In an April 25, 2016 report, Dr. Sharma indicated that appellant reported that she heard a pop in her back when she lifted a mail tray (weighing about 30 pounds) at work on January 26, 2016. She diagnosed low back pain with right sacroiliac joint dysfunction and right lumbosacral radiculopathy. Dr. Sharma advised that appellant was disabled until an unknown date. However, this report is of no probative value on the issue of this case because Dr. Sharma did not provide any opinion on causal relationship. The Board has held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁵

¹² 5 U.S.C. § 8101(2); *see Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

¹³ 20 C.F.R. § 10.5(bb); *see Bruce Chameroy*, 42 ECAB 121, 126 (1990).

¹⁴ *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

¹⁵ *See Charles H. Tomaszewski*, 39 ECAB 461 (1988).

In a June 24, 2016 report, Dr. Rizzi noted that he initially saw appellant on January 27, 2016 at which time she complained of having suffered a back injury the prior day while loading mail on her truck. Appellant reported that she twisted to the left while lifting mail trays and experienced an acute popping sensation and discomfort in her right low back and buttock area. Dr. Rizzi reported examination findings from June 24, 2016 and indicated that appellant could not return to work. He noted, “At this point, I feel that her mechanism of injury is as above [sic] related to her lifting mail trays on January 26, 2016.”

The Board finds that this report is of limited probative value regarding the question of whether appellant sustained a January 26, 2016 employment injury because Dr. Rizzi did not provide any medical rationale in support of his opinion on causal relationship. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.¹⁶ Dr. Rizzi did not describe the January 26, 2016 employment incident in any detail or explain the medical process through which it could have caused or aggravated a diagnosed back condition. In fact, Dr. Rizzi did not identify any specific medical condition that he felt was related to the January 26, 2016 employment incident, nor did he provide a complete medical history of appellant’s back condition or support his opinion on causal relationship with objective findings on diagnostic testing and physical examination.¹⁷

In a January 27, 2016 report, Dr. Rizzi noted that appellant reported that she felt pain when she bent down to pick up a mail tray at work on January 26, 2016. He diagnosed lumbar sprain and probable radiculopathy. On March 22, 2016 Dr. Rizzi diagnosed sciatica and sacroiliac joint pain. However, these reports are of no probative value on the issue of this case because Dr. Rizzi did not provide an opinion on causal relationship. As noted above, the Board has held that medical evidence which does not offer an opinion regarding the cause of an employee’s condition is of no probative value on the issue of causal relationship.¹⁸

In support of her claim for a January 26, 2016 employment injury, appellant submitted numerous reports, dated between February and December 2016, from Dr. Mancarella, an attending chiropractor. The Board finds, however, that the reports of Dr. Mancarella do not constitute probative medical evidence because he is not a physician within the meaning of FECA under the facts of the present case. This is because Dr. Mancarella did not indicate in any of his reports that his findings of subluxations were demonstrated by x-rays to exist.¹⁹

On appeal, counsel argues that the reports of attending physicians established appellant’s claim for a January 26, 2016 employment injury. However, the Board has explained why this evidence was insufficient to establish appellant’s claim. Counsel also argues that the reports of

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

¹⁷ See *Victor J. Woodhams*, *supra* note 10.

¹⁸ See *supra* note 15.

¹⁹ See *supra* notes 12 and 13.

Dr. Mancarella constitute probative medical evidence, but the Board has explained why Dr. Mancarella does not qualify as a physician within the meaning of FECA.²⁰

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 failed to meet her burden of proof to establish that her diagnosed low back conditions are causally related to the accepted January 26, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the February 14, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 16, 2018
Washington, DC

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

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

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

²⁰ On February 5, 2016 Dr. Mancarella completed the attending physician's report portion of a form for authorization for examination and/or treatment (Form CA-16). Where an employing establishment properly executes a Form CA-16 authorizing medical treatment related to a claim for a work injury, the form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination/treatment regardless of the action taken on the claim. *See Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c).