

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

T.F., Appellant)

and)

DEPARTMENT OF THE TREASURY,)
INTERNAL REVENUE SERVICE, CRIMINAL)
INVESTIGATION, Washington, DC, Employer)
_____)

**Docket No. 21-0516
Issued: September 15, 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
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 17, 2021 appellant filed a timely appeal from an August 21, 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 August 21, 2020 decision, appellant submitted additional evidence to OWCP. 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 medical condition causally related to the accepted January 6, 2020 employment incident.

FACTUAL HISTORY

On January 18, 2020 appellant, then a 46-year-old criminal investigator/special agent, filed a traumatic injury claim (Form CA-1) alleging that on January 6, 2020 she sustained a lower back injury when she was exercising by running through a neighborhood while in the performance of duty. She asserted that, after running, her “lower back felt different,” and she reported that her back pain worsened as the days passed and then started to radiate down into her right leg and hip.³ Appellant stopped work on January 15, 2020. OWCP assigned the claim File No. xxxxxx383 and administratively approved payment for a limited amount of medical expenses without formally adjudicating the claim.⁴

In support of her claim, appellant submitted a January 14, 2020 report from Dr. Jeffrey Sabloff, a Board-certified orthopedic surgeon, who advised that appellant had been disabled from work since January 14, 2020 and could not return to work until after her next scheduled appointment on January 28, 2020, when further disability would be determined. On January 28, 2020 Dr. Sabloff indicated that appellant had been disabled since January 28, 2020 and could not return to work until February 18, 2020, when further disability would be determined. The findings of a February 12, 2020 magnetic resonance imaging (MRI) scan of appellant’s lumbar spine contained an impression of mild levoscoliosis, disc disease at L4-5 and L5-S1, and mild degenerative changes. On February 18, 2020 Dr. Sabloff noted that appellant had been disabled since February 18, 2020 and could not return to work until March 17, 2020, when further disability would be determined.

In a February 19, 2020 attending physician’s report (Form CA-20), Dr. Sabloff noted, regarding the history of injury, “[i]mpact from running due to prior back injury sustained at work,” and diagnosed lumbar disc herniation and degenerative disc disease, lumbar, related to the reported employment activity. He checked a box marked “Yes” to indicate that the diagnosed conditions were caused or aggravated by the reported employment activity and added the notation, “Due to fall. No prior injury.” Dr. Sabloff found that appellant was totally disabled for the period January 14 through March 17, 2020. In a duty status report (Form CA-17) dated March 5, 2020, he listed the date of injury as January 6, 2020 and noted regarding how the injury occurred,

³ Appellant asserted that she sustained a prior back injury in the form of a herniated disc with a 10 percent “disability rating” as a result of a motor vehicle accident.

⁴ In a separate claim, assigned OWCP File No. xxxxxx506, OWCP had previously accepted that appellant sustained a June 18, 1998 traumatic injury in the form of neck and lumbar sprains as a result of a work-related motor vehicle accident. In another claim, assigned OWCP File No. xxxxxx845, appellant claimed a low back injury due to a November 19, 2002 motor vehicle accident at work, but the claim was denied by OWCP on January 13, 2003. In another claim, assigned OWCP File No. xxxxxx691, OWCP had previously accepted that appellant sustained a November 28, 2006 traumatic injury in the form of a lumbosacral strain when she was moving boxes at work and felt something pop in her low back. OWCP has not administratively combined these claims with the current claim, File No. xxxxxx383.

“[i]mpact from running due to prior back injury sustained at work from a [motor vehicle accident]. [Form CA-1] is on file -- herniated disc.” Dr. Sabloff diagnosed lumbosacral sprain “due to injury” and found that appellant was totally disabled from work. In a March 6, 2020 Form CA-17 report, he listed the date of injury as January 6, 2020 and provided the same description of the injury mechanism as in his March 5, 2020 report. Dr. Sabloff diagnosed lumbar disc herniation “due to injury” and advised that appellant was totally disabled from work.

In a March 17, 2020 report, Dr. Sabloff indicated that appellant could return to light-duty work on March 18, 2020 with restrictions of teleworking at home for four hours per day until her follow-up appointment on April 7, 2020. Appellant submitted unsigned reports, dated between February 13 and March 23, 2020, which reported the findings of physical therapy sessions. She also submitted rehabilitation flowsheets from the same period, which contained illegible signatures.

In a March 25, 2020 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her as to the type of additional factual and medical evidence required and provided a questionnaire for her completion. By separate development letter of even date, OWCP requested additional information from the employing establishment, including whether appellant’s work required her to engage in the reported January 6, 2020 activities. It afforded both parties 30 days to respond.

Appellant submitted an April 2, 2020 statement in which she indicated that on January 6, 2020 she was running/jogging in her neighborhood for approximately 15 minutes as part of a work-related physical fitness program when she felt a strange sensation and pain in her back. She reported that she bent down on one knee to stretch her muscles, and then lost her balance and fell to the ground.⁵ Appellant also submitted an exercise activity log, signed by appellant on March 26, 2020 and a supervisor on April 7, 2020, which contained a January 6, 2020 entry referencing flexibility exercises and jogging.

Appellant submitted a March 18, 2020 Form CA-20 report from Dr. Sabloff who noted regarding the history of injury, “[i]mpact from running due to prior back injury sustained at work,” and diagnosed lumbar disc herniation and degenerative disc disease (lumbar) related to the reported employment activity. Dr. Sabloff checked a box marked “Yes” to indicate that the diagnosed conditions were caused or aggravated by the employment activity and added the notation, “Due to fall.” He found that appellant was totally disabled from work for the period January 14 through March 17, 2020, and indicated that she could return to light-duty work on March 18, 2020.

In a May 1, 2020 report, Dr. Sabloff advised that appellant could return to light-duty work on April 8, 2020 with restrictions of teleworking at home for four hours per day until her follow-up appointment on April 28, 2020. In another May 1, 2020 report, he indicated that appellant could return to work on April 29, 2020 “without any law enforcement component” until her

⁵ Regarding prior back problems, appellant indicated that she was involved in a work-related motor vehicle accident approximately 18 or 19 years prior and had experienced “back/leg issues” since the accident.

follow-up appointment on May 26, 2020. Appellant also submitted an unsigned physical therapy report dated March 18, 2018.

In an April 7, 2020 statement, appellant's supervisor advised that appellant was participating in an approved physical fitness program required by her work at the time of the claimed injury on January 6, 2020.

By decision dated May 4, 2020, OWCP accepted that appellant was in the performance of duty on January 6, 2020 when she ran through her neighborhood, felt pain in her back and right hip/leg, and fell onto the ground while kneeling on one knee. However, it denied her traumatic injury claim because she failed to submit sufficient medical evidence to establish a diagnosed medical condition causally related to the accepted January 6, 2020 employment incident.

On May 29, 2020 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. In an accompanying statement, she indicated that the work-related motor vehicular accident to which she previously referred had occurred on June 18, 1998.⁶ Appellant submitted a January 14, 2020 report from Dr. Sabloff who noted that appellant reported that, beginning approximately one week prior "with no specific injury," she experienced mid-back pain, which radiated into her low back.⁷ Dr. Sabloff provided physical examination findings and diagnosed degenerative disc disease of the lumbar spine. On January 28, 2020 he again diagnosed degenerative disc disease of the lumbar spine and recommended additional diagnostic testing of the lumbar spine. In February 18, April 7 and 28, 2020 reports, Dr. Sabloff diagnosed degenerative disc disease of the lumbar spine and lumbar disc herniation.

In a May 12, 2020 report, Dr. Sabloff summarized his treatment of appellant since January 14, 2020 and advised that her diagnosis was herniated disc at L4-5, bulging disc at L5-S1, and lumbar sprain. He indicated that appellant could not perform her special agent job at full capacity and noted that he had asked her not to perform heavy activities until she was completely healed. In a May 19, 2020 report, Dr. Sabloff diagnosed degenerative disc disease of the lumbar spine and lumbar disc herniation. He opined that appellant, by having to run in order to maintain her special agent position, "exacerbated a preexisting condition." Dr. Sabloff advised that appellant would remain on limited-duty work.⁸ In another May 19, 2020 report, he indicated that appellant could return to work on May 26, 2020 "without any law enforcement component" until her next appointment on July 7, 2020.

By decision dated August 21, 2020, OWCP's hearing representative conducted a review of the written record and affirmed the May 4, 2020 decision.

⁶ Appellant also submitted an undated document in which she answered questions from an unidentified source regarding the 1998 motor vehicle accident.

⁷ Appellant reported that she had been involved in a motor vehicle accident 19 years prior and had a herniated disc

⁸ The Board notes that the case record contains a version of the May 19, 2020 report that includes handwritten edits initialed by Dr. Sabloff.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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, 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.⁹ 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.¹⁰

To determine if an employee has 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 component is whether the employee actually experienced the employment incident that allegedly occurred.¹¹ The second component is whether the employment incident caused a personal injury.¹²

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹³ A physician's opinion on whether there is causal relationship between the diagnosed condition and the accepted employment incident 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 the specific employment incident.¹⁴

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.¹⁵

⁹ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

¹⁰ *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).

¹¹ *B.P.*, Docket No. 16-1549 (issued January 18, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹² *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

¹³ *L.S.*, Docket No. 19-1769 (issued July 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁴ *B.C.*, Docket No. 20-0221 (issued July 10, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). See *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted January 6, 2020 employment incident.

Appellant submitted a February 19, 2020 Form CA-20 report from Dr. Sabloff who noted, regarding the history of injury, “[i]mpact from running due to prior back injury sustained at work,” and diagnosed lumbar disc herniation and degenerative disc disease, lumbar, related to the reported employment activity. Dr. Sabloff checked a box marked “Yes” to indicate that the diagnosed conditions were caused or aggravated by the reported employment activity and added the notation, “Due to fall. No prior injury.” On March 18, 2020 he produced a similar Form CA-20 report in which he checked a box marked “Yes” to indicate that the same diagnosed conditions were caused or aggravated by the employment activity and added the notation, “Due to fall.” Appellant’s burden of proof includes the necessity of furnishing an affirmative opinion from a physician who supports his or her conclusion with sound medical reasoning.¹⁶ Dr. Sabloff provided no rationale for his opinion on causal relationship in these reports; therefore, these reports do not provide an opinion on whether the claimed disability is causally related to the accepted employment injury.¹⁷ As such, Dr. Sabloff’s February 19 and March 18, 2020 reports are insufficient to discharge appellant’s burden of proof regarding her claim for a January 6, 2020 traumatic employment injury.

In a March 5, 2020 Form CA-17 report, Dr. Sabloff listed the date of injury as January 6, 2020 and noted regarding how the injury occurred, “[i]mpact from running due to prior back injury sustained at work from a [motor vehicle accident]. [Form CA-1] is on file -- herniated disc].” He diagnosed lumbosacral sprain “due to injury” and found that appellant was totally disabled from work. Dr. Sabloff produced a similar Form CA-17 report on March 6, 2020, although he diagnosed lumbar disc herniation “due to injury,” instead of lumbosacral sprain “due to injury.” The Board finds, however, that these reports are of limited probative value because Dr. Sabloff did not provide a rationalized medical opinion explaining the medical process through which the accepted January 6, 2020 employment incident could have caused the diagnosed conditions.¹⁸ 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.¹⁹ Therefore, these reports are insufficient to establish appellant’s traumatic injury claim.

In a May 19, 2020 report, Dr. Sabloff diagnosed degenerative disc disease of the lumbar spine and lumbar disc herniation and opined that appellant, by having to run in order to maintain her special agent position, “exacerbated a preexisting condition.” Although he suggested a work-related cause for an aggravation of appellant’s back condition, his report is of limited probative

¹⁶ *J.A.*, Docket No. 18-1586 (issued April 9, 2019); *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

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

¹⁸ The Board notes that, although appellant mentioned a prior back injury due to a June 18, 1998 motor vehicle accident in some of her statements of record, she has only claimed that her back and right hip/leg conditions on and after January 6, 2020 were causally related to the accepted January 6, 2020 employment incident.

¹⁹ *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

value because he did not describe the January 6, 2020 employment incident or provide a rationalized medical opinion relating a specific diagnosed condition to that employment incident. As noted, 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.²⁰ Therefore, this report also is insufficient to establish appellant's traumatic injury claim.

Appellant submitted several brief reports in which Dr. Sabloff denoted various periods of partial and total disability, including reports dated January 14 and 28, February 18, March 17, and May 1 and 19, 2020. In January 14 and 28, February 18, and April 7 and 28, 2020 reports, Dr. Sabloff diagnosed degenerative disc disease of the lumbar spine and/or lumbar disc herniation. In a May 12, 2020 report, he summarized his treatment of appellant since January 14, 2020 and advised that her diagnosis was herniated disc at L4-5, bulging disc at L5-S1, and lumbar sprain. However, these reports are of no probative value regarding appellant's claim for a January 6, 2020 traumatic employment injury because they do not contain an opinion that appellant sustained a specific diagnosed condition causally related to the accepted January 6, 2020 employment incident. The Board has held that a medical report is of no probative value on a given medical matter if it does not contain an opinion on that matter.²¹ Therefore, these reports are insufficient to establish appellant's claim.

Appellant submitted unsigned reports, dated between February 13 and March 23, 2020, which reported the findings of physical therapy sessions. She also submitted rehabilitation flow sheets from the same period that contained illegible signatures. However, these reports are of no probative value regarding appellant's traumatic injury claim. The Board has held that a report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8101(2) and reports lacking proper identification do not constitute probative medical evidence.²² In addition, the Board notes that the report of a physical therapist does not constitute probative medical evidence as a physical therapist is not a physician under FECA.²³

Appellant also submitted the findings of a February 12, 2020 MRI scan of the lumbar spine that contained an impression of mild levoscoliosis, disc disease at L4-5 and L5-S1, and mild

²⁰ *Id.*

²¹ *T.H.*, Docket No. 18-0704 (issued September 6, 2018). *See also L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018); *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

²² *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

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); *S.T.*, Docket No. 17-0913 (issued June 23, 2017) (a physical therapist is not a physician 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).

degenerative changes. However, diagnostic studies lack probative value as they do not address whether employment factors caused the diagnosed condition.²⁴

As appellant has not submitted rationalized medical evidence establishing causal relationship between her diagnosed conditions and the accepted January 6, 2020 employment incident, she 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 medical condition injury causally related to the accepted January 6, 2020 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the August 21, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 15, 2021
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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

²⁴ C.S., Docket No. 19-1279 (issued December 30, 2019).