

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

_____)
J.H., Appellant)
)
and)
)
DEPARTMENT OF DEFENSE, DEFENSE)
COMMISSARY AGENCY, SHAW AIR FORCE)
BASE, SC, Employer)
_____)

Docket No. 21-0367
Issued: August 25, 2021

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 January 13, 2021 appellant filed a timely appeal from an October 15, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the October 15, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a lumbar spine condition causally related to the accepted August 29, 2020 employment incident.

FACTUAL HISTORY

On September 4, 2020 appellant, then a 25-year-old store worker, filed a traumatic injury claim (Form CA-1) alleging that on August 29, 2020 she suffered lower back pain and spasms when pulling a pallet inside a freezer while in the performance of duty. On the reverse side of the claim form the employing establishment acknowledged that appellant was injured in the performance of duty. Appellant stopped work on September 4, 2020.

In a development letter dated September 9, 2020, OWCP informed appellant that the evidence of record was insufficient 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 submit the necessary evidence.

OWCP subsequently received a September 10, 2020 report from Dr. Terry King, a Board-certified family practitioner, who noted that appellant strained her lower back while pulling a product out of a freezer on August 29, 2020. Dr. King provided physical examination findings and diagnosed lumbar radiculitis and low back strain.

In a partially legible note, dated September 15, 2020, Dr. King diagnosed low back strain and lumbar radiculopathy.

In a September 25, 2020 report, Dr. King noted that appellant's pain and loss of mobility was improving. He provided physical examination findings and diagnosed low back strain.

Appellant also submitted work status reports and order requisition forms, dated September 10 through 25, 2020, in which Dr. King diagnosed low back strain and lumbar radiculopathy. Dr. King noted that appellant could perform restricted-duty work at a sedentary level. He referred her for physical therapy treatment and requested a magnetic resonance imaging (MRI) scan of her lumbar spine.

By decision dated October 15, 2020, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted August 29, 2020 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 *Supra* note 1.

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, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁷

The medical evidence required to establish causal relationship between a claimed 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 specific employment factors identified by the employee.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a lumbar spine condition causally related to the accepted August 29, 2020 employment incident.

In support of her claim, appellant submitted reports from Dr. King, dated September 10 through 25, 2020, who described the employment incident and provided physical examination findings. Dr. King diagnosed lumbar radiculitis and low back strain and advised that appellant could perform restricted-duty work at a sedentary level. However, he did not offer an opinion as to whether any of appellant's diagnosed conditions were causally related to the accepted August 29, 2020 employment incident. 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

⁴ *S.O.*, Docket No. 21-0002 (issued April 29, 2021); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *R.J.*, Docket No. 20-1630 (issued April 27, 2021); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *J.C.*, Docket No. 20-1584 (issued April 23, 2021); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *K.M.*, Docket No. 21-0016 (issued April 21, 2021); *Elaine Pendleton*, 40 ECAB 1143 (1989); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *J.B.*, Docket No. 21-0011 (issued April 20, 2021); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *P.C.*, Docket No. 20-0855 (issued November 23, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

issue of causal relationship.¹⁰ Accordingly, these reports are insufficient to meet appellant's burden of proof to establish her claim.

As the medical evidence of record does not contain rationalized medical evidence establishing causal relationship between appellant's diagnosed conditions and the accepted August 29, 2020 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 lumbar spine condition causally related to the accepted August 29, 2020 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the October 15, 2020 decision of the Office of Workers' Compensation Programs is affirmed.¹¹

Issued: August 25, 2021
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

¹⁰ *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹¹ Upon return of the file, OWCP should consider administratively combining this file with other claims containing similar injuries.