

FACTUAL HISTORY

This case has previously been before the Board on a different issue.² The facts and circumstances as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On August 20, 2019 appellant, then a 60-year-old medical clerk, filed a traumatic injury claim (Form CA-1) alleging that on August 12, 2019 she reinjured her back and shoulder, and experienced stress when a gunman entered the employing establishment while in the performance of duty. She stated that while she was sitting at her desk a gunman walked by the pharmacy with a rifle in his hand shouting: "where is urgent care" and she jumped under her desk to avoid getting shot. On the reverse side of the Form CA-1 appellant contended that she was not near the site during the incident, and did not report an injury. She stopped work on August 13, 2019 and returned on August 14, 2019.³

In an August 30, 2019 development letter, OWCP informed 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 provide the necessary evidence.

Appellant subsequently submitted an August 14, 2019 slip signed by Purvi Patel, a medical provider, who noted that appellant had experienced back pain following the August 12, 2019 active shooter event at work.

On August 14, 2019 Dr. Charles M. Slack, a Board-certified orthopedic surgeon, diagnosed degenerative lumbar disc and facet disease with spondylolisthesis. He requested that appellant be provided with an orthopedic chair with lumbar support. In a separate report of even date, Dr. Slack provided restrictions. In a medical form dated August 28, 2019, he treated appellant for low back derangement with degenerative lumbar disc and facet disease, L4-5 spondylolisthesis grade 1, and flare-up of cervical derangement. Dr. Slack prescribed physical therapy.

By decision dated October 7, 2019, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish a diagnosed condition causally related to the accepted August 12, 2019 employment incident.

On November 2, 2019 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

In support thereof, appellant submitted a report dated September 30, 2016, wherein Dr. Slack diagnosed low back derangement with radiculopathy and herniated lumbar disc. In an

² *Order Remanding Case*, Docket No. 21-0669 (issued March 3, 2023).

³ On May 1, 2014 appellant filed a Form CA-1 alleging that on April 30, 2014 she sustained right knee, right arm, and right shoulder injuries when she tripped and fell over computer cords, while in the performance of duty. OWCP assigned that claim OWCP File No. xxxxxx287. It accepted appellant's claim for sprain of the right ankle and subsequently expanded the acceptance of her claim to include right Achilles tendinitis, sprain of the right shoulder and upper arm, sprain of the right wrist, right lumbago, adhesive capsulitis of the right shoulder, and right trigger finger.

August 14, 2019 work capacity evaluation (Form OWCP-5c), he diagnosed flare up of low back derangement and degenerative disc disease with L4-5 spondylosis. Dr. Slack released appellant to work eight hours a day with restrictions. In an attending physician's report (Form CA-20) dated October 22, 2019, he recounted appellant's history of injury on August 12, 2019 and indicated a diagnosis of intervertebral disc disorder and radiculopathy of the lumbar region. Dr. Slack checked a box marked "Yes" indicating that appellant's condition was caused or aggravated by an employment activity, specifically bending and crawling under her desk.

Following a preliminary review, by decision dated January 22, 2020, OWCP's hearing representative set aside the October 7, 2019 decision, finding that the case was not in posture for decision. The case was remanded for further development. The hearing representative instructed OWCP to further develop the factual aspects of the claim. It requested that appellant comment on the agency's challenge; address where she was in relationship to the alleged gunman on August 12, 2019; further describe how hiding under her desk reinjured her back and shoulder; describe her preexisting back and shoulder problems and any disability and associated treatment; and address whether she has a history of prior emotional condition. The hearing representative further instructed OWCP to initiate development with the employing establishment, requesting information relative to their challenge 1; confirmation of where appellant was at the time of the alleged incident and where the alleged gunman was in relationship to her duty station; and provide available police and incident reports. The hearing representative instructed OWCP to thereafter issue a *de novo* decision.

In a February 5, 2020 development letter, OWCP requested that appellant submit additional evidence in support of her claim. It advised her of the type of factual and medical evidence needed, and provided a questionnaire for her completion. By separate development letter of even date, OWCP requested additional information from the employing establishment regarding the August 12, 2019 employment incident, including why they believed that the employee was not near the gunman during the incident on August 12, 2019. It also requested copies of available police and/or incident reports. OWCP afforded both parties 30 days to respond.

Appellant subsequently submitted a work status note and report dated November 14, 2018, wherein Dr. Slack diagnosed persistent low back derangement with L5-S1, herniated disc with radiculopathy, and persistent cervical derangement. Dr. Slack returned appellant to sedentary duty with restrictions. In a July 17, 2019 report, he diagnosed cervical and lumbar derangement, cervical and lumbar radiculopathies, degenerative disc and facet disease, L5-S1 right-sided disc protrusion, and lumbar spondylosis. In a work status report of even date, Dr. Slack diagnosed persistent low back derangement with L5-S1, herniated disc with radiculopathy, and cervical derangement and released appellant to sedentary work with restrictions. On August 14, 2019 he noted treatment of appellant for a flare up of lateral neck pain and low back pain radiating into the right leg. Dr. Slack noted findings on examination of neck and back pain, slow and deliberate gait pattern, limited range of motion for flexion and extension, positive straight leg raises on the right, decreased muscle strength, decreased reflexes bilaterally, and decreased sensation diffusely in the right arm. He diagnosed flare up of low back derangement, degenerative lumbar disc facet disease, L4-5 spondylolisthesis grade 1, and cervical derangement. Dr. Slack recommended physical therapy and provided work restrictions.

On August 14, 2019 Brenda Fritz, a physician assistant, treated appellant for right shoulder and low back pain. Appellant reported that a gunman entered her workplace, and she hid under her desk, aggravating her preexisting conditions.

Dr. Valentin Berman, a Board-certified psychiatrist, treated appellant on September 20, 2019 after an incident at work. He noted that she was cooperative, had appropriate mood and effect, had normal judgement, and was nonsuicidal. Dr. Berman diagnosed post-traumatic stress disorder, improved.

In a witness statement dated February 12, 2020, F.S., a coworker, noted that on August 12, 2019 at 2:10 p.m. he was at his workstation and saw the gunman with a rifle in his hand coming around the atrium hall near the outpatient pharmacy. He reported hiding behind a locked door. F.S. provided a handwritten map of the work area. In another witness statement of even date, B.S., a coworker, noted that on the day of the active shooter incident, she was at her desk in the urgent care. She reported seeing the gunman standing in front of a coworker's desk holding a rifle. B.S. reported that she and appellant hid under their desks.

In a February 19, 2020 response to the development letter, appellant indicated that on August 12, 2019 she was sitting at her desk when she saw people running down the hallway shouting "here he comes with a gun." She noted that the shooter came around the corner by the pharmacy shouting "where is urgent care" and she jumped to the floor and crawled under her desk. Appellant described the area under her desk as very small, and noted that she hit her knee, shoulder, and back trying to stay out of the gunman's way. She reported that the gunman rushed pass her with a rifle in his hand when the police stopped him and ordered him drop his weapon. Appellant indicated that the shooter tossed the rifle toward the police and laid on the ground.

In a report dated November 25, 2019, Dr. Slack diagnosed persistent cervical and lumbar derangement, and degenerative disc and facet disease, with L4-5 spondylolisthesis. He continued her work restrictions.

By decision dated May 7, 2020, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish that her diagnosed condition was causally related to the accepted August 12, 2019 employment incident.

On June 23, 2020 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

OWCP received additional evidence. In work status reports dated August 13, 2018 and November 25, 2019, Dr. Slack diagnosed persistent cervical derangement, persistent lumbar derangement L5-S1 with flare up of radiculopathy. He released appellant to sedentary work with restrictions.

Dr. Theodore Fisher, a Board-certified orthopedic surgeon, prepared work status reports dated April 17, July 9, and September 10, 2020. He diagnosed L5-S1 herniated disc, L4-5 facet arthropathy, and right L5 radiculopathy and recommended sedentary work with restrictions. On July 9, 2020 Dr. Fisher treated appellant for back and neck pain and recurrent lower extremity radiculopathy. He reviewed a magnetic resonance imaging (MRI) scan of the lumbar spine dated May 29, 2020, which demonstrated right greater than left foraminal stenosis at L5-S1 secondary to disc osteophyte complex and facet arthropathy. Dr. Fisher diagnosed L5-S1 herniated nucleus pulposus, degenerative disc disease, facet arthropathy, right greater than left L5-S1 foraminal stenosis, and right L5 radiculopathy. He recommended an intra-articular injection and physical therapy.

Dr. Nidal Elbaridi, a Board-certified anesthesiologist, treated appellant on August 7 and 17, 2020 for low back, leg, and shoulder pain. He diagnosed right shoulder impingement syndrome, lumbar spondylosis, tear of the right rotator cuff, and degeneration of lumbar intervertebral disc.

By decision dated October 19, 2020, OWCP's hearing representative affirmed the May 7, 2020 decision.

Appellant appealed to the Board. By order dated March 3, 2023, the Board remanded the case and instructed OWCP to administratively combine OWCP File Nos. xxxxxx965 and xxxxxx287 followed by a *de novo* decision.⁴

On April 13, 2023 OWCP administratively combined appellant's claims, with OWCP File No. xxxxxx965 serving as the master file. In an April 18, 2023 development letter, it informed appellant of the deficiencies of her claim. OWCP advised her of the type of factual and medical evidence needed and afforded her 30 days to submit the necessary evidence.

OWCP received additional evidence. An MRI scan of the lumbar spine dated May 29, 2020 demonstrated rightward predominant disc bulge, endplate spurring at L5-S1 contributing to moderate to advanced right foraminal narrowing, mild-to-moderate left foraminal narrowing, multilevel mild-to-moderate facet arthrosis, mild spondylotic change, and suspected lesion in the liver. An MRI scan of the lumbar spine dated May 26, 2023 demonstrated moderate bilateral foraminal stenosis at L5-S1, moderate type 1 endplate change at L5-S1 asymmetric to the left and worse when compared to prior examination, T2 signal focus of the right liver, and abdominal aortic aneurysm.

On August 7, 2020 Dr. Elbaridi treated appellant for leg, low back, and shoulder pain. He provided a history of work injuries in May 2014 and August 2019 and diagnosed lumbar spondylosis, tear of the right rotator cuff, and degeneration of lumbar intervertebral disc. On August 17, 2020 Dr. Elbaridi performed an intra-articular injection. He treated appellant in follow up on August 31 and October 30, 2020 and January 5, 2021 and she reported moderate relief from the injection, but still noted radicular symptoms. Dr. Elbaridi diagnosed spinal stenosis of the lumbar region, lumbar spondylosis, and lumbosacral radiculopathy. In October 30, 2020 and January 5, 2021 reports, he restricted appellant to work with no repetitive bending or stooping. In reports dated May 3 and June 6, 2023, Dr. Elbaridi provided a history of the injury, and diagnosed spinal stenosis of the lumbar region, pain due to varicose veins of the bilateral legs, long-term drug therapy, and osteoarthritis. On May 11, 2023 he treated appellant for painful varicose veins and performed a venous insufficiency report.

Dr. Fisher treated appellant on April 1, 2022 for chronic low back pain and recurrent numbness of the foot. He diagnosed L4-5 facet arthropathy, L5-S1 herniated nucleus pulposus, degenerative disc disease, and right L5 radiculopathy.

In a Form CA-20 dated July 7, 2019, Dr. Vijaya Sarma provided a history of appellant's injury and diagnosed intervertebral disc disorder with radiculopathy. She checked a box marked

⁴ *Order Remanding Case*, Docket No. 21-0669 (issued March 3, 2023).

“Yes” indicating that appellant’s condition was caused or aggravated by the employment activity, specifically bending and crawling under her desk.⁵

By decision dated March 14, 2024, OWCP denied appellant’s traumatic injury claim, finding that the medical evidence of record was insufficient to establish a medical condition causally related to the accepted August 12, 2019 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ 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,⁷ 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.⁸ 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.⁹

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.¹⁰

The medical evidence required to establish causal relationship is rationalized medical opinion evidence.¹¹ 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.¹²

⁵ On July 28, 2023 appellant filed a notice of recurrence (Form CA-2a) claim.

⁶ *Id.*

⁷ *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).

⁸ *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).

⁹ *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).

¹⁰ *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).

¹¹ *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).

¹² *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).

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.¹³

In a case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹⁴

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted August 12, 2019 employment incident.

In reports dated July 17 and August 14, 2019, Dr. Slack provided diagnoses. In a form report dated August 28, 2019, he treated appellant and provided diagnoses. Similarly, in a Form OWCP-5c dated August 14, 2019, Dr. Slack diagnosed flare up of low back derangement and degenerative disc disease with L4-5 spondylosis. He noted that appellant could work eight hours a day with restrictions. Likewise, in work status reports dated August 14 and November 25, 2019, Dr. Slack provided diagnoses and released appellant to sedentary work.¹⁵ In a report dated November 25, 2019, he provided diagnoses and continued work restrictions. However, in these notes Dr. Slack failed to offer an opinion on causal relationship. 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.¹⁶ Thus, the Board finds that these reports are insufficient to meet appellant's burden of proof.

In another report dated August 14, 2019, Dr. Slack provided diagnoses and reported that on August 12, 2019 a gunman entered her workplace with a rifle, and she crawled under her desk and experienced a flare-up of right lateral neck pain and low back pain. Similarly, on August 7, 2020 Dr. Elbaridi provided a history of work injuries and provided diagnoses. On August 17, 2020 he performed an intra-articular injection. Dr. Elbaridi treated appellant in follow up on August 31 and October 30, 2020 and January 5, 2021 and provided diagnoses. In the October 30, 2020 and January 5, 2021 reports, he restricted appellant to work with no repetitive bending or stooping. Likewise, on May 3 and June 6, 2023 Dr. Elbaridi provided diagnoses, and explained that appellant reinjured her right low back pain and right leg during an August 2019 employment incident when an active shooter entered the workplace, and she jumped under a desk hitting her back. While Drs. Slack and Elbaridi indicated that appellant's medical conditions were work related, they failed to provide medical rationale explaining the basis of their opinion. Without explaining, physiologically, how the specific employment incident caused or aggravated a

¹³ *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

¹⁵ Appellant also submitted work status reports from Dr. Slack dated September 30, 2016, August 13 and November 14, 2018. However, these reports predate the August 12, 2019 incident and do not otherwise address causal relationship.

¹⁶ *See S.H.*, Docket No. 19-1128 (issued December 2, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

diagnosed condition, Drs. Slack and Elbaridi's opinions on causal relationship are of limited probative value and insufficient to establish appellant's claim.¹⁷

Appellant submitted an employing establishment clinic note dated August 14, 2019 signed by Purvi Patel. The author, however, cannot be identified as a physician.¹⁸ Therefore, this report is insufficient to establish the claim.

On September 20, 2019 Dr. Berman diagnosed post-traumatic stress disorder after an accident at work. In work status reports dated April 17, July 9, and September 10, 2020, Dr. Fisher diagnosed L5-S1 herniated disc, L4-5 facet arthropathy, and right L5 radiculopathy. Similarly, in reports dated July 9, 2020 and April 1, 2022, he diagnosed L5-S1 herniated nucleus pulposus, degenerative disc disease, facet arthropathy, right greater than left L5-S1 foraminal stenosis, and right L5 radiculopathy. Likewise, on August 7, 2020, Dr. Elbaridi diagnosed right shoulder impingement syndrome, lumbar spondylosis, tear of the right rotator cuff, and degeneration of lumbar intervertebral disc. However, as noted above, in these notes Drs. Berman, Fisher and Elbaridi failed to offer an opinion on causal relationship. 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.¹⁹ Therefore, these reports are insufficient to establish the claim.

In August 12 and October 22, 2019 Form CA-20 reports, by Dr. Slack and a July 7, 2023 Form CA-20 by Dr. Sarma, both physicians checked a box marked "Yes" indicating that appellant's medical conditions were causally related to the accepted August 12, 2019 employment incident. However, the Board has held that an opinion on causal relationship with an affirmative check mark, without more by way of medical rationale, is insufficient to establish the claim.²⁰ As such, these reports are insufficient to establish appellant's claim.

Appellant submitted notes from Ms. Fritz, a physician assistant, dated August 14, 2019. Certain healthcare providers such as physician assistants are not considered physician[s] as defined

¹⁷ *G.L.*, Docket No. 18-1057 (issued April 14, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

¹⁸ *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).

¹⁹ *See S.H.*, Docket No. 19-1128 (issued December 2, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

²⁰ *See C.S.*, Docket No. 18-1633 (issued December 30, 2019); *D.S.*, Docket No. 17-1566 (issued December 31, 2018).

under FECA.²¹ Consequently, these notes will not suffice for purposes of establishing appellant's claim.²²

The record also contains MRI scans. The Board has held, however, that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the accepted employment injuries resulted in appellant's diagnosed medical conditions.²³

As the medical evidence of record is insufficient to establish causal relationship between a medical condition and the accepted August 12, 2019 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 medical condition causally related to the accepted August 12, 2019 employment incident.

²¹ 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). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *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 C.K.*, Docket No. 19-1549 (issued June 30, 2020) (physician assistants are not considered physicians under FECA).

²² *Id.*

²³ *L.A.*, Docket No. 22-0463 (issued September 29, 2022); *D.K.*, Docket No. 21-0082 (issued October 26, 2021); *O.C.*, Docket No. 20-0514 (issued October 8, 2020); *R.J.*, Docket No. 19-0179 (issued May 26, 2020).

ORDER

IT IS HEREBY ORDERED THAT the March 14, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 5, 2024
Washington, DC

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

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

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