

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

|                                 |   |                         |
|---------------------------------|---|-------------------------|
| N.H., Appellant                 | ) |                         |
|                                 | ) |                         |
| and                             | ) | Docket No. 23-0602      |
|                                 | ) | Issued: August 25, 2023 |
| DEPARTMENT OF VETERANS AFFAIRS, | ) |                         |
| WEST HAVEN VA MEDICAL CENTER,   | ) |                         |
| West Haven, CT, 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  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On March 20, 2023 appellant filed a timely appeal from a December 15, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 lower back condition causally related to the accepted March 29, 2022 employment incident.

**FACTUAL HISTORY**

On March 29, 2022 appellant, then a 41-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that she sustained pain in her lower back and legs when she awkwardly

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

tried to catch a patient who stood up and fell backwards as she was pushing him in a wheelchair, while in the performance of duty.

In a development letter dated April 1, 2022, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence. No response was received.

By letter dated April 28, 2022, the employing establishment controverted the claim, noting that there was no medical evidence with a valid diagnosis from a physician. It explained that appellant had not met the burden to establish fact of injury.

By decision dated May 11, 2022, OWCP denied appellant's claim. It found that appellant had not submitted medical evidence containing a diagnosis in connection with the accepted incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

In March 29, 2022 progress notes, Dr. Louis Fazen, a Board-certified internist, diagnosed "sciatica from potentially herniated disc consistent with lifting patient/catching patient while [appellant's] spine flexed and in torsion." He circled "Yes" in response to whether the injury was related to job duties. In response to a multiple-choice question regarding opinion of relationship, he circled, "it is more likely than not that the condition was related to the employee's regular job duties." In response to a question regarding the type of illness or injury, Dr. Fazen circled "Lifting/Repositioning Patients." In a narrative portion of the form, he related that appellant was transporting a patient who jumped up from the wheelchair and began to fall backward and that appellant attempted to break their fall "with torsion of her back in addition to forward flexion" and experienced back pain. Dr. Fazen prescribed restrictions for work.

In progress reports and duty status memorandum covering the period April 8 through May 11, 2022, Dr. Effia James, Board-certified in internal medicine, and occupational medicine, related diagnoses of lumbar strain and sciatica.

OWCP also received several unsigned progress notes.

On September 27, 2022 appellant requested reconsideration.

By decision dated December 15, 2022, OWCP modified its prior decision to reflect that appellant had presented medical evidence with a valid diagnosis of lumbar strain and sciatica. However, the claim remained denied because she had not submitted sufficient medical evidence to establish that the accepted March 29, 2022 employment incident caused or aggravated the diagnosed conditions.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>2</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 of FECA, that the claim was timely filed within the applicable time limitation of FECA,<sup>3</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>4</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>5</sup>

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 whether the employment incident caused a personal injury and can be established only by medical evidence.<sup>6</sup>

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>7</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 incident.<sup>8</sup>

## ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a lower back condition causally related to the accepted March 29, 2022 employment incident.

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<sup>2</sup> *Id.*

<sup>3</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>4</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>5</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>6</sup> *See J.P.*, Docket No. 22-0868 (issued October 31, 2022); *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>7</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>8</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).

In March 29, 2022 progress notes, Dr. Fazen diagnosed “sciatica from potentially herniated disc consistent with lifting patient/catching patient while [appellant’s] spine flexed and in torsion.” The Board finds that Dr. Fazen’s diagnosis of a “sciatica from potentially herniated disc” is not a firm medical diagnosis and is speculative and equivocal. The Board has held that the opinion of a physician supporting causal relationship must not be speculative or equivocal.<sup>9</sup> Dr. Fazen opined that appellant’s conditions were “consistent with” catching a falling patient and circled on a form an opinion that it is more likely than not that the diagnosed conditions are “related to the employee’s regular job duties.” The Board also finds that this opinion is speculative.<sup>10</sup> In response to the type of illness or injury, Dr. Fazen circled “Lifting/Repositioning Patients” and provided a narrative relating that appellant was transporting a patient in a wheelchair and when the patient jumped up and appellant attempted to break his fall “with torsion of her back in addition to forward flexion.” The Board finds that Dr. Fazen’s response to the form question and his narrative description of the employment incident fail to provide a medical opinion on causation of reasonable medical certainty and supported by medical rationale explaining how the diagnosed conditions were physiologically caused by the accepted employment incident. The Board thus finds that the progress notes from Dr. Fazen are of limited probative value and are insufficient to establish the claim.<sup>11</sup>

In progress reports and duty status memorandum dated from April 8 through May 11, 2022, Dr. James related diagnoses of lumbar strain and sciatica; however, she offered no opinion regarding the cause of appellant’s condition. The Board has held that 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.<sup>12</sup> Therefore, these reports are also insufficient to establish appellant’s claim.

Appellant also submitted unsigned reports. The Board has held that medical evidence, which is unsigned has no probative value, as it is not established that the author is a physician.<sup>13</sup>

As the medical evidence of record is insufficient to establish causal relationship between the diagnosed lower back condition and the accepted March 29, 2022 employment incident, the Board finds that appellant has not met her burden of proof.

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<sup>9</sup> *P.W.*, Docket No. 20-0407 (issued July 17, 2020); *Ricky S. Storms*, 52 ECAB 349 (2001).

<sup>10</sup> *Id.*

<sup>11</sup> *See C.H.*, Docket No. 22-1186 (December 22, 2022); *see D.Y.*, Docket No. 20-0112 (issued June 25, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>12</sup> *S.C.*, Docket No. 21-0929 (issued April 28, 2023); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>13</sup> *See Z.G.*, Docket No. 19-0967 (issued October 21, 2019); *R.M.*, 59 ECAB 690 (2008); *Merton J. Sills*, 39 ECAB 572, 575 (1988); *Bradford L. Sullivan*, 33 ECAB 1568 (1982).

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 lower back condition causally related to the accepted March 29, 2022 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 15, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 25, 2023  
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