

ISSUE

The issue is whether appellant has met her burden of proof to establish a back condition causally related to the accepted March 15, 2019 employment incident.

FACTUAL HISTORY

On March 21, 2019 appellant, then a 48-year-old psychiatric nurse, filed a traumatic injury claim (Form CA-1) alleging that on March 15, 2019 she sustained a back injury when escorting an uncooperative patient to a seclusion room who attempted to pull her to the ground as he was kicking and swinging his body and arms while in the performance of duty. She stopped work on the date of injury.

In a March 27, 2019 development letter, OWCP informed appellant that it had received no evidence in support of her traumatic injury claim. It advised her of the type of factual and medical evidence necessary to establish her claim. OWCP afforded appellant 30 days to submit the necessary evidence.

A March 21, 2019 note from Chris Hull, a nurse practitioner in the employing establishment's health unit, indicated that appellant was off work March 18 and 19, 2019 due to an injury. In a second March 21, 2019 note, Mr. Hull excused her from work through March 26, 2019. On March 26, April 3 and 8, 2019, he restricted appellant to no lifting, pushing, or pulling greater than 10 pounds. A separate April 8, 2019 note noted that appellant was released to full-duty work without restrictions.

By decision dated May 2, 2019, OWCP accepted that the March 15, 2019 employment incident occurred. However, it denied appellant's traumatic injury claim, finding that she had not submitted evidence containing a medical diagnosis in connection with the injury and/or events. Thus, OWCP concluded that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive evidence. In a March 21, 2019 report, Dr. Bradford Mersereau, Board-certified in family medicine at the employing establishment's health unit, indicated that four days prior, appellant and another staff member were attempting to physically restrain a patient during a behavior emergency response and was now feeling mid-to-lower back pain centered and radiating to both sides of her mid back. On physical examination appellant described discomfort with twisting, turning, bending and extending her back. Dr. Mersereau diagnosed a mid-to-lower back strain and held appellant off from work until March 26, 2019.

A March 26, 2019 physical therapy note indicates that appellant related complaints of pain primarily in the cervical spine, but was also experiencing mid-back pain and an exacerbation of prior chronic low back pain after a "March 22, 2019" work injury.

In an April 8, 2019 addendum, Dr. Mersereau noted that appellant had been improving in physical therapy and working with restrictions. Later that day, appellant requested to be released to full-duty work as her current restrictions fit within her current position as a psychiatric nurse.

In a May 3, 2019 follow-up visit, Dr. Mersereau noted that appellant related complaints in her cervical area and left shoulder blade. Appellant had resumed full-duty work on April 8, 2019, but was having increased discomfort and lack of motion that she related had started at the time of the original injury. Dr. Mersereau recommended a magnetic resonance imaging (MRI) scan of the cervical spine and prescribed medications and physical therapy. A May 3, 2019 note from Mr. Hull documented that appellant was off from work on April 28 and 29 and May 2, 2019. On May 21, 2019 Mr. Hull requested that she be provided with a sit-to-stand desk.

On August 15, 2019 appellant requested review of the written record before a representative of OWCP's Branch of Hearings and Review. By decision dated August 23, 2019, OWCP found the request untimely filed, but further exercised its discretion and determined that her request could equally well be addressed by requesting reconsideration from the district office and submitting evidence not previously considered.

OWCP continued to receive medical evidence. A May 21, 2019 physical therapy note indicated ongoing symptoms of the neck and mid back.

In a July 18, 2019 report, Dr. John Fahrback, a Board-certified neurosurgeon, noted a history that appellant was involved in an altercation on the floor after which she developed significant neck pain which eventually migrated to the left arm. He noted that the pain radiated down the left arm in the C6 distribution, which was made worse by physical therapy, activity, and use of the left arm at work. Dr. Fahrback performed a physical examination and noted weakness of the left biceps and diminished sensation in the distal forearm along the radial aspect between the first and second digits. He reviewed an MRI scan of the cervical spine and noted a left paracentral disc osteophyte complex resulting in up to 50 percent foraminal narrowing. Dr. Fahrback discussed treatment options, including surgery, and diagnosed cervical disc displacement at C5-6 and spondylosis with radiculopathy of the cervical region.

On October 15, 2019 appellant requested reconsideration.

By decision dated January 23, 2020, OWCP modified, the May 2, 2019 decision, finding that Dr. Mersereau provided a valid diagnosis of mid-to-lower back strain, cervical disc displacement at C5-6, and other spondylosis with radiculopathy of the cervical region. However, the claim remained denied as the medical evidence of record was insufficient to establish a causal relationship between the diagnosed conditions and the accepted March 15, 2019 employment incident.

On May 13, 2020 appellant requested reconsideration of the January 23, 2020 decision. She included an operative report of Dr. Fahrback dated September 4, 2019, indicating that she had undergone left C5-6 laminoforaminotomy with medial facetectomy. Dr. Fahrback's postoperative diagnosis was left C6 radiculopathy. In a follow-up note dated September 17, 2019, he noted appellant's arm pain had improved. Dr. Fahrback performed a physical examination and recommended physical therapy and for her to remain off from work. On November 12, 2019 he noted onset of severe right-sided arm pain after two sessions of physical therapy. Dr. Fahrback performed a physical examination, which indicated weakness of the right biceps. He recommended steroids, an MRI, scan and flexion-extension x-rays. On November 21, 2019 Dr. Fahrback noted tenderness over the right epicondyle and diagnosed lateral epicondylitis due

to overuse of her right arm. On January 6, 2020 he referred her for an orthopedic consult to evaluate the lateral epicondylitis of the right elbow.

A February 5, 2020 note of Dr. Matthew Binkley, who specializes in orthopedic surgery, indicated that appellant complained of right elbow pain, but no diagnosis was offered. A May 7, 2020 letter from a representative of Dr. Fahrbach's office who excused appellant from work from May 7 through June 22, 2020.

In a statement dated May 5, 2020, appellant related that, while working on March 15, 2019 in an inpatient psychiatric unit, a patient became agitated and threatened to harm himself. She and other staff members attempted physical restraint of the patient. While appellant attempted to hold him as tightly as she could, the patient was swinging his arms and legs and thrashing his body, which caused her significant pain in her upper back area. Appellant related her attempts to rest and use ice on her days off and outline her treatment with a nurse practitioner in employee health. She returned to work and experienced worsening pain. Appellant ultimately underwent an MRI scan and then surgery with Dr. Fahrbach on September 4, 2019. Since the surgery, she has been experiencing right arm pain due to overcompensating.

By decision dated May 20, 2020, OWCP denied modification of the January 23, 2020 decision.

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 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. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is

³ *Supra* note 1.

⁴ *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).

⁵ *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).

⁶ *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).

whether the employment incident caused a personal injury and can be established only by medical evidence.⁷

The medical evidence required to establish a 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 back condition causally related to the accepted March 15, 2019 employment incident.

In a March 21, 2019 report, Dr. Mesereau diagnosed a mid-to-low back strain, which occurred after appellant was attempting to physically restrain a patient during a behavioral emergency response. His remaining reports detail ongoing treatment, provided work restrictions and referrals to therapy, testing, and neurosurgery, but do not address 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.¹⁰ Therefore, appellant has not met her burden of proof with these submissions.

In a July 18, 2019 report, Dr. Fahrbach diagnosed cervical disc displacement at C5-6 and other spondylosis with radiculopathy of the cervical region after appellant was involved in an altercation with a patient. His operative report of September 4, 2019 indicates he performed left C5-6 laminoforaminotomy with medial facetectomy and rendered a diagnosis of left C6 radiculopathy. In follow-up notes dated September 17 and November 12 and 21, 2019, Dr. Fahrbach outlined appellant's ongoing treatment and complaints. On November 21, 2019 he included an additional diagnosis of lateral epicondylitis due to overuse of her right arm. However, none of Dr. Fahrbach's reports contain an opinion on the issue of causal relationship between the accepted employment incident and the diagnosed conditions. Therefore, his reports are of no probative value and are insufficient to establish appellant's claim.¹¹

⁷ *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).

⁸ *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).

⁹ *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).

¹⁰ *S.W.*, Docket No. 19-1579 (issued October 9, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹¹ *Id.*

A February 5, 2020 note of Dr. Binkley indicates that appellant complained of right elbow pain, but provided no diagnosis. A medical report lacking a firm diagnosis is of no probative value.¹²

A work excuse letter dated May 7, 2020 from Dr. Binkley's office holding appellant off work May 7 through June 22, 2020 contained no diagnosis and bore a signature of a lay person. Because causal relationship is a medical issue that can only be proven by probative medical opinion evidence, lay persons are not competent to render medical opinions.¹³

The remaining records are reports from physical therapists and work slips from a nurse practitioner. These reports have no probative value, however, because physical therapists and nurse practitioners are not considered physicians as defined under FECA.¹⁴

As appellant has not submitted rationalized medical evidence establishing that her back condition was causally related to the accepted employment incident of March 15, 2019, the Board finds that 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 back condition causally related to the accepted March 15, 2019 employment incident.

¹² *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

¹³ *See A.T.*, Docket No. 18-1717 (issued May 10, 2019); *J.A.*, Docket No. 18-0882 (issued December 31, 2018); *James A. Long*, 40 ECAB 538 (1989).

¹⁴ Section 8101(2) of FECA provides as follows: "(2) 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* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *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). *See also R.L.*, Docket No. 19-0440 (issued July 8, 2019) (nurse practitioners and physical therapists are not considered physicians under FECA); *Jane White*, 34 ECAB 515, 518 (1983) (physical therapists are not considered physicians under FECA).

ORDER

IT IS HEREBY ORDERED THAT the May 20, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 5, 2022
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