

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

E.M., Appellant	)	
	)	
and	)	Docket No. 24-0331
	)	Issued: July 3, 2024
U.S. POSTAL SERVICE, FALLSTON POST	)	
OFFICE, Fallston, MD, Employer	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*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  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On February 11, 2024 appellant filed a timely appeal from a November 16, 2023 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 lumbar condition causally related to the accepted March 22, 2022 employment incident.

**FACTUAL HISTORY**

On March 23, 2022 appellant, then a 52-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 22, 2022 she sustained a lower back injury when she was lifting a tote and felt a strong sensation radiating from her back to her stomach and into her left leg

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

while in the performance of duty. She described getting in the back of her long-life vehicle (LLV) to move trays when she felt a popping sensation in her back rendering her unable to move her left side to bend or drive while on her mail route. Appellant stopped work on March 22, 2023.

In support of her claim, appellant submitted a March 22, 2022 emergency department report wherein Dr. Danya Khoujah, Board-certified in emergency medicine, treated her for acute left-sided back pain with sciatica. Dr. Khoujah diagnosed acute left-sided back pain with sciatica.

A March 24, 2022 magnetic resonance imaging (MRI) scan of the lumbar spine revealed an impression of mild levocurvature of the lumbar spine with degenerative changes most conspicuous in the lower lumbar spine.

In a March 25, 2022 report, Dr. Sae-Yoon Sharon Park, Board-certified in family medicine, evaluated appellant for left lower back pain, which she described as pressure for the past three days. She diagnosed lumbar radiculopathy, resolved and low back pain. In a March 29, 2022 note, Dr. Park reported that appellant received medical care on March 25, 2022 and could resume regular work with no restrictions on April 8, 2022.

In a March 30, 2022 report, Bridget Ann Mena, a physician assistant, noted the March 22, 2022 employment incident and diagnosed lumbar spondylosis, stenosis of the lumbar spine, and multilevel lumbar degenerative spine disease. She noted that appellant was neurologically stable, discussed her course of treatment, and referred her for physical therapy. In a March 30, 2022 report, Ms. Mena noted appellant's prescribed medication and referral for physical therapy. In an April 7, 2022 note, she reported that appellant received medical advice on April 7, 2022 and was unable to work from March 25 through April 18, 2022.

In an April 15, 2022 note, Jorge Guerrero, a physician assistant, reported that appellant received medical advice on April 7, 2022 and was unable to work from March 25 through April 21, 2022.

In an April 21, 2022 report, Ms. Mena evaluated appellant for complaints of ongoing left sided low back and lateral thigh pain. She noted no improvement with medication management and referred appellant for pain management. In an April 21, 2022 note, Ms. Mena reported that appellant received medical care on April 21, 2022 and was unable to work from April 21 through 26, 2022.

In an April 27, 2022 note, Dr. Park reported that appellant was unable to work until April 30, 2022 and could return to regular work with no restrictions on May 2, 2022.

In an April 29, 2022 report, Dr. Boris Gronas, an osteopath Board-certified in family medicine, evaluated appellant for left back pain. He noted that on March 22, 2022 appellant was lifting a heavy bin at work and felt immediate pain in her left back, left chest, left lower leg, and buttocks region causing her to drop the bin. Dr. Gronas reported that she could not continue working and sought emergency medical treatment later that date. He noted that appellant's lumbar spine MRI scan was negative for radiculopathy and diagnosed other specified disorders of the muscles. Dr. Gronas recommended physical therapy and further diagnostic testing. He provided appellant light-duty restrictions beginning on May 9, 2022.

In an April 29, 2022 report, Joseph F. Richardson, a physician assistant, reported that appellant was evaluated for pain to the left side of her body after lifting a heavy bin of mail. He diagnosed other specified disorders of muscle, provided a referral to physical therapy, and placed her on light-duty work beginning on May 9, 2022. In an April 29, 2022 duty status report (Form CA-17), Mr. Richardson diagnosed pain to lower back and leg and provided appellant light-duty work restrictions.

In a May 31, 2022 development letter, OWCP notified appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In response to OWCP's development letter, appellant submitted a March 22, 2022 emergency department report, wherein Dr. Khoujah noted that appellant presented for evaluation of acute low back pain radiating down her leg, consistent with acute disc rupture. Dr. Khoujah noted that appellant was bending over from standing when she had a sudden onset of sharp pain, causing her to be transported to the hospital and treated with pain medication. She diagnosed acute left-sided back pain with sciatica and recommended an MRI scan of the lumbar spine.

OWCP received unsigned reports dated March 30 and April 25, 2022 documenting medical treatment on those dates.

In a June 10, 2022 report, Dr. Gronas evaluated appellant for low back pain and diagnosed other unspecified disorders of muscle. He recommended updated light-duty work restrictions beginning on June 11, 2022 and referral for a back specialist.

In a June 10, 2022 report, Mr. Richardson evaluated appellant for pain to the left side of the body after she lifted a heavy bin of mail. He diagnosed other specified disorders of muscle and provided updated light-duty work restrictions effective June 11, 2022.

In a June 13, 2022 report, Dr. Gronas evaluated appellant for low back pain and diagnosed other unspecified disorders of muscles. He released her to light-duty work beginning June 13, 2022 and discharged appellant from his care.

In a June 13, 2022 report, Mr. Richardson evaluated appellant for pain to left side of body after she lifted a heavy bin of mail. He diagnosed other specified disorders of muscle and released her to light-duty work.

In a Form CA-17 dated June 13, 2022, Mr. Richardson diagnosed pain in the lower back and left leg and recommended light-duty work restrictions.

In a Form CA-17 dated July 12, 2022, Mr. Richardson diagnosed pain in the lower back and left leg and recommended light-duty work restrictions.

By decision date July 14, 2022, OWCP accepted that the March 22, 2022 employment incident occurred as alleged, but denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted March 22, 2022 employment incident. Therefore, it concluded that the requirements had not been met to establish an injury as defined by FECA.

Following OWCP's decision, appellant submitted a July 11, 2022 report, wherein Mr. Richardson diagnosed other specified disorders of muscle and continued light-duty work restrictions.

In a July 11, 2022 report, Dr. Gronas evaluated appellant for complaints to the left hip outer region radiating towards the left knee. He continued light-duty work restrictions.

In return-to-work notes dated August 1, 2022, Dr. Omar Zalatimo, a Board-certified neurosurgeon, reported that appellant was under his care from August 1 through 19, 2022. He provided light-duty work restrictions, noting that she would be reevaluated at her August 30, 2022 appointment. In separate forms of even date, Dr. Zalatimo referred appellant for pain management and physical/occupational therapy.

On August 8, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In an August 1, 2022 Form CA-17, Dr. Zalatimo diagnosed L5-S1 disc bulge with possible lumbar annular tear. He reported that appellant was unable to work pending further evaluation by pain management.

In an August 30, 2022 report, Donald Lindauer, a physician assistant, discussed appellant's examination findings and diagnosed lumbar disc disease with radiculopathy and spondylosis without myelopathy or radiculopathy, lumbar region. He recommended intra-articular injections. In a note of even date, Dr. Lindauer recommended she continue her current restrictions and noted that she could return to work as she was scheduled. In a separate note of even date, he requested physical therapy and manual therapy techniques for appellant's diagnoses of lumbar disc disease with radiculopathy and spondylosis without myelopathy or radiculopathy, lumbar region. In a September 15, 2022 report, Dr. Lindauer diagnosed lumbar disc disease with radiculopathy and spondylosis without myelopathy or radiculopathy, lumbar region. He recommended continued physical therapy and intra-articular injections.

In a September 15, 2022 report, Dr. Ritu Bhambhani, Board-certified in pain management, noted appellant's diagnosis of lumbosacral spondylosis without myelopathy and administered intra-articular injections.

On September 29, 2022 Mr. Lindauer treated appellant for left-sided pain. He diagnosed lumbar disc disease with radiculopathy, and lumbar spondylosis without myelopathy or radiculopathy.

In a November 21, 2022 report, Dr. Zalatimo reported that appellant was a postal worker who had been suffering from low back pain since March 2022, which began when she was lifting a box at work resulting in numbness throughout the left side of her body. She reported that the numbness developed into a pressure on the left side of her lower back and complained of a burning sensation throughout her left L5 distribution to just above her knee. Appellant further reported ongoing pain, which worsened with walking or other strenuous activity with no improvement despite physical therapy and intra-articular injections. Dr. Zalatimo reviewed the results of a November 18, 2022 lumbar MRI scan, which revealed an L4-5 disc bulge with degenerative facet changes without severe spinal canal stenosis, mild left foraminal stenosis and a right foraminal

stenosis. At L5-S1, he noted a disc bulge without spinal stenosis with moderate left foraminal stenosis and moderate right foraminal stenosis. Dr. Zalatimo reviewed the results of a November 17, 2022 flexion and extension x-ray of the lumbar spine, which revealed no instability. He recommended a left-sided L4-5 possible L5-S1 laminectomy and possible foraminotomy based on the results of the imaging studies and appellant's symptoms.

A surgery scheduling note received on December 20, 2022 indicated that appellant was scheduled for a decompressive laminectomy with Dr. Zalatimo on January 10, 2023.

A hearing was held on December 16, 2022.

Following the hearing, appellant submitted a neurosurgery letter dated November 7, 2022 from Dr. Zalatimo discussing her complaints of numbness throughout her left lower extremity, which were worse with extended ambulation and a feeling that her left lower extremity would give out if she walked for too long. Dr. Zalatimo noted that physical therapy and intra-articular injections did not provide relief. He recommended imaging studies.

In a February 16, 2023 note, Dr. Zalatimo reported that appellant was scheduled for surgery on March 7, 2023. Appellant submitted postoperative care instructions dated March 7, 2023 for a lumbar laminectomy.

By decision dated March 24, 2023, OWCP's hearing representative set aside the July 14, 2022 decision finding that the case required additional development of the medical evidence. She remanded the case for OWCP to prepare a statement of accepted facts (SOAF), and request that Dr. Zalatimo provide an opinion on whether the accepted employment incident caused or contributed to the claimed lumbar injury and resultant surgery. The hearing representative further requested that Dr. Zalatimo explain the extent of appellant's condition and treatment post-surgery.<sup>2</sup>

In a letter dated April 6, 2023, OWCP requested that Dr. Zalatimo review the SOAF and provide a rationalized medical opinion on whether the accepted employment incident resulted in the diagnosed condition (lumbar disc disease) and need for surgery. It further requested he explain the extent of appellant's condition and address her treatment post-surgery. OWCP accorded appellant 30 days to respond.

In another letter dated April 18, 2023, OWCP requested that Dr. Zalatimo review the SOAF and provide a rationalized medical opinion on how/whether the accepted March 22, 2022 employment incident resulted in the diagnosed condition (lumbar disc disease) and need for surgery. It further requested he explain the extent of appellant's condition and address her medical treatment post-surgery. OWCP accorded appellant 30 to respond.

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<sup>2</sup> On remand OWCP prepared an April 6, 2023 SOAF which described appellant's March 22, 2022 employment incident when she bent over to pick up a tote and while coming back up, felt a strong sensation going from her back to her stomach down her leg. It further noted that she underwent a March 24, 2022 lumbar MRI scan and sought treatment with Drs. Park, Zalatimo, and Bhambhani.

In an August 1, 2022 neurosurgery clinic letter, Leslie Pahl, a physician assistant, discussed Dr. Zalatimo's examination findings, reviewed diagnostic studies, and recommended appellant pursue pain management and physical therapy for her low back and left hip pain.

In a March 7, 2023 operative report, Dr. Zalatimo reported that appellant underwent a lumbar laminectomy.

In a May 22, 2023 note, Dr. Zalatimo reported that appellant could return to work on July 10, 2023. In a form report of even date, he diagnosed condition of spinal stenosis of the lumbar region without neurogenic claudication and referred her to orthopedics.

By decision dated July 20, 2023, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that her diagnosed medical conditions were causally related to the accepted March 22, 2022 employment incident.

On August 24, 2023 appellant requested reconsideration. In support of her claim, she submitted an August 18, 2023 letter, wherein Dr. Zalatimo reported that appellant had been under his care since November 7, 2022 and described the accepted March 22, 2022 employment injury. Dr. Zalatimo noted that appellant complained of pain in her lower back radiating down the back of her leg to her toes, worsening pain with long periods of sitting or standing, weakness such that her left leg would give out at times when she was walking. He discussed appellant's November 17, 2022 diagnostic studies, which revealed no instability throughout the lumbar spine. Dr. Zalatimo reported that her diagnostic studies did reveal at L5-S1 a disc bulge without spinal stenosis with moderate left foraminal stenosis and moderate right foraminal stenosis, resulting in surgery on March 7, 2023. He noted that appellant was released to work on July 10, 2023, but was still currently under his care.

By decision dated November 16, 2023, OWCP denied modification of the July 20, 2023 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</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>4</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

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<sup>3</sup> *Id.*

<sup>4</sup> *E.K.*, Docket No. 22-1130 (issued December 30, 2022); *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).

employment injury.<sup>5</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>6</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. First, 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. Second, the employee must submit sufficient evidence to establish that the employment incident caused an injury.<sup>7</sup>

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>8</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 identified by the employee.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a lumbar condition causally related to the accepted March 22, 2022 employment incident.

In work status reports, Form CA-17 reports, referral forms, and surgery notes dated August 1, 2022 through August 18, 2023, Dr. Zalatimo discussed appellant's course of treatment and examination findings related to the lumbar spine and left lower extremity following a March 22, 2022 employment incident resulting in a lumbar laminectomy on March 7, 2023. He diagnosed lumbar disc disease and L5-S1 disc bulge and provided appellant work restrictions. However, Dr. Zalatimo did not provide an opinion on the cause of the diagnosed medical conditions. 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.<sup>10</sup> Thus, these reports are insufficient to establish the claim.

In medical reports dated April 29 through July 11, 2022, Dr. Gronas reported that on March 22, 2022 appellant was lifting a heavy bin at work and felt immediate pain in her left back,

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<sup>5</sup> *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *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>6</sup> *E.H.*, Docket No. 22-0401 (issued June 29, 2022); *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>7</sup> *H.M.*, Docket No. 22-0343 (issued June 28, 2022); *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *S.M.*, Docket No. 22-0075 (issued May 6, 2022); *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>9</sup> *J.D.*, Docket No. 22-0935 (issued December 16, 2022); *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).

<sup>10</sup> *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

left chest, left lower leg, and buttocks region causing her to drop the bin and seek emergency medical treatment later that date. He diagnosed other unspecified disorders of muscle, lumbar sprain and provided light-duty work restrictions. However, Dr. Gronas failed to provide an opinion on causal relationship.<sup>11</sup> 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, this evidence is insufficient to establish appellant's claim.

In reports dated March 25 through April 27, 2022, Dr. Park evaluated appellant for left lower back pain. She diagnosed lumbar radiculopathy, resolved, and low back pain with accompanying work restrictions. In a September 15, 2022 report, Dr. Bhambhani diagnosed lumbosacral spondylosis without myelopathy and administered an intra-articular injection. However, these reports do not contain an opinion on the cause of appellant's conditions. As noted above, 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.<sup>13</sup> Therefore, this evidence is insufficient to establish appellant's claim.

In a March 22, 2022 emergency department report, Dr. Khoujah noted the history of injury and diagnosed acute left-sided back pain with sciatica and recommended an MRI scan of the lumbar spine. While she accurately noted the history of injury provided by appellant, she did not offer an opinion regarding the cause of appellant's condition.<sup>14</sup> As noted above, a report without an opinion on causation is of no probative value and is, therefore, insufficient to establish appellant's claim.<sup>15</sup>

OWCP also received unsigned after visit summaries dated March 30 and April 25, 2022 documenting treatment on those dates. However, the Board has long held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence because the author cannot be identified as a physician.<sup>16</sup>

Appellant also submitted treatment notes, work status notes, and Form CA-17's from physician assistants, as well as treatment notes from a nurse practitioner. However, certain healthcare providers such as nurses, and physician assistants are not considered physicians as

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<sup>11</sup> See *D.C.*, Docket No. 18-1425 (issued March 15, 2019).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *S.S.*, Docket No. 18-0081 (issued August 22, 2018).

<sup>15</sup> See *J.S.*, Docket No. 23-0930 (issued January 2, 2024); *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>16</sup> *L.B.*, Docket No. 21-0353 (issued May 23, 2022); *T.D.*, Docket No. 20-0835 (issued February 2, 2021); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

defined under FECA and their reports do not constitute competent medical evidence.<sup>17</sup> Consequently, these medical findings or opinions are insufficient to meet appellant's burden of proof.<sup>18</sup>

The remaining evidence of record consists of a March 24, 2022 MRI scan of the lumbar spine and laboratory blood test results dated March 10 through 28, 2022. The Board, however, has held that diagnostic studies, standing alone, lack probative value as they do not address whether the accepted March 22, 2022 employment incident caused the diagnosed condition.<sup>19</sup> For this reason, these reports are insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish causal relationship between a medical condition and the accepted March 22, 2022 employment incident, the Board finds that appellant has not met her burden of proof.<sup>20</sup>

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 March 22, 2022 employment incident.

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<sup>17</sup> Section 8102(2) of FECA provides as follows: 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. § 8102(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (May 2023); *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 S.S.*, Docket No. 21-1140 (issued June 29, 2022) (physician assistants are not considered physicians under FECA and are not competent to provide medical opinions); *P.S.*, Docket No. 17-0598 (issued June 23, 2017) (registered nurses are not considered physicians as defined under FECA).

<sup>18</sup> *T.H.*, Docket No. 23-1142 (issued March 28, 2024).

<sup>19</sup> *F.D.*, Docket No. 19-0932 (issued October 3, 2019).

<sup>20</sup> *LD.*, Docket No. 22-0848 (issued September 2, 2022); *T.G.*, Docket No. 14-751 (issued October 20, 2014).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 16, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 3, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board