United States Department of Labor
Employees' Compensation Appeals Board

R.Q., Appellant	)	
and	)	**Docket No. 20-0585**
	)	**Issued: September 10, 2021**
U.S. POSTAL SERVICE, FDR STATION POST OFFICE, New York, NY, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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 21, 2020 appellant, through counsel, filed a timely appeal from a December 17, 2019 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.[3]

[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*.

[3] The Board notes that following the December 17, 2019 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 November 3, 2017 employment incident.

FACTUAL HISTORY

On November 3, 2017 appellant, then a-52-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, at 9:20 a.m. that day, she injured the right side of her lower back when bending to lift a tub of flats while in the performance of duty. She stopped work on the same day.

In a November 3, 2017 medical report, Dr. Aaron Arredondo, Board-certified in emergency medicine, indicated that appellant experienced a work-related injury while lifting a heavy bin of mail earlier that day and presented with aching pain in her lower lumbar spine. He noted that she had no pertinent past medical or surgical history and that her physical examination findings were normal.

In a November 8, 2017 work restrictions note, Dr. Rasheed U. Jafar, a Board-certified internist, noted that appellant was seen for severe pain in her lower back and advised that she could return to work on December 6, 2017.

In a December 1, 2017 development letter, OWCP informed appellant of the deficiencies in her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a factual questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In a separate November 8, 2017 work restriction note, Dr. Jafar noted that appellant could return to work December 6 through 30, 2017.

A December 15, 2017 x-ray of the lumbar spine revealed no obvious fractures, dislocation, or subluxations.

In a December 15, 2017 medical report, Dr. Robert Drazic, an osteopath and Board-certified orthopedic surgeon, noted that appellant injured her lower back on November 3, 2017 when she was lifting a 15-pound tub of mail while at work. He indicated that she was immediately transported to a medical center and was unable to return to work since. Dr. Drazic conducted a physical examination, which revealed mild decreased range of motion and positive muscle tightness of the lumbar spine. He indicated that an x-ray of the lumbar spine was normal. Dr. Drazic diagnosed lower back pain and lumbar spine pain. He further noted that appellant was currently undergoing physical therapy and home exercises. In a medical note of even date, Dr. Drazic diagnosed lumbar spine sprain. In a work status evaluation (Form OWCP-5c) of even date, he noted that appellant was disabled due to a lower back injury until further notice.

In a December 22, 2017 work status report, Dr. Drazic placed appellant on temporary total disability status from December 31, 2017 and continuing.

The employing establishment, in a January 12, 2018 letter, controverted appellant's claim, asserting that he was previously out of work with a diagnosis related to the right side of the lower

back. It argued that his injury was caused by a questionable preexisting condition, not an employment incident. The employing establishment also submitted medical notes dated October 10 through 18, 2017, which indicated that appellant previously sought medical treatment for abdominal pain and a lumbar-related condition.

Appellant underwent physical therapy treatments from December 26 through 28, 2017.

By decision dated January 12, 2018, OWCP denied appellant's traumatic injury claim. It found that the evidence was insufficient to establish causal relationship between appellant's diagnosed condition and the accepted November 3, 2017 employment incident.

In a January 26, 2018 medical report, Dr. Drazic reiterated his examination findings. He reviewed the results of appellant's January 18, 2018 lumbar spine magnetic resonance imaging (MRI) scan, which demonstrated spinal canal stenosis at L3-4, small posterior annular fissure at L2-3, L4-5, and L5-S1, and severe left-sided neural foraminal narrowing. Dr. Drazic diagnosed lumbar spine stenosis, herniated discs, and degenerative changes. He opined that the accepted November 3, 2017 employment incident caused and/or aggravated appellant's diagnosed conditions.

On February 9, 2018 appellant requested reconsideration of OWCP's January 12, 2018 decision.

By decision dated February 23, 2018, OWCP denied modification of its January 12, 2018 decision.

In a March 2, 2018 medical report, Dr. Drazic diagnosed spinal stenosis without neurogenic claudication, lumbar intervertebral disc displacement, and lumbar intervertebral disc degeneration. In a medical note of even date, he noted his physical examination findings.

On March 27, 2018 appellant requested reconsideration of OWCP's February 23, 2018 decision.

In April 6 and May 8, 2018 medical reports, Dr. Drazic reiterated his examination findings and diagnoses.

By decision dated June 22, 2018, OWCP denied modification of its February 23, 2018 decision.

In a June 6, 2018 medical report and medical note of even date, Dr. Drazic again reiterated his examination findings and diagnoses.

In an October 25, 2018 medical report, Dr. Kanwarpaul Grewal, a Board-certified orthopedic surgeon, noted appellant's history of injury and indicated that appellant underwent physical therapy without improvement. He indicated that appellant had radiating pain down her left hip, tingling in left foot and toes, trouble sitting and walking for a while, and trouble sleeping. Dr. Grewal noted that appellant's lumbar spine x-rays revealed multilevel degenerative disc disease resulting in up to moderate spinal canal stenosis at L3-4 and up to marked foraminal stenosis at L5-S1 on the left. He diagnosed intractable back pain and lumbar radiculopathy with sensory changes. Based on Dr. Drazic's notes and reports, Dr. Grewal opined that appellant's

symptoms "correlated" with the accepted November 3, 2017 employment incident. He placed her on temporary disability status and indicated that appellant needed further treatment.

In November 5, 2018 medical report and note, Dr. Drazic reiterated his examination findings and diagnoses. He also reviewed appellant's new lumbar spine MRI scan and compared the results to the January 18, 2018 lumbar spine MRI scan. Dr. Drazic concluded that the new MRI scan revealed no significant interval change.

On December 3, 2018 appellant, through counsel, requested reconsideration of OWCP's June 22, 2018 decision.

By decision dated February 21, 2019, OWCP denied modification of its June 22, 2018 decision.

An October 18, 2018 lumbar spine MRI scan revealed no significant interval change from the January 18, 2018 lumbar spine MRI scan. It also revealed multilevel degenerative disc disease resulting in up to moderate spinal canal stenosis at L3-4 and up to marked foraminal stenosis at L5-S1 on the left.

Dr. Luis M. Fandos, Board-certified in pain medicine, noted in a March 19, 2019 medical report, that appellant felt sudden onset of low back pain on November 3, 2017 while picking up a tub of magazine at work. He indicated that she had no prior history of low back pain or accident involving the lumbar spine. On physical examination, Dr. Fandos found that appellant had a total impairment and inability to perform any work duties. He indicated that she currently needed help to get dressed and undressed. Dr. Fandos reviewed appellant's October 18, 2018 lumbar spine MRI scan and diagnosed lumbar radiculitis and radiculopathy. He opined that the accepted November 3, 2017 employment incident as described was the competent medical cause of appellant's injury. Dr. Fandos further concluded that her complaints were "consistent" with the history of injury, which was also consistent with his objective findings. In an order form of even date, he diagnosed lumbar radiculopathy and ordered an epidural steroid injection.

In a March 20, 2019 general medical and surgical authorization request form, Dr. Fandos diagnosed lumbar radiculopathy and requested authorization to perform a transforaminal epidural injection.

Dr. Grewal noted in a March 28, 2019 medical report that appellant's pain had increased since her last visit. He indicated that bending and lifting boxes as part of her work on November 3, 2017 was the mechanism of her injury. Dr. Grewal noted physical examination findings and repeated his diagnoses. He opined that bending and lifting "likely caused" the herniation or disc osteophyte to worsen, making appellant more symptomatic. Dr. Grewal explained that lumbar spondylolisthesis could potentially happen as well or be worsened with the process of bending and lifting.

In an April 18, 2019 medical report, Dr. Drazic reiterated his examination findings and diagnoses. He noted the results of the April 18, 2019 lumbar spine x-ray, which revealed multilevel degenerative changes, and the April 18, 2019 lumbar spine MRI scan, which revealed no significant interval change. Dr. Drazic opined that despite squatting down to use her legs for strength and leverage when lifting the tub of mail, the accepted November 3, 2017 employment incident aggravated appellant's lumbar spine, including the bulging discs and spinal stenosis,

which then caused her symptoms and discomfort. He concluded that lifting the tub of mail caused a shearing force within her lumbar spine.

In a June 10, 2019 medical report, Dr. Drazic repeated his examination findings and diagnoses. He opined that lifting the tub of mail during the accepted November 3, 2017 employment incident caused a shearing force within appellant's lumbar spine which was greater than the load bearing capacity in her spine, thus, creating local traumatic inflammation. Dr. Drazic noted that she had radiographic evidence of spinal stenosis. He explained that spinal stenosis caused a pinching of the spinal cord and/or nerve roots, which led to pain, cramping, weakness, or numbness. Dr. Drazic found that the traumatic inflammation further exacerbated spinal stenosis. He explained that the pain triggered difficulties in performing daily activities and being unable to perform exercises adequately leading to core muscular weakness, further exacerbating and perpetuating appellant's spinal stenotic symptoms.

In an August 30, 2019 medical report, Dr. Drazic repeated his examination findings, diagnoses, and opinion on causal relationship between appellant's injuries and the mechanism of injury.

On September 19, 2019 appellant, through counsel, requested reconsideration.

In a November 22, 2019 medical report, Dr. Drazic reiterated his examination findings and diagnoses.

By decision dated December 17, 2019, OWCP denied modification of the February 21, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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 limitation of FECA,[5] 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.[6] 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.[7]

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. The first the first component is that

[4] *Id*.

[5] *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).

[6] *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).

[7] *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).

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.[8]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[9] 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.[10]

In any 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.[11]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a lumbar spine condition causally related to the accepted November 3, 2017 employment incident.

In his medical reports dated January 26 through November 5, 2018, Dr. Drazic diagnosed lumbar spine pain, lumbar spine stenosis without neurogenic claudication, herniated discs, lumbar intervertebral disc displacement, and lumbar intervertebral disc degeneration. He opined that lifting the 15-pound tub of mail on November 3, 2017 at work caused appellant's diagnosed conditions. While he provided an affirmative opinion on causal relationship, Dr. Drazic did not offer any medical rationale sufficient to explain how and why he believes the accepted November 3, 2017 employment incident could have resulted in or contributed to her diagnosed conditions. Without explaining how lifting the 15-pound tub of mail caused or contributed to appellant's injury, these reports are of limited probative value.[12]

On October 25, 2018 Dr. Grewal opined that, after reviewing appellant's history of injury and Dr. Drazic's reports, appellant's lumbar radiculopathy "correlated" with the accepted November 3, 2017 employment incident. As stated previously, without explaining how,

[8] *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).

[9] *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).

[10] *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).

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *M.S.*, Docket No. 19-0913 (issued November 25, 2019).

[12] *See A.P.*, Docket No. 19-0224 (issued July 11, 2019).

physiologically, the movements involved in the employment incident caused or contributed to appellant's injury, Dr. Grewel's October 25, 2018 report is also of limited probative value.[13]

Dr. Fandos, in his March 19, 2019 medical report, described the accepted November 3, 2017 employment incident. He opined that her lumbar radiculitis and radiculopathy were causally related to the accepted employment incident. While he also provided an affirmative opinion which supported causal relationship, Dr. Fandos did not provide a pathophysiological explanation as to how the accepted incident either caused or contributed to appellant's diagnosed conditions.[14] A mere conclusory opinion provided by a physician without the necessary rationale explaining how and why the incident was sufficient to result in the diagnosed medical condition is insufficient to meet a claimant's burden of proof to establish a claim.[15] For this reason, Dr. Fandos's March 19, 2019 report is also insufficient to meet appellant's burden of proof.

Dr. Grewal, in his March 28, 2019 medical report, diagnosed back pain and lumbar radiculopathy and opined that bending and lifting boxes as part of appellant's work on November 3, 2017 was the mechanism of her injury. The Board, however, finds that Dr. Grewal's opinion that bending and lifting "likely caused" the herniation or disc osteophyte to worsen is speculative and equivocal and, thus, insufficient to establish appellant's burden of proof.[16]

In his medical reports dated April 18 through November 22, 2019, Dr. Drazic noted that appellant had radiographic evidence of spinal stenosis. He opined that despite squatting down to use her legs for strength and leverage, lifting the tub of mail during the accepted November 3, 2017 employment incident caused a shearing force within her lumbar spine, creating local traumatic inflammation. Although Dr. Drazic indicated that appellant had no other significant history, he opined that the traumatic inflammation further exacerbated her preexisting spinal stenosis, aggravating the lumbar spine. As noted above, the Board has consistently held that complete medical rationalization is particularly necessary when there is a preexisting condition involving the same body part, and has required medical rationale differentiating between the effects of the work-related injury and the preexisting condition in such cases.[17] The Board finds that Dr. Drazic provided no such medical rationale in support of his opinion regarding the aggravation of appellant's lumbar condition. These reports are, therefore, insufficient to establish appellant's claim.

In his November 3, 2017 medical report, Dr. Arredondo indicated that appellant was treated for aching pain in her lower lumbar spine. Similarly, Dr. Jafar, in his November 8, 2017

[13] *Id*.

[14] *Supra* note 12 at Chapter 2.805.3e (January 2013); *D.F.*, Docket No. 20-0093 (issued June 15, 2020); *Victor J. Woodhams, supra* note 10.

[15] *J.O.*, Docket No. 19-0326 (issued July 16, 2019).

[16] The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value. *R.C.*, Docket No. 18-1695 (issued March 12, 2019); *see Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

[17] *Supra* note 12.

work restrictions note, noted that appellant was seen for severe pain in her lower back and Dr. Drazic, in his December 15, 2017 medical report, diagnosed lower back pain and lumbar spine pain. The Board has consistently held that a diagnosis of "pain" does not constitute the basis for payment of compensation, as pain is a symptom rather than a specific diagnosis.[18] Therefore, these reports are insufficient to establish appellant's claim.

Dr. Drazic, in his December 15, 2017 Form OWCP-5c, December 22, 2017 work status report, and medical notes dated January 26 through November 5, 2018, noted his physical examination findings and placed appellant on temporary total disability status. He, however, did not provide a specific diagnosis of an injury or medical condition. The Board has held that medical reports which do not provide a firm diagnosis and render an opinion on causal relationship are of no probative value and are insufficient to establish the claim.[19] Accordingly, these notes are insufficient to satisfy appellant's burden of proof to establish her claim.[20]

In a December 15, 2017 medical note, Dr. Drazic diagnosed lumbar spine sprain. However, he did not provide an opinion on the cause of appellant's conditions. Similarly, Dr. Fandos, in his order form dated March 19, 2019, diagnosed lumbar radiculopathy, but did not address causal relationship. Medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.[21] As neither physician addressed causal relationship, these reports are also insufficient to meet appellant's burden of proof.

Appellant also submitted December 15, 2017 x-rays and an October 18, 2018 MRI scan report addressing her lumbar spine conditions. The Board has held, however, that diagnostic test reports standing alone lack probative value as they do not provide an opinion on causal relationship between an employment incident and a diagnosed condition.[22]

Finally, the record also contains physical therapy treatment reports. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers

[18] *T.S.*, Docket No. 20-0343 (issued July 15, 2020); *J.P.*, Docket No. 19-0303 (issued August 13, 2019).

[19] *R.L.*, Docket No. 20-0284 (issued June 30, 2020); *S.H.*, Docket No. 19-1897 (issued April 21, 2020).

[20] *T.G.*, Docket No. 19-0904 (issued November 25, 2019); *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[21] *H.J.*, Docket No. 20-0282 (issued July 21, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[22] *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

are not considered "physician[s]" as defined under FECA.[23] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[24]

As appellant has not submitted rationalized medical evidence establishing causal relationship between her lumbar spine conditions and the accepted November 3, 2017 employment incident, the Board finds that she has not met her burden of proof to establish her claim.

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 lumbar conditions causally related to the accepted November 3, 2017 employment incident.

[23] 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 also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (nurse practitioners and physical therapists are not considered physicians 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).

[24] *See T.W.*, Docket No. 19-1412 (issued February 3, 2020); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, *id*.

ORDER

IT IS HEREBY ORDERED THAT the December 17, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 10, 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