United States Department of Labor
Employees' Compensation Appeals Board

R.H., Appellant	)	
and	)	**Docket No. 24-0711**
	)	**Issued: August 22, 2024**
DEPARTMENT OF VETERANS AFFAIRS, VA CENTRAL ALABAMA HEALTHCARE, CENTRAL ALABAMA VA MEDICAL CENTER-TUSKEGEE, Tuskegee, AL, 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 June 21, 2024 appellant filed a timely appeal from an April 3, 2024 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.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish a low back condition causally related to the accepted November 16, 2022 employment incident.

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[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the April 3, 2024 decision, OWCP received additional evidence. 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.*

FACTUAL HISTORY

On December 2, 2022 appellant, then a 37-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on November 16, 2022 she injured her low back while in the performance of duty. She noted that she felt a pain in her lower back when she pulled a resident up by his sheet while centering him in his bed. Appellant stopped work on November 17, 2022, and returned to work on November 21, 2022.

In a form report dated November 16, 2022, "Dr. M. Kumar" noted that appellant related complaints of back pain after repositioning a patient. A physical examination revealed lower back tenderness in the sacral and coccyx areas. Dr. Kumar diagnosed a lower back strain and recommended that appellant remain off from work for three days and avoid strenuous activities and lifting.

In an employee health unit report dated November 17, 2022, Dr. Robert J. Newsom, a public health and general preventive medicine physician, noted that appellant related complaints of sharp lower back pain which she attributed to pulling a patient up in his bed. He documented his physical examination findings and diagnosed "low back sprain work related."

A December 7, 2022 report of employee's emergency treatment, bearing an illegible signature, indicated that appellant had been examined for an "injury -- work related" and could return to work with restrictions of no lifting or pushing more than 10 pounds for the next five days.

In a report of employee's emergency treatment dated December 8, 2022, Florence Dyer, a nurse practitioner, noted that appellant was not able to work at that time due to a work-related injury and that she was instructed to submit a recommendation from her orthopedist.

In a December 20, 2022 medical report, Dr. Gilberto Gomez, an osteopath specializing in orthopedic surgery, noted that appellant related complaints of low back pain with radicular symptoms down the posterior right thigh, which she attributed to pulling a patient in his bed on November 16, 2022. He related that she initially felt a sharp pain in her back and that the pain had progressed over the last month despite activity modification and use of anti-inflammatory medication. Dr. Gomez performed a physical examination and noted that appellant was uncomfortable throughout the examination in a manner that was clinically referable to the lumbar spinal axis. He also documented pain with palpation over the lumbar paraspinal muscles around the lumbar junction. Dr. Gomez obtained x-rays, which revealed mild spondylosis at L5-S1. He diagnosed pain in lumbar spine, lumbar spondylosis, low back strain, and annular tear of lumbar disc. Dr. Gomez recommended physical therapy, pain medication, and light duty.

On January 4, 2023 appellant was offered and accepted a modified nursing assignment. The duties of the position included patient care and administrative tasks that would not require her to lift, pull, or push greater than 10 pounds.

OWCP also received January 5, 2023 letters from the employing establishment controverting appellant's claim and a copy of its standard operating procedures for lifting patients designated as high fall risks.

Appellant underwent physical therapy to her lower back on January 5 and 6, 2023.

In a January 17, 2023 follow-up report, Dr. Gomez noted appellant's complaints and examination findings. He recommended that she undergo a magnetic resonance imaging (MRI) scan of the lumbar spine.

In a January 27, 2023 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP thereafter received additional physical therapy notes for dates of service from January 10 through February 16, 2023, signed by a physical therapist.

By decision dated March 7, 2023, OWCP denied appellant's claim, finding that she had not submitted sufficient evidence to establish that the November 16, 2022 employment incident occurred, as alleged. Consequently, it found that she had not met the requirements to establish an injury as defined by FECA.

OWCP continued to receive evidence, including physical therapy reports dated February 20 and 21, 2023, signed by physical therapists, and an MRI scan report dated February 24, 2023, which revealed a right disc protrusion at L5-S1 compressing the proximal right S1 nerve root.

On March 24, 2023 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was conducted on September 6, 2023.

By decision dated November 17, 2023, OWCP's hearing representative affirmed, as modified, the March 7, 2023 decision. The hearing representative found that the November 16, 2022 incident had occurred as alleged, and that appellant had submitted sufficient medical evidence to establish diagnosed medical conditions. However, the claim remained denied as appellant did not provide a rationalized medical opinion explaining how her diagnosed conditions were causally related to the accepted November 16, 2022 employment incident.

OWCP thereafter received a March 28, 2023 attending physician's report (Form CA-20) by Dr. Gomez, who checked a box marked "Yes" to indicate that appellant's condition was caused or aggravated by an employment activity. Dr. Gomez also noted "refer to medical encounter enclosed December 20, 2022" for the history of the injury, examination findings, and diagnoses.

On March 14, 2024 appellant, through counsel, requested reconsideration of OWCP's November 17, 2023 decision. In support of the request, she submitted a March 7, 2023 medical report by Dr. Gomez, who noted the history of the November 16, 2022 employment incident and her complaints and examination findings. Dr. Gomez reviewed the February 24, 2023 MRI scan and indicated that it was of poor quality as appellant was not able to tolerate the test due to her body habitus and claustrophobia. He performed an interlaminar epidural steroid injection at L5-S1 and recommended that she lose weight. Dr. Gomez diagnosed lumbar spondylosis, annular tear of lumbar disc, low back strain, herniation of nucleus pulposus of lumbar intervertebral disc, and pain in lumbar spine. He recommended light-duty work that could be performed at waist level with restrictions with no lifting greater than 25 pounds; occasional repetitive movement, standing, pushing, and pulling; and no climbing, bending at the waist, kneeling, or squatting.

By decision dated April 3, 2024, OWCP denied modification of its November 17, 2023 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 the fact that the individual is an employee of the United States within the meaning of FECA,[3] that the claim was timely filed within the applicable time limitation period 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.[4] 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.[5]

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 an injury.[6]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[7] 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 identified by the employee.[8]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a low back condition causally related to the accepted November 16, 2022 employment incident.

In support of her claim, appellant submitted a November 17, 2022 employee health unit report by Dr. Newsom, who diagnosed "low back sprain -- work related." However, Dr. Newsom did not explain a pathophysiological process of how the accepted November 16, 2022 employment

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[3] *K.R.*, Docket No. 20-0995 (issued January 29, 2021); *A.W.*, Docket No. 19-0327 (issued July 19, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

[5] *J.B.*, Docket No. 20-1566 (issued August 31, 2021); *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).

[6] *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).

[7] *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).

[8] *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

incident caused or contributed to the diagnosed condition. The Board has held that a medical opinion should offer a medically-sound and rationalized explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions.[9] Medical evidence, which does not explain the nature of the relationship between the diagnosed condition and the specific employment incident, is insufficient to meet the claimant's burden of proof.[10] As such, Dr. Newsom's November 17, 2022 report is insufficient to meet appellant's burden of proof.

In his December 20, 2022 medical report, Dr. Gomez noted the history of the November 16, 2022 employment incident and diagnosed lumbar spondylosis, low back strain, and annular tear of lumbar disc. In a March 28, 2023 Form CA-20, he checked a box marked "Yes" to indicate that appellant's condition, as diagnosed in the December 20, 2022 report, was caused or aggravated by an employment activity. In both reports, however, Dr. Gomez failed to explain with adequate rationale how the accepted employment incident either caused or contributed to appellant's diagnosed conditions. As noted above, a medical opinion should reflect a medically-sound and rationalized explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions.[11] Moreover, with regard to the Form CA-20, the Board has held that an opinion on causal relationship with an affirmative check mark, without more by the way of medical rationale, is insufficient to establish the claim.[12] This evidence is therefore insufficient to establish the claim.

In follow-up reports dated January 17 and March 7, 2023, Dr. Gomez diagnosed lumbar spondylosis, annular tear of lumbar disc, low back strain, and herniation of nucleus pulposus of lumbar intervertebral disc. However, he did not offer an opinion regarding the cause of these conditions. Similarly, in the November 16, 2022 employee health unit note, Dr. Kumar diagnosed a lower back strain, but did not offer an opinion regarding the cause of appellant's condition. The Board has held that an opinion which does not address the cause of an employee's condition is of no probative value on the issue of causal relationship.[13] Thus, these reports are insufficient to establish appellant's claim.

Appellant also submitted a report by Ms. Dyer, a nurse practitioner, and physical therapy notes signed by a physical therapist. The Board has held that medical reports signed solely by a nurse or physical therapist are of no probative value, as such healthcare providers are not considered physicians as defined under FECA and, therefore, are not competent to provide a

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[9] *See T.G.*, Docket No. 21-0175 (issued June 23, 2021); *V.D.*, Docket No. 20-0884 (issued February 12, 2021); *J.D.*, Docket No. 19-1953 (issued January 11, 2021); *K.W.*, Docket No. 19-1906 (issued April 1, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[10] *Id.*

[11] *Id.*

[12] *See C.S.*, Docket No. 18-1633 (issued December 30, 2019); *D.S.*, Docket No. 17-1566 (issued December 31, 2018); *Lillian M. Jones,* 34 ECAB 379, 381 (1982).

[13] *T.D.,* Docket No. 19-1779 (issued March 9, 2021); *L.B.* Docket No. 18-0533 (issued August 27, 2018); *D.K.* Docket No. 17-1549 (issued July 6, 2018).

medical opinion.[14] Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.[15]

OWCP also received a December 7, 2022 report of employee's emergency treatment, bearing an illegible signature. Reports that are unsigned or that bear illegible signatures cannot be considered probative medical evidence because they lack proper identification[16] as the author cannot be identified as a physician.[17]

The remaining evidence of record consisted of an MRI scan report. The Board has held that diagnostic reports, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the accepted employment incident caused a diagnosed condition.[18] Therefore, this evidence is also insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence establishing a causal relationship between her diagnosed low back condition and the accepted November 16, 2022 employment incident, the Board finds that she has not met her burden of proof to establish her claim.[19]

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 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 low back condition causally related to the accepted November 16, 2022 employment incident.

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[14] 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); *D.H.,* Docket No. 22-1050 (issued September 12, 2023) (nurses and nurse practitioners are not considered physicians as defined under FECA); *A.M.*, Docket No. 20-1575 (issued May 24, 2021) (physical therapists are not physicians as defined by 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).

[15] *K.A.*, Docket No. 18-0999 (issued October 4, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, *id.*

[16] *W.L.*, Docket No. 19-1581 (issued August 5, 2020).

[17] *D.T.,* Docket No. 20-0685 (issued October 8, 2020); *Merton J. Sills,* 39 ECAB 572, 575 (1988).

[18] *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

[19] *See J.T.*, Docket No. 18-1755 (issued April 4, 2019); *T.O.*, Docket No. 18-0139 (issued May 24, 2018).

ORDER

IT IS HEREBY ORDERED THAT the April 3, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 22, 2024
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