

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

E.B., Appellant)	
)	
and)	Docket No. 24-0762
)	Issued: September 10, 2024
SOCIAL SECURITY ADMINISTRATION,)	
Jamaica, NY, Employer)	
)	

Appearances:

Thomas S. Harkins, Esq., for the appellant¹
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 July 12, 2024 appellant, through counsel, filed a timely appeal from a January 31, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

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

FACTUAL HISTORY

On October 18, 2022 appellant, then a 26-year-old contact representative, filed an occupational disease claim (Form CA-2) alleging that she developed a neck and back condition due to factors of her federal employment, including prolonged sitting, repetitive computer work, and use of internet telephone software to speak with clients. She noted that she first became aware of her condition and realized its relation to her federal employment on September 22, 2022. Appellant stopped work on September 22, 2022.

In a supplemental statement dated September 28, 2022, appellant related that on September 22, 2022 she injured her neck and back while sitting at a computer and speaking with clients on the telephone. She informed her supervisor that she was experiencing pain and requested an ergonomic chair. Appellant sought medical treatment at the emergency room.

On September 28, 2022 Dr. Zimatu Chukumerije, an osteopath Board-certified in emergency medicine, treated appellant in the emergency room and diagnosed low back pain without sciatica and neck pain. X-rays of the lumbar and cervical spine revealed no abnormalities.

Appellant submitted a report signed on October 4, 2022 by a provider with an illegible signature, who indicated that she was treated from September 23 through October 4, 2022. The provider noted that she continued to experience significant symptoms that may interfere with regular functional performance, work, or leisure activities.

A magnetic resonance imaging (MRI) scan of the lumbar spine dated October 13, 2022 demonstrated grade 1 retrolisthesis of L5 on S1, L2-3 level disc bulge resulting in bilateral neuroforaminal encroachment, L3-4 level disc bulge abutting the thecal sac resulting in bilateral neuroforaminal encroachment, L4-5 level posterior disc herniation asymmetric to the left resulting in central and bilateral neuroforaminal encroachment, and L5-S1 level posterior disc herniation resulting in central and bilateral neuroforaminal encroachment with severe left neuroforaminal narrowing. An MRI scan of the cervical spine demonstrated levoscoliosis, straightening of the normal cervical lordosis, C3-4 level posterior disc herniation with productive changes resulting in central and right neuroforaminal encroachment with moderate right neuroforaminal narrowing, C4-5 level disc bulge with productive changes resulting in central canal encroachment without neuroforaminal encroachment, C5-6 level posterior disc herniation flattening the sac resulting in central canal encroachment and left neuroforaminal encroachment, and C6-7 level disc bulge abutting the thecal sac resulting in central canal encroachment without neuroforaminal encroachment. An MRI scan of the thoracic spine revealed normal cord signal, no disc bulge or disc herniation, and no central canal or neuroforaminal encroachment.

On October 17, 2022 Dunreath Anderson, a nurse practitioner, prepared a duty status report (Form CA-17), and diagnosed neck and upper back injuries and indicated that appellant was totally disabled from work. In an attending physician's report (Form CA-20) of even date, she diagnosed

bulging cervical and lumbar discs. Ms. Anderson checked a box marked “Yes,” indicating that the diagnosed conditions were caused or aggravated by the described employment incident. In a form report dated October 17, 2022, she noted treating appellant since September 22, 2022 for severe neck, middle back, and lower back pain. Ms. Anderson indicated that appellant would be incapacitated from September 22, 2022 through April 28, 2023.

In a development letter dated October 26, 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 respond. By separate development letter of the same date, it requested that the employing establishment provide additional evidence, including comments from a knowledgeable supervisor regarding appellant’s claim. OWCP afforded the employing establishment 30 days to respond.

OWCP received additional evidence. In reports dated October 3 and 17, 2022 Ms. Anderson, diagnosed sprain of ligaments of the lumbar, thoracic, and cervical spine, sprain of muscle, fascia, and tendon at neck and low back, strain of muscle and tendon of back wall of thorax, other cervical disc displacement, and other intervertebral disc displacement of the lumbar region. Appellant reported that her symptoms began at work on September 22, 2022 while she was sitting at her desk typing when she developed a sudden, sharp pain in her neck and lower back. She opined within a degree of medical certainty the history presented by appellant, the objective findings, and diagnosis rendered was causally related to the injury appellant incurred on a specified date. Ms. Anderson noted that appellant was totally disabled. In a Form CA-17 dated November 14, 2022, she diagnosed neck and upper back injury and advised that appellant was totally disabled. In a Form CA-20 of even date, Ms. Anderson checked a box marked “Yes,” indicating that the diagnosed conditions were caused or aggravated by the described employment factors.

In response to the development letter, appellant submitted a signed questionnaire form dated October 28, 2022, and a position description.

By decision dated December 12, 2022, OWCP denied appellant’s occupational disease claim, finding that she had not submitted medical evidence containing a medical diagnosis in connection with the accepted factors of her federal employment. It concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

OWCP received additional evidence. In reports dated November 14 and December 12, 2022, and February 3, March 7, April 25, May 9, June 6, June 27, August 1, and September 8, 2023, Ms. Anderson diagnosed sprain of ligaments of the lumbar, thoracic, and cervical spine, sprain of muscle, fascia, and tendon at neck and low back, strain of muscle and tendon of back wall of thorax, other cervical disc displacement, and other intervertebral disc displacement of the lumbar region. She opined within a degree of medical certainty the history presented by appellant, the objective findings, and diagnosis rendered was causally related to the injury appellant incurred on a specified date. Ms. Anderson noted appellant was totally disabled and could return to light duty on June 6, 2023.

Dr. Nachmy Bronstein, a chiropractor, treated appellant on November 15 and 18, 2022 for back and neck pain radiating into the upper and lower extremities. Appellant attributed her symptoms to prolonged sitting at work. Dr. Bronstein diagnosed cervicgia and low back pain. He opined that based on the physical examination and the history presented that appellant's condition was causally related to the incident described in the examination.

Dr. Mark Goldstein, a Board-certified anesthesiologist, treated appellant on November 16, 2022 and February 17 and March 31, 2023, for neck, mid-back, and low back pain. Appellant reported that on September 22, 2022 while at work she was sitting at her desk typing when she developed a sudden, sharp pain in her neck, mid and low back. Dr. Goldstein diagnosed cervicgia with cervical spine sprain and strain, cervical disc displacement with herniated nucleus pulposus at C3-4, C5-6 and bulges at C4-5 and C6-7, left cervical radiculopathy, thoracic spine sprain and strain, lumbago with lumbar spine sprain and strain, lumbar disc displacement with herniated nucleus pulposus at L4-5 and L5-S1 and bulges at L2-3 and L3-4, and lumbar facet joint syndrome. He opined that the history presented by the patient, the objective physical findings, and diagnosis rendered was causally related to the injury appellant incurred on the date above. Dr. Goldstein noted appellant was temporarily totally disabled. On March 31, 2023 he recommended a series of intra-articular injections.

On February 3, 2023 Dr. Ross Fialkov, a chiropractor, treated appellant for back and neck pain radiating into the upper and lower extremities. Appellant reported that her symptoms began at work while she was sitting and working on a computer. Dr. Fialkov diagnosed segmental and somatic dysfunction of the cervical and lumbar region. He opined that appellant's conditions were causally related to the employment factors.

An electromyography and nerve conduction velocity (EMG/NCV) test dated February 21, 2023 revealed no abnormalities.

On April 10, 2023 Dr. Abdalla Adam, a Board-certified physiatrist, treated appellant for neck and back pain. He noted findings on examination of positive foraminal compression/ Spurling's sign, moderate tenderness of the cervical and thoracic muscles, severe tenderness of the lumbar muscles, positive straight leg raising test on the left, slow and antalgic gait, and decreased sensation at L5-S1 distribution. Dr. Adam diagnosed cervical, thoracic, and lumbar sprain, strain, disc disease, and radiculopathy. He opined within a degree of medical certainty that the history presented by appellant, the objective physical findings, and diagnosis rendered was causally related to the injury incurred on the specified date. Dr. Adam noted that appellant was totally disabled.

Dr. Goldstein treated appellant in follow-up on September 1, 2023 for axial pain in the cervical and lumbar spine. He noted diagnoses and recommended medial branch blocks for the cervical and lumbar region. Dr. Goldstein opined that the history presented by appellant, the objective physical findings, and diagnosis rendered was causally related to the injury incurred on the specified date. He noted that appellant was currently employed but was partially disabled.

On November 13, 2023 appellant requested reconsideration.

By decision dated January 31, 2024, OWCP modified its December 12, 2022 decision, to reflect that appellant had established a medical diagnosis. However, the claim remained denied, as the medical evidence of record was insufficient to establish a medical condition causally related to the accepted factors of her federal employment.

LEGAL PRECEDENT

A claimant seeking benefits under FECA³ 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,⁴ 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.⁵ 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.⁶

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.

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁷ The opinion of the physician must be based upon 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.⁸

ANALYSIS

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

³ *Supra* note 2.

⁴ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *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).

⁶ *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).

⁷ *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018).

On September 28, 2022 Dr. Chukumerije treated appellant in the emergency room and diagnosed acute back pain. However, this report fails to provide an opinion regarding the cause of appellant's cervical and lumbar conditions.⁹ 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.¹⁰ Therefore this report is insufficient to establish causal relationship.

Dr. Goldstein treated appellant on November 16, 2022 and February 17, March 31, and September 1, 2023, and provided diagnoses. He opined within a degree of medical certainty that the history presented by the patient, the objective physical findings, and diagnosis rendered was causally related to the injury appellant incurred on the date above. Similarly, on April 10, 2023, Dr. Adam provided diagnoses and opined within a degree of medical certainty that the history presented by appellant, the objective physical findings, and diagnosis rendered was causally related to the injury incurred on the specified date. While Drs. Goldstein and Adam indicated that appellant's medical conditions were work related, they failed to provide medical rationale explaining the basis of their opinions. Without explaining, pathophysiologically, how the specific employment factors caused or aggravated a diagnosed condition, Drs. Goldstein's and Adam's opinions on causal relationship are of limited probative value and insufficient to establish appellant's claim.¹¹

The Board further finds that none of the chiropractic reports from Drs. Bronstein and Fialkov constitute probative medical evidence, because a chiropractor is only considered a physician for purposes of FECA if he or she diagnoses subluxation based upon x-ray evidence.¹² As appellant's chiropractors did not diagnose a spinal subluxation based upon x-ray evidence, they are not considered physicians as defined under FECA and their reports do not constitute competent medical evidence.¹³

Appellant also submitted notes from Ms. Anderson, a nurse practitioner. However, certain healthcare providers such as nurse practitioners are not considered "physician[s]" as defined under

⁹ *L.D.*, Docket No. 18-1468 (issued February 11, 2019).

¹⁰ See *L.B.*, *supra* note 8; *D.K.*, Docket No. 17-1549 (issued July 6, 2018); *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹¹ *G.L.*, Docket No. 18-1057 (issued April 14, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

¹² Section 8101(2) of FECA provides that the term physician includes chiropractors only if the treatment consists of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. 5 U.S.C. § 8101(2). See *T.T.*, Docket No. 18-0838 (issued September 19, 2019); *Thomas W. Stevens*, 50 ECAB 288 (1999); *George E. Williams*, 44 ECAB 530 (1993).

¹³ *C.S.*, Docket No. 19-1279 (issued December 30, 2019).

FECA.¹⁴ Consequently, these notes will not suffice for purposes of establishing appellant's claim.¹⁵

The record also contains MRI scans of the lumbar, thoracic, and cervical spine, lumbar x-rays, and an EMG/NCV study. 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 factors resulted in appellant's diagnosed medical conditions.¹⁶

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted factors of appellant's 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 medical condition causally related to the accepted factors of her federal employment.

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); *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 *T.J.*, Docket No. 19-1339 (issued March 4, 2020) (nurse practitioners are not considered physicians under FECA).

¹⁵ *Id.*

¹⁶ *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 January 31, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 10, 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