United States Department of Labor
Employees' Compensation Appeals Board

L.N., Appellant	)	
and	)	**Docket No. 19-0727**
	)	**Issued: September 10, 2019**
GENERAL SERVICES ADMINISTRATION, DELAWARE VALLEY FIELD OFFICE, Camden, NJ, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On February 19, 2019 appellant filed a timely appeal from a January 4, 2019 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish left lower extremity and lumbar spine conditions causally related to the accepted May 19, 2017 employment incident.

FACTUAL HISTORY

On June 2, 2017 appellant, then a 56-year-old property manager, filed a traumatic injury claim (Form CA-1) alleging that, on May 19, 2017, she sustained pain, bruising, and numbness as

[1] 5 U.S.C. § 8101 *et seq.*

a result of falling with her laptop while in the performance of duty. She stopped work on that date and returned on May 23, 2017.

In a report dated June 7, 2017, Dr. Anthony Dibona, a Board-certified family practitioner, examined appellant for complaints of a fall at work with pain in the left hip, leg, and foot. Appellant stated that she fell at work on May 19, 2017 while getting ready to go home. She did not recall tripping. The next day, appellant felt numbness in her left foot and found herself limping. On examination of the left lower extremity, Dr. Dibona noted left calf pain with dorsiflexion and palpation, left hip pain with movement and palpation, straight leg raises limited to 30 degrees with the left leg, and left-sided lumbar pain. He diagnosed lumbar radiculopathy and referred appellant for magnetic resonance imaging (MRI) scans of the lumbar spine and left knee.

Appellant submitted a June 8, 2017 attending physician's report (Form CA-20), as well as a duty status report (Form CA-17) and a work excuse note of the same date, which were signed by a nurse practitioner.

A magnetic resonance imaging (MRI) scan of the left knee dated June 27, 2017 demonstrated a questionable meniscocapsular junction tear of the body of the medial meniscus and patellofemoral degenerative joint disease. A lumbar spine MRI scan of the same date demonstrated mildly bulging discs at L2-3, L4-5, and L5-S1, as well as mild narrowing of the central spinal canal at L4-5 with degenerative changes at the articular facets.

In a report dated July 3, 2017, Dr. Alan L. Urkowitz, a Board-certified family practitioner, followed up with appellant regarding her MRI scans. He noted that the MRI scan of the left knee demonstrated a possible meniscus tear and that the MRI scan of the lumbar spine demonstrated significant degenerative disc disease. On examination of the extremities, Dr. Urkowitz noted that the lumbar spine was tender to palpation, while the left knee was tender posteriorly and laterally with pain upon flexion. He diagnosed lumbar radiculopathy and internal derangement of the left knee.

In an attached attending physician's report (Form CA-20) dated July 7, 2017, Dr. Urkowitz noted that appellant found herself on the floor on May 19, 2017, but that she did not recall falling or tripping. On examination, he observed left-sided lumbar pain, left hip pain with movement, left calf pain with dorsiflexion and palpation, and left knee pain. Dr. Urkowitz diagnosed lumbar radiculopathy and internal derangement of the left knee. He checked a box marked "Yes" indicating that he believed that the diagnosed conditions were caused or aggravated by the employment incident of May 19, 2017, explaining that the conditions were from a fall at work. Dr. Urkowitz advised that she not return to work until she had seen an orthopedist.

In a work excuse note dated July 14, 2017, Dr. Urkowitz requested that appellant be excused from work from July 14 through 24, 2018. In an attached attending physician's report (Form CA-20) of the same date, Dr. Urkowitz on physical examination observed pain in appellant's left knee and upper left calf. He noted that MRI scans demonstrated a possible meniscus tear and degenerative joint disease of the spine. Dr. Urkowitz diagnosed lumbar radiculopathy and internal derangement of the left knee. He checked a box marked "Yes" indicating that the diagnosed conditions were caused or aggravated by the employment incident of

May 19, 2017, noting that she was injured at work. Dr. Urkowitz advised that appellant could not return to work until an appointment with an orthopedist on July 19, 2017.

In a report dated July 20, 2017, Dr. Steven Kahn, a Board-certified orthopedic surgeon, examined appellant for complaints of lower back pain with radiation in her lower extremities and left lateral knee pain with some radiation into the left leg. He noted that appellant sustained a slip and fall on May 19, 2017 while performing duties of her employment, sustaining conditions of the left knee and lumbar spine. On examination of the left knee, Dr. Kahn observed motion from 0 to 120 degrees of flexion and ligamentous stability to varus valgus stresses in full extension as well as 30 degrees of flexion. On examination of the lumbar spine, he observed tenderness to palpation over the paravertebral region with muscle spasm more pronounced on the left. Active range of motion was limited and straight leg raising on the left was positive for lumbar pain with a radicular component down the ipsilateral extremity. Dr. Kahn reviewed the MRI scans of June 27, 2017 and diagnosed post-traumatic thoracolumbar strain with associated myofasciitis; lumbar spondylosis with degenerative disc disease preexistent to and exacerbated by the incident of May 19, 2017; a healed post-traumatic contusion of the left knee; and clinical lumbar radiculopathy of the left lower extremity. He recommended that appellant return to work on July 25, 2017, with restrictions of avoiding prolonged sitting and standing, as well as breaks every 20 to 25 minutes when she was required to travel in a car.

Appellant submitted physical therapy notes dated from August 2 through 31, 2017.

In a development letter dated August 31, 2017, OWCP informed appellant that she had not submitted sufficient factual or medical evidence to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In a letter dated September 15, 2017, Dr. Kahn noted that appellant returned for evaluation of her left knee and thoracolumbar spine. He indicated that, upon review of his previous medical report, he failed to include lumbar disc pathology in the form of disc bulges at L2-3, L3-4, and L4-5. Dr. Kahn noted that appellant continued to have ongoing lower back pain with some radiation and radicular features in her left buttocks and lower extremity. Appellant's anterior left knee pain had resolved, but some posterior left knee discomfort remained. On examination of the left knee, he noted some palpatory tenderness in the semimembranosus, semitendinosus region posteriorly. On examination of the thoracolumbar spine, Dr. Kahn observed palpatory tenderness over the paravertebral region with mild spasm, more pronounced on her left. Motion was improved 80 to 85 percent of normal with flexion and extension. A straight leg test on the left was positive for lumbar pain with a radicular component down the ipsilateral extremity. Dr. Kahn diagnosed post-traumatic thoracolumbar strain with associated myofasciitis; lumbar spondylosis with degenerative disc disease preexistent to and exacerbated by the incident of May 19, 2017; disc bulge at L2-3, L4-5, and L5-S1; clinical lumbar radiculopathy of the left lower extremity; and a healed post-traumatic contusion of the left knee. He recommended continuation of physical therapy and an electromyogram/nerve conduction (EMG/NCV) study of her lower extremities.

In a letter dated September 25, 2017, Dr. Urkowitz opined that appellant's back and knee conditions were caused by her fall at work on May 19, 2017. He noted that, although appellant had underlying degenerative disc disease of the spine, he felt that her fall aggravated the pain.

On September 27, 2017 appellant responded to OWCP's inquiries. She stated that her condition was not related to any other injury except the fall that occurred at work on May 19, 2017.

By decision dated October 11, 2017, OWCP denied appellant's claim finding that she had not submitted sufficient medical evidence to meet her burden of proof to establish that her lumbar and left knee conditions were causally related to the accepted May 19, 2017 employment incident.

On April 9, 2018 appellant requested reconsideration. With her request, she submitted a July 14, 2017 report from Dr. Urkowitz which was previously of record.

By decision dated July 6, 2018, OWCP denied modification of its October 11, 2017 decision.

On August 13, 2018 appellant requested reconsideration. With her request, she submitted a letter from Dr. Urkowitz dated August 1, 2018 in which he reviewed her history of treatment as in his letter of September 25, 2017. Dr. Urkowitz opined that her back and knee conditions were caused by her fall at work on May 19, 2017. He explained that although she had underlying degenerative disc disease in her spine, he felt her fall had aggravated the pain. Dr. Urkowitz further felt that her left knee condition was caused by her fall at work, as she had no prior history of left knee injuries.

By decision dated January 4, 2019, OWCP denied modification of its July 6, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of proof to establish 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 of FECA, 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.[3] 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.[4]

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first

[2] *Id.*

[3] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[4] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

component is whether the employee actually experienced the employment incident that allegedly occurred.[5] The second component is whether the employment incident caused a personal injury.[6]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue. A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. 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).[7]

In a case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[8]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish left lower extremity and lumbar spine conditions causally related to the accepted May 19, 2017 employment incident.

On July 20 and September 15, 2017 Dr. Kahn examined appellant's lumbar spine and diagnosed lumbar spondylosis with degenerative disc disease preexistent to and exacerbated by the incident of May 19, 2017. Although he provided diagnoses and imposed work restrictions, he did not provide an opinion on causal relationship. The Board has held that medical evidence 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] These reports, therefore, are insufficient to establish appellant's claim.

In a letter dated September 25, 2017, Dr. Urkowitz noted that appellant presented to his office on June 7, 2017, stating that she fell at work on May 19, 2017. Appellant complained of left hip, leg, and foot pain. In a follow-up visit on July 3, 2017, Dr. Urkowitz reviewed her MRI scans, which demonstrated degenerative disc disease of her lumbar spine and a possible meniscal capsular tear of the medial meniscus. In a visit on July 14, 2017, appellant continued to have significant knee pain. Dr. Urkowitz opined that appellant's back and knee conditions were caused by her fall at work on May 19, 2017. He noted that, although she had underlying degenerative disc disease of the spine, he felt that her fall aggravated the pain. In a letter dated August 1, 2018,

[5] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *Id.*; *John J. Carlone*, 41 ECAB 354 (1989).

[7] *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

[8] *J.F.*, Docket No. 19-0456 (issued July 12, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

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

Dr. Urkowitz reviewed appellant's history of treatment and opined that her back and knee conditions were caused by her fall at work on May 19, 2017. He again explained that, although she had underlying degenerative disc disease in her spine, he felt her fall aggravated the pain. Dr. Urkowitz further felt that appellant's left knee condition was caused by her fall at work, as she had no prior history of left knee injuries. These reports of Dr. Urkowitz are conclusory in nature, however, as they fail to explain in detail how the accepted May 19, 2017 employment incident caused appellant's lumbar and left knee conditions.[10] The Board has held that the mere recitation of a claimant's history does not suffice for purposes of establishing causal relationship between a diagnosed condition and the employment incident.[11] Without explaining physiologically how the accepted employment incident caused or contributed to the diagnosed conditions, the physician's report is of limited probative value.[12] Therefore, these reports of Dr. Urkowitz are insufficient to meet appellant's burden of proof.

In attending physician's reports (Form CA-20) dated July 7 and 14, 2017, Dr. Urkowitz checked a box marked "Yes" indicating that he believed appellant's conditions were caused or aggravated by the incident of May 19, 2017. The Board has held that a report that addresses causal relationship with a checkmark, without medical rationale explaining how the employment incident caused or aggravated the diagnosed condition, is of diminished probative value and insufficient to establish causal relationship.[13] As such, Dr. Urkowitz's reports of July 7 and 14, 2017 are insufficient to establish appellant's burden of proof.[14]

In narrative reports dated July 3 and 14, 2017, Dr. Urkowitz examined appellant and diagnosed lumbar radiculopathy and internal derangement of the left knee, as well as recommending treatment. Similarly, on June 7, 2017, Dr. Dibona examined appellant and diagnosed lumbar radiculopathy, referring appellant for MRI scans. However, these reports from Drs. Urkowitz and Dibona did not provide opinions on causal relationship. The Board has held that medical evidence 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.[15] These reports, therefore, are insufficient to establish appellant's claim.

Appellant submitted MRI scans of her lumbar spine and left knee dated June 27, 2017. The Board has held that diagnostic studies lack probative value as they do not address whether the

[10] *See N.S.*, Docket No. 19-0167 (issued June 21, 201).

[11] *Id. See also J.G.*, Docket No. 17-1382 (issued October 18, 2017).

[12] *J.P.*, Docket No. 18-1165 (issued January 15, 2019); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[13] *See S.G.*, Docket No. 18-0209 (issued October 4, 2018); *R.A.*, Docket No. 17-1472 (issued December 6, 2017); *Sedi L. Graham*, 57 ECAB 494 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

[14] *M.C.*, Docket No. 18-0361 (issued August 15, 2018).

[15] *Supra note* 9.

employment incident caused any of the diagnosed conditions.[16] Therefore, these reports are insufficient to establish her claim.

Finally, appellant submitted reports signed by nurse practitioners and physical therapists. These reports do not constitute competent medical evidence because nurse practitioners and physical therapists are not considered "physicians" as defined under FECA.[17]

Entitlement to FECA benefits may not be based on surmise, conjecture, speculation, or on the employee's own belief of a causal relationship.[18] The Board finds that the record lacks rationalized medical evidence establishing causal relationship between the May 19, 2017 employment incident and the diagnosed left lower extremity and lumbar spine conditions.[19]

As appellant has not submitted sufficiently rationalized medical evidence to establish her claim that she sustained left lower extremity or lumbar spine conditions causally related to the accepted May 19, 2017 employment incident, she has not met her burden of proof.[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 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 left lower extremity and lumbar spine conditions causally related to the accepted May 19, 2017 employment incident.

[16] *See J.S.*, Docket No. 17-1039 (issued October 6, 2017).

[17] *G.S.*, Docket No. 18-1696 (issued March 26, 2019); *see M.M.*, Docket No. 17-1641 (issued February 15, 2018); *K.J.*, Docket No. 16-1805 (issued February 23, 2018); *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); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law).

[18] *See A.S.*, Docket No. 17-2010 (issued October 12, 2018); *Louis R. Blair, Jr.*, 54 ECAB 348 (2003).

[19] *See J.S.*, Docket No. 17-0507 (issued August 11, 2017).

[20] *K.L.*, Docket No. 18-1029 (issued January 9, 2019).

ORDER

IT IS HEREBY ORDERED THAT the January 4, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 10, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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