

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

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<b>E.P., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 21-0936</b>
	)	<b>Issued: April 12, 2022</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Highland, NY, Employer</b>	)	
_____	)	

*Appearances:*  
Thomas S. Harkins, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 7, 2021 appellant, through counsel, filed a timely appeal from a January 21, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the January 21, 2021 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 condition causally related to the accepted October 27, 2019 employment incident.

## FACTUAL HISTORY

On October 27, 2019 appellant, then a 58-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that, on that day, she injured her low back when she lifted a package while in the performance of duty. She stopped work at the time of the alleged injury.

W.F., appellant's supervisor, completed and signed an authorization for examination and/or treatment (Form CA-16) on October 27, 2019. OWCP also received an official position description, noting that appellant's duties required loading and sorting mail.

In a development letter dated November 5, 2019, OWCP advised 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. OWCP afforded appellant 30 days to respond.

In response, appellant submitted a completed development questionnaire signed on November 8, 2019. She explained that on October 27, 2019 she had unloaded pallets of parcels from an online retailer. While sorting the packages, appellant lifted a large, heavy box and felt a stabbing pain in her spine. She could no longer bend her back or knees. Appellant reported the incident to her supervisor, who called an ambulance to transport appellant to a hospital. At the hospital, she was given an analgesic injection, oral medication, and lidocaine patches. A physician held appellant off work for three days. Appellant obtained a November 5, 2019 appointment with Dr. Karl Ziermann, an osteopathic physician Board-certified in internal medicine, who obtained x-rays and held her off work for one month to undergo physical therapy and pain management. She noted that she had no history of back problems prior to the October 27, 2019 incident. Appellant submitted additional evidence.

In an October 27, 2019 report, Dr. Matthew Stupple, Board-certified in emergency medicine, held appellant off work for three days. Hospital emergency department discharge instructions indicated a provisional diagnosis of sciatica.

In a December 6, 2019 report, Dr. Richard Dentico, Board-certified in sports medicine, provided a history of the October 27, 2019 employment incident. On examination, he observed limited lumbar range of motion, and tenderness to palpation of the lumbar paraspinals. Dr. Dentico diagnosed acute low back pain, lumbar spondylosis, and sacroiliac joint dysfunction. He prescribed medication and physical therapy.

By decision dated December 11, 2019, OWCP accepted that the October 27, 2019 employment incident occurred, as alleged, but denied appellant's claim as causal relationship had not been established between the diagnosed medical conditions and the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury or condition causally related to the accepted October 27, 2019 employment incident.

On November 18, 2020 appellant, through counsel, requested reconsideration. Counsel submitted additional medical evidence that he contended was sufficient to establish causal relationship between the accepted October 27, 2019 employment incident and the diagnosed lumbar conditions.

In an October 27, 2019 report, Alison Marques, a paramedic, noted that appellant related that she experienced severe, sudden sacral pain while at work after lifting a package then bending forward. Appellant was transported to a hospital emergency department.

In reports dated October 27, 2019, Dr. Stupple related appellant's account of the onset of severe, sudden low back pain with radiation to the sacrum/coccyx and right posterior leg after bending to lift something while at work. On examination, he observed pain originating in her back, reproducible with motion. Dr. Stupple stated an impression of right-sided sciatica, and a strain of the muscle, fascia, and tendons of the lower back.

In November 5, 2019 reports, Dr. Ziermann provided a history of the October 27, 2019 employment incident and treatment. On examination, he observed limited lumbar motion, bilaterally limited hip motion, and back pain with straight leg testing. Dr. Ziermann obtained x-rays of the lumbar spine, which demonstrated slight scoliosis with degenerative disc disease. He diagnosed acute back pain, lumbar spondylosis, and sacroiliac joint dysfunction. Dr. Ziermann prescribed medication and physical therapy.

In a November 22, 2019 report, on the attending physician's report, Part B of Form CA-16, Dr. Ziermann diagnosed lumbar spondylosis causally related to the October 27, 2019 employment incident. He checked a box indicating his support for causal relationship, and noted that appellant had "bent down to lift up a package and developed acute onset pain" requiring hospital treatment. Dr. Ziermann held her off work.

In a December 10, 2019 work capacity evaluation for musculoskeletal conditions (Form OWCP-5c), Dr. Dentico diagnosed sacroiliac joint dysfunction. He held appellant off work until January 15, 2020.

In a report dated August 6, 2020, Dr. Ziermann diagnosed acute low back pain, lumbar spondylosis, and sacroiliac joint dysfunction. He opined that it was reasonable that the October 27, 2019 employment incident "could cause" acute low back pain and sacroiliac joint dysfunction.

Dr. Dentico, in an August 17, 2020 report, noted that appellant reported symptomatic relief after a lumbar medial branch block injection. He diagnosed lumbar degenerative disc disease, lumbar foraminal stenosis, and lumbar spondylosis.

In an October 22, 2020 report, Dr. Dentico noted that appellant's lumbar condition was related to the October 27, 2019 employment incident. He returned her to full duty as she was asymptomatic and her lumbar pain was managed with activity modification.

By decision dated January 21, 2021, OWCP denied modification of the December 11, 2019 decision.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>4</sup> 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 FECA, that the claim was timely filed within the applicable time limitation period of FECA,<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a 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 whether the employment incident caused a personal injury.<sup>8</sup>

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>9</sup> 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.<sup>10</sup>

## ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a lumbar condition causally related to the accepted October 27, 2019 employment incident.

In reports dated October 27, 2019, Dr. Stupple related appellant's account of the onset of severe, sudden low back pain with sacral and right lower extremity radicular symptoms after

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<sup>4</sup> *Supra* note 2.

<sup>5</sup> *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).

<sup>6</sup> *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).

<sup>7</sup> *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).

<sup>8</sup> *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).

<sup>9</sup> *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).

<sup>10</sup> *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).

bending to lift something while at work. He noted findings on examination and stated an impression of right-sided sciatica, and a strain of the muscle, fascia, and tendons of the lower back. However, Dr. Stupple offered no opinion on causal relationship in these reports. Medical evidence that fails to address causation is of no probative value on that issue.<sup>11</sup> Therefore, the Board finds that the October 27, 2019 medical reports from Dr. Stupple are insufficient to establish causal relationship.

Appellant submitted an October 27, 2019 report by Ms. Marques, a paramedic, who related appellant's account of severe, sudden sacral pain after lifting a package and bending forward while at work. This report is insufficient to establish appellant's entitlement to FECA benefits. The Board has held that certain healthcare providers such as physician assistants and paramedics are not considered physicians as defined under FECA and, thus, are not competent to render medical opinions.<sup>12</sup> Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlements to FECA benefits.

Dr. Ziermann treated appellant beginning on November 5, 2019. He provided a consistent history of injury in his reports through August 6, 2020. In his November 22, 2019 report, Dr. Ziermann attributed appellant's lumbar spondylosis and sacroiliac joint dysfunction to bending to lift a package on October 27, 2019. He opined in an August 6, 2020 report that it was reasonable that the October 27, 2019 employment incident "could cause" sacroiliac joint dysfunction and the onset of acute low back pain. An opinion that it is reasonable that the October 27, 2019 employment incident could cause the diagnosed lumbar spondylosis and sacroiliac joint dysfunction is speculative in nature. The Board has held that medical opinions that are speculative and equivocal are of diminished probative value.<sup>13</sup> Dr. Ziermann's reports, therefore, are insufficient to meet appellant's burden of proof.

Dr. Dentico, in reports dated from December 6, 2019 through October 22, 2020, provided an accurate history of the October 27, 2019 employment injury. He diagnosed sacroiliac joint dysfunction and lumbar degenerative disc disease. Dr. Dentico opined in his October 22, 2020 report that appellant's lumbar condition was attributable to the October 27, 2019 employment incident. While he discussed the October 27, 2019 employment incident, he did not offer a rationalized medical opinion explaining how that incident caused appellant's diagnosed conditions.<sup>14</sup> Dr. Dentico did not explain how lifting a package then bending forward while at

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<sup>11</sup> *C.G.*, Docket No. 20-0957 (issued January 27, 2021); *L.G.*, Docket No. 20-0433 (issued August 6, 2020); *S.D.*, Docket No. 20-0413 (July 28, 2020); *S.K.*, Docket No. 20-0102 (issued June 12, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>12</sup> 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 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 *J.S.*, Docket No. 18-1085 (issued, February 12, 2019).

<sup>13</sup> *C.M.*, Docket No. 21-0435 (issued October 22, 2021); *S.O.*, Docket No. 21-0002 (issued April 29, 2021); *H.A.*, Docket No. 18-1455 (issued August 23, 2019); *Samuel Senkow*, 50 ECAB 370 (1999).

<sup>14</sup> *J.N.*, Docket No. 21-0606 (issued November 23, 2021); *T.W.*, Docket No. 20-0767 (issued January 13, 2021); see *H.A.*, Docket No. 18-1466 (issued August 23, 2019); *L.R.*, Docket No. 16-0736 (issued September 2, 2016).

work would have caused or contributed to sacroiliac joint dysfunction and lumbar degenerative disc disease. The Board has held that a medical opinion should reflect a correct history and offer a rationalized explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions.<sup>15</sup> Dr. Dentico's reports are, therefore, of limited probative value and insufficient to establish causal relationship.<sup>16</sup>

As the medical evidence of record is insufficient to establish causal relationship between appellant's diagnosed medical conditions and the accepted factors of her federal employment, 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 lumbar condition causally related to the accepted October 27, 2019 employment incident.<sup>17</sup>

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<sup>15</sup> *T.G.*, Docket No. 21-0175 (issued June 23, 2021); *J.D.*, Docket No. 19-1953 (issued January 11, 2021); *see K.W.*, Docket No. 19-1906 (issued April 1, 2020).

<sup>16</sup> *Id.*

<sup>17</sup> The Board notes that the employing establishment issued a Form CA-16, dated October 27, 2019. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *V.S.*, Docket No. 20-1034 (issued November 25, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 21, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 12, 2022  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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