United States Department of Labor
Employees' Compensation Appeals Board

M.T., Appellant	)	
and	)	**Docket No. 24-0616**
	)	**Issued: July 8, 2024**
DEPARTMENT OF THE NAVY, FLEET READINESS CENTER SOUTHEAST, NAVAL AIR STATION JACKSONVILLE, Jacksonville, FL, 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 May 6, 2024 appellant filed a timely appeal from a March 21, 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.

[1] 5 U.S.C. § 8101 *et seq*.

ISSUE

The issue is whether appellant has met her burden of proof to establish a back condition causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On December 22, 2023 appellant, then a 70-year-old miscellaneous clerk, filed an occupational disease claim (Form CA-2) alleging that she first became aware of her lumbar spinal stenosis condition on January 21, 2022, and that it was caused or aggravated by factors of her federal employment on October 5, 2023. She indicated that on October 5, 2023 her back seemed to get worse over the course of the day and it was then that she realized that her sandblasting job had caused the problem. On the reverse side of the claim form, the employing establishment indicated that appellant was last exposed to conditions alleged to have caused the disease on September 14, 2008.

In an undated statement, appellant described her previous duties as an aircraft sandblaster. She also indicated that she had seen Dr. Shelby Chen, a Board-certified neurologist, concerning her back condition and subsequently underwent back surgery for her spinal stenosis. Appellant indicated that a year and several months post-surgery, she was still in pain and the diagnostic imaging revealed a degenerated disc on the left side of her spine. She indicated that she was currently undergoing epidural and nerve block injections.

Medical evidence submitted with the claim included undated and unsigned reports from the health care provider generated on November 6, 2023, which noted a previous history of a March 2022 L2-5 lumbar laminectomy. The reports included a preoperative visit for an L2-5 laminectomy which contained a diagnosis of lumbar spinal stenosis with neurogenic claudication; an undated operative report from Dr. Chen for an L2-5 laminectomy; an undated procedure summary report for a lumbar spine facet injection at left L3-4 performed by Dr. Scott C. Palmer, a Board-certified neurologist, for lumbar spondylosis with facet arthropathy at L3-4, left-sided pain; and inpatient physical therapy progress notes.

In an April 8, 2022 report, Dr. Chen advised that on March 7, 2022 he performed "a lumbar laminectomy in the setting of spinal stenosis." He opined that appellant's work responsibilities involving manual labor over the course of her life contributed to the development of the spinal stenosis.

In a development letter dated December 26, 2023, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 60 days to respond. In a separate development letter of even date, it requested that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations. OWCP afforded the employing establishment 30 days to respond.

In a follow-up development letter dated January 25, 2024, OWCP advised appellant that it had performed an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the December 26, 2023 letter to submit the requested supporting

evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

OWCP subsequently received appellant's February 5, 2024 statement, which described her duties as a sandblaster which she believed contributed to her claimed lumbar spinal stenosis condition.

In a February 24, 2024 response, the employing establishment indicated that appellant last worked as a sandblaster on September 13, 2008 and provided her employment history. It provided a position description for a sandblaster and notifications of personnel action on Standard Form (SF) 50 with effective dates of August 14, 2008, September 14, 2008, January 2, 2022, and January 14, 2024, which showed that appellant's job changed from a sandblaster to a training program assistant on September 14, 2008. The employing establishment noted that appellant was reassigned due to a separate work-related injury. It requested that appellant's case be reviewed for timeliness.

Medical reports from a healthcare provider were received for the period January 20, 2022 through November 9, 2023. Diagnostic reports received included January 14, 2022 and August 25, 2023 computerized tomography (CT) scans; January 20, 2022 and August 28, 2023 magnetic resonance imaging (MRI) scans of lumbar spine and cervical spine; and an August 25, 2023 x-ray of lumbar spine. Also received were a March 7, 2022 operative report from Dr. Chen, and reports from Dr. Palmer dated September 25 and November 9, 2023 which documented lumbar spine facet injections left side and medial branch nerve block, respectively, due to lumbar spondylosis without myelopathy.

By decision dated March 21, 2024, OWCP denied the claim as she had not submitted sufficient evidence to establish causal relationship between her diagnosed spinal stenosis condition and her federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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, 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.[3] 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.[4]

[2] *Supra* note 1.

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

[4] *B.H.*, Docket No. 20-0777 (issued October 21, 2020); *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).

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors by the claimant.[5]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[6] 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 factors.[7] 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.[8]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a back condition causally related to the accepted factors of her federal employment.

In support of her claim, appellant submitted an April 8, 2022 report from Dr. Chen which noted that he had performed a lumbar laminectomy due to spinal stenosis on March 7, 2022. Dr. Chen opined that appellant's work responsibilities involving manual labor over the course of her life contributed to the development of the lumbar spinal stenosis. While Dr. Chen generally supported that appellant's manual labor at work contributed to her lumbar spinal stenosis, it lacked medical rationale explaining how the specific work duties or movements involved in appellant's manual labor work caused or contributed to the diagnosed condition.[9] The Board has held that without explaining how appellant's employment duties physiologically caused or aggravated her condition, an opinion on causal relationship is of limited probative value.[10] Thus, this report is insufficient to establish appellant's work-related occupational disease claim.[11]

[5] *N.E.*, Docket No. 23-1155 (issued February 8, 2024); *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *L.D.*, Docket No. 19-1301 (issued January 29, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019).

[6] *D.S.*, Docket No. 21-1388 (issued May 12, 2022); *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

[7] *D.S. id.*; *D.J.*, Docket No. 19-1301 (issued January 29, 2020).

[8] *T.M.*, Docket No. 22-0220 (issued July 29, 2022); *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *see also J.L.*, Docket No. 18-1804 (issued April 12, 2019).

[9] *D.F.*, Docket No. 24-0078 (issued April 24, 2024); *R.T.*, Docket No. 18-0581 (issued October 3, 2018).

[10] *D.F., id.*; *see A.P.*, Docket No. 19-0224 (issued July 11, 2019).

[11] *M.M.*, Docket No. 20-1649 (issued January 4, 2023).

Appellant also submitted Dr. Chen's March 7, 2022 operative report regarding appellant's L2-5 laminectomy and Dr. Palmer's September 25 and November 9, 2023 reports regarding lumbar spine facet injection left side and medial branch nerve block, respectively, due to lumbar spondylosis without myelopathy. The record also contains undated and unsigned reports from a healthcare provider, which were generated on November 6, 2023. The Board has held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.[12] These reports, therefore, are insufficient to establish appellant's work-related occupational disease claim.

Appellant also provided several diagnostic test reports of her lumbar and cervical spine. The Board has held that diagnostic test reports, standing alone, lack probative value as they do not provide an opinion on causal relationship between the employment injury and an additional diagnosed condition.[13] Such reports are therefore insufficient to establish appellant's claim.

Appellant also submitted reports from physical therapists. However, the Board has held that medical reports signed by a nurse, a physical therapist, or a physician assistant are of no probative value, because these medical providers are not considered physicians as defined under FECA.[14] Consequently, their medical findings or opinions are insufficient to meet appellant's burden of proof.

As appellant has not submitted rationalized medical evidence establishing a back condition as causally related to 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 back condition causally related to the accepted factors of her federal employment.

[12] *E.B.*, Docket No. 24-0471 (issued June 11, 2024); *T.D.*, Docket No. 20-0835 (issued February 2, 2021); *R.C.*, Docket No. 19-0376 (issued July 15, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[13] *T.H.*, Docket No. 18-1736 (issued March 13, 2019).

[14] Section 8101(2) provides that a 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 also* Federal (FECA) Procedure Manual, Claims, *Causal Relationship*, Part 2 -- Chapter 2.805.3a(1) (January 2013); *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 nurses, physician assistants, and physical therapists are not competent to render a medical opinion under FECA).

ORDER

IT IS HEREBY ORDERED THAT the March 21, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 8, 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