United States Department of Labor
Employees' Compensation Appeals Board

T.M., Appellant	)	
and	)	**Docket No. 22-0220**
	)	**Issued: July 29, 2022**
U.S. POSTAL SERVICE, CARDISS COLLINS POST OFFICE, Chicago, IL, Employer	)	

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, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 22, 2021 appellant filed a timely appeal from a September 20, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish a diagnosed medical condition causally related to the accepted December 4, 2020 employment incident.

FACTUAL HISTORY

On December 9, 2020 appellant, then a 45-year-old city delivery specialist, filed a traumatic injury claim (Form CA-1) alleging that on December 4, 2020 she a sustained a back injury when delivering large packages while in the performance of duty. She asserted that her

[1] 5 U.S.C. § 8101 *et seq*.

back muscles began to tighten while working her delivery route, and that she experienced lower back pain. Appellant stopped work on the date of the claimed injury. She informed her supervisor of her condition the next morning. In a December 8, 2020 statement, appellant advised that she continued to experience back pain.

In notes dated December 8, 15, and 29, 2020, Dr. Zahra Ismail, a Board-certified internist, excused appellant from work for the period December 8 through 29, 2020 as she was "incapacitated from any work-related activities." In the December 29, 2020 note, she advised that appellant could return to work on January 4, 2021 to "partial duties" with a restriction of lifting no more than 25 pounds for the first week.

In a December 23, 2020 attending physician's report (Form CA-20), Dr. Ismail advised that appellant reported injuring her lower back when lifting packages at work on December 4, 2020. She listed physical examination findings of limited range of motion of the lower back due to pain and diagnosed acute lower back pain without sciatica. Dr. Ismail checked a box marked "Yes," indicating that the diagnosed condition was caused or aggravated by the December 4, 2020 employment activity. She found that appellant was totally disabled from work for the period December 4 through 30, 2020.

In a December 20, 2020 letter, appellant's immediate supervisor indicated that the employing establishment was challenging appellant's claim. She acknowledged that appellant delivered packages on December 4, 2020, but asserted that none of them weighed more than 11 pounds and 3 ounces.

In a January 4, 2021 development letter, OWCP notified appellant of the deficiencies of her claim. It advised her of the type of evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Appellant submitted a December 31, 2020 report from Vicki Lind, a nurse assigned to appellant by OWCP, who detailed her interactions with appellant. In a January 8, 2021 note, Dr. Ismail indicated that, commencing January 4, 2021, appellant was restricted from lifting more than 25 pounds, and noted that she may return to activities on February 1, 2021.

By decision dated February 23, 2021, OWCP accepted that appellant delivered packages in the performance of duty on December 4, 2020, as alleged. However, it denied her claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted December 4, 2020 employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On July 26, 2021 appellant requested reconsideration of the February 23, 2021 decision.

Appellant submitted an April 29, 2021 report from Dr. Sara Doss, a Board-certified internist, who indicated that appellant was seen on December 8, 2020 for acute low back pain that developed after lifting a heavy object at work. Dr. Doss noted that she diagnosed acute midline low back pain without sciatica and recommended rest from lifting and work. She advised that appellant underwent follow-up visits on December 15 and 29, 2020 and her pain improved significantly. Dr. Doss indicated that appellant was able to return to work on January 4, 2021.

In a May 28, 2021 Form CA-20, Dr. Doss indicated that appellant reported she was lifting a dresser and refrigerator at work on an unspecified date and developed acute low back pain. She advised that appellant had physical examination findings of tenderness of the paraspinal lumbar muscles at L2 through S1 without neurological deficits and diagnosed acute midline low back pain without sciatica. Dr. Doss checked a box marked "Yes" indicating that the diagnosed condition was caused or aggravated by the reported employment activity. She indicated that appellant was totally disabled, commencing December 4, 2020, and was able to resume regular duty on January 4, 2021.

In a July 16, 2021 report, Dr. Doss indicated that appellant was seen on December 8, 2020 for acute low back pain that developed after lifting a dresser and small refrigerator at work. Appellant reported that she felt a pulling sensation and some pain while engaging in the moving activity and woke up the next day with significant lower pain such that she could not get out of bed without experiencing severe pain. Dr. Doss indicated, "[t]his appears to establish a causal relationship between the diagnosed condition and the event at work." She indicated that she diagnosed acute midline low back pain without sciatica and recommended medication, a stretching regimen, and rest from lifting and work. Dr. Doss advised that appellant underwent follow-up visits on December 15 and 29, 2020 and her pain improved significantly. She indicated that appellant was able to return to work on January 4, 2021.

By decision dated September 20, 2021, OWCP denied modification of its February 23, 2021 decision.

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 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.[2] 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.[3]

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.[4] The second component is whether the employment incident caused a personal injury.[5]

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

[3] *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).

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

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

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 the specific employment incident.[6] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[7]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition causally related to the accepted December 4, 2020 employment incident.

In notes dated December 8, 15, and 29, 2020, Dr. Ismail excused appellant from work for the period December 8, 2020 through January 3, 2021as she was "incapacitated from any work-related activities." In the December 29, 2020 note, she advised that appellant could return to work on January 4, 2021 with restrictions. In a Form CA-20, Dr. Ismail advised that appellant reported injuring her lower back when lifting packages at work on December 4, 2020. She listed physical examination findings of limited range of motion of the lower back due to pain and diagnosed acute lower back pain without sciatica. Dr. Ismail checked a box marked "Yes" indicating that the diagnosed condition was caused or aggravated by the December 4, 2020 employment activity. She found that appellant was totally disabled from work for the period December 4 through 30, 2020. In a January 8, 2021 note, Dr. Ismail indicated that, commencing January 4, 2021, appellant was restricted from lifting more than 25 pounds, and noted that she may return to activities on February 1, 2021. While Dr. Ismail's reports contain a diagnosis of acute midline low back pain without sciatica, the Board has held that pain alone is a symptom, not a medical diagnosis, and that findings of pain or discomfort alone do not satisfy the medical aspect of the fact of injury medical determination.[8] Therefore, his reports are insufficient to establish a medical diagnosis in connection with the accepted employment incident.[9]

Appellant also submitted an April 29, 2021 report from Dr. Doss, who indicated that appellant was seen on December 8, 2020 for acute low back pain that developed after lifting a heavy object at work. Dr. Doss noted that she diagnosed acute midline low back pain without sciatica and recommended rest from lifting and work. She noted that appellant was able to return to work on January 4, 2021. In a May 28, 2021 Form CA-20, Dr. Doss indicated that appellant reported that she was lifting a dresser and refrigerator at work on an unspecified date and developed acute low back pain. She advised that appellant had physical examination findings of tenderness of the paraspinal lumbar muscles at L2 through S1 without neurological deficits and diagnosed acute midline low back pain without sciatica. Dr. Doss checked a box marked "Yes" indicating

[6] *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

[7] *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

[8] *See F.U.*, Docket No. 18-0078 (issued June 6, 2018); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.4a(6) (August 2012).

[9] *See supra* notes 4 and 5.

that the diagnosed condition was caused or aggravated by the reported employment activity. She noted that appellant was totally disabled, commencing December 4, 2020, and was able to resume regular duty on January 4, 2021. In a July 16, 2021 report, Dr. Doss indicated that appellant was seen on December 8, 2020 for acute low back pain that developed after lifting a dresser and small refrigerator at work. She discussed appellant's reported course of low back symptoms and noted, "[t]his appears to establish a causal relationship between diagnosed condition and the event at work." Dr. Doss diagnosed acute midline low back pain without sciatica. Her reports, however, only contain a diagnosis of acute midline low back pain without sciatica. As noted above, pain alone is a symptom, not a medical diagnosis, and findings of pain or discomfort alone do not satisfy the medical aspect of the fact of injury medical determination.[10] Therefore, this evidence is also insufficient to establish a medical diagnosis in connection with the accepted employment incident.[11]

In a December 31, 2020 report, Ms. Lind, a nurse assigned to appellant by OWCP, detailed her interactions with appellant. The Board has held, however, that health care providers such as nurses, physician assistants, physical therapists are not considered physicians as defined under FECA and their reports do not constitute competent medical evidence.[12] Therefore, this report is of no probative value and insufficient to meet appellant's burden of proof.

As the medical evidence of record does not contain a medical report relating a diagnosed medical condition to the accepted December 4, 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 diagnosed medical condition, causally related to the accepted December 4, 2020 employment incident.

[10] *See supra* note 8.

[11] *See supra* notes 4 and 5.

[12] Section 8101(2) of FECA defines a physician as 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); *M.M.*, Docket No. 17-1641 (issued February 15, 2018); *K.J.*, Docket No. 16-1805 (issued February 23, 2018); *P.S*, Docket No. 17-0598 (issued June 23, 2017); *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).

ORDER

IT IS HEREBY ORDERED THAT the September 20, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 29, 2022
Washington, DC

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

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

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