United States Department of Labor
Employees' Compensation Appeals Board

G.G., Appellant	)	
and	)	**Docket No. 21-0736**
	)	**Issued: December 20, 2021**
U.S. POSTAL SERVICE, MERRIFIELD PROCESSING & DISTRIBUTION CENTER, Merrifield, VA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 20, 2021 appellant filed a timely appeal from a March 23, 2021 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]

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the March 23, 2021 decision, OWCP received additional evidence. However, 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*.

ISSUE

The issue is whether appellant has met her burden of proof to establish a lower back condition causally related to the accepted January 29, 2021 employment incident.

FACTUAL HISTORY

On February 11, 2021 appellant, then a 48-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on January 29, 2021 she injured her lower back when lifting trays while in the performance of duty. On the reverse side of the claim form, the employing establishment acknowledged that she was injured in the performance of duty. Appellant stopped work on January 29, 2021.

In a February 9, 2021 medical report, Dr. Nori Buising, Board-certified in family medicine, indicated that appellant injured her back while moving parcels. She diagnosed sciatica of the left side associated with a disorder of the lumbosacral spine and referred appellant to orthopedic surgery for further evaluation. In a medical note of even date, Dr. Buising opined that appellant should remain off work until February 13, 2021 and only perform desk work upon her return.

In a February 9, 2021 duty status report (Form CA-17), Dr. Buising noted that appellant experienced pain in her back when lifting letter trays on January 29, 2021 and submitted work restrictions for her to follow.

On February 11, 2021 the employing establishment controverted appellant's claim, asserting that she submitted medical evidence that suggested that she had a preexisting condition and that there were inconsistencies in her description of how her injury occurred.

In a development letter dated February 12, 2021, OWCP informed appellant of the deficiencies of her claim and advised her of the factual and medical evidence necessary to establish her claim. It provided a factual questionnaire for her completion. OWCP afforded appellant 30 days to provide the necessary information.

In a February 15, 2021 medical report, Lisa J. Siddall, a nurse practitioner, ordered physical therapy to treat appellant's diagnosed degenerative lumbar disc and lumbar radicular pain. In a medical note of even date, she recommended that appellant only perform light-duty work.

On March 1, 2021 the employing establishment submitted a copy of an offer of modified assignment (limited duty), consisting of manually casing letters for six hours per day, sitting, simple grasping, and no lifting over three pounds.

In a March 15, 2021 medical report, Ms. Siddall evaluated appellant for lumbar pain that began on January 29, 2021. She diagnosed degenerative lumbar disc and lumbar radicular pain and referred her to physical therapy. In a Form CA-17 of even date, Ms. Siddall reiterated her diagnoses and also provided work restrictions for appellant.

By decision dated March 23, 2021, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted January 29, 2021 employment incident.

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, that the claim was timely filed within the applicable time limitation period of FECA,[3] 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 if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[6] The second component is whether the employment incident caused a personal injury.[7]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[8] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[9] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a lumbar condition causally related to the accepted January 29, 2021 employment incident.

Dr. Buising, in her February 9, 2021 medical report, indicated that appellant injured her back while moving parcels and diagnosed sciatica of the left side associated with a disorder of the lumbar spine. However, she failed to explain, with rationale, how the accepted employment

[3] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *L.S.*, Docket No. 19-1769 (issued July 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[5] *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] *B.P.*, Docket No. 16-1549 (issued January 18, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

[9] *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

[10] *B.C.*, Docket No. 20-0221 (issued July 10, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

incident either caused or contributed to her diagnosed lumbar 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.[11] For this reason, Dr. Buising's February 9, 2021 medical report is insufficient to meet appellant's burden of proof.

In her February 9, 2021 Form CA-17, Dr. Buising noted that appellant experienced pain in her back when lifting letter trays on January 29, 2021. The Board has held, however, that pain is a symptom and not a compensable medical diagnosis.[12] Moreover, Dr. Buising did not 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 is of no probative value on the issue of causal relationship.[13] The Form CA-17 is, therefore, insufficient to establish appellant's claim.

The remaining medical evidence consists of medical reports and notes signed by a nurse practitioner. However, certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered physicians as defined under FECA.[14] Consequently, this evidence will not suffice for purposes of establishing entitlement to FECA benefits.[15]

As the medical evidence of record is insufficient to establish causal relationship between a lumbar condition and the accepted January 29, 2021 employment incident, 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 lumbar condition causally related to the accepted January 29, 2021 employment incident.

[11] *J.D.*, Docket No. 19-1953 (issued January 11, 2021); *see K.W.*, Docket No. 19-1906 (issued April 1, 2020).

[12] *See S.L.*, Docket No. 19-1536 (issued June 26, 2020); *D.Y.*, Docket No. 20-0112 (issued June 25, 2020).

[13] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[14] Section 8101(2) 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 also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *M.F.*, Docket No. 19-1573 (issued March 16, 2020); *N.B.*, Docket No. 19-0221 (issued July 15, 2019); *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] *See M.C.*, Docket No. 19-1074 (issued June 12, 2020) (nurse practitioners are not considered physicians under FECA).

ORDER

IT IS HEREBY ORDERED THAT the March 23, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 20, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board