

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

M.K., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
JAMES J. PETERS VA MEDICAL CENTER,)
Bronx, NY, Employer)

Docket No. 22-1303
Issued: May 12, 2023

Appearances:

Thomas S. Harkins, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On September 9, 2022 appellant, through counsel, filed a timely appeal from an August 22, 2022 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted July 25, 2018 employment incident.

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.*

FACTUAL HISTORY

On August 2, 2018 appellant, then a 55-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that, on July 25, 2018, she sustained injuries when she slipped on a greasy floor while in the performance of duty.

Appellant was seen in the employing establishment emergency medicine department on July 30, 2018 by Dr. David Ng, Board-certified in emergency medicine, and was excused from work for three days. Dr. Svetlana Ilizarov, a Board-certified sports medicine specialist, related in an August 13, 2018 note that appellant was a patient in the rehabilitation medicine clinic and was to remain off work until August 21, 2018. In an August 15, 2018 note, Dr. Elena Belkin, a psychiatrist, reported that appellant was seen in rehabilitation clinic for low back pain post fall.³ On September 18, 2018 Dr. Ilizarov, related that appellant could return to full-duty work on September 18, 2018.

On March 9, 2021 appellant stopped work. On April 19, 2021 she filed a notice of recurrence (Form CA-2a) for medical treatment beginning March 9, 2021 due to increased pain causally related to the July 25, 2018 work injury.

In a May 3, 2021 development letter, OWCP advised appellant of the deficiencies of her claim and requested additional factual and medical evidence. It afforded her 30 days to respond.

OWCP received appellant's May 10, 2021 statement, wherein she attested that she was feeding patients when she slipped on July 25, 2018.

In March 10 and 19, 2021 work excuse notes, Dr. Heidi Klingbeil, a Board-certified psychiatrist, held appellant off work due to severe leg pain and significant injury, respectively. In an April 2, 2021 note, she opined that appellant could return to work on April 5, 2021 with restrictions. In an April 9, 2021 note, Dr. Christopher Brusalis, a Board-certified orthopedic surgeon, indicated that appellant had chronic low back pain requiring restrictions, which included no lifting over five pounds and avoiding heavy work activities.

In a May 20, 2021 development letter, OWCP advised appellant of the type of evidence needed to establish a recurrence of her work-related condition or disability. It requested that she submit additional medical information, including a detailed medical report from her physician that clearly established how her claimed recurrence was causally related to her accepted employment. OWCP provided appellant 30 days to submit the necessary evidence.

OWCP received partially legible May 7, 2021 diagnostic reports.

On May 5, 2021 Dr. Jake Ni, a Board-certified orthopedic surgeon, diagnosed greater trochanteric bursitis of left hip and tear of left acetabular labrum and referred appellant to physical therapy.

³ An August 30, 2018 employing establishment report of emergency treatment, bearing an illegible signature, indicated that appellant could return work on light duty.

In a May 25, 2021 report, Leora Rosen, a physical therapist, noted that appellant reported a history of fall in 2018 followed by two years of physical therapy with an increase in pain in December 2020.

In a May 28, 2021 report, Dr. Ilizarov noted that appellant's hip pain started after a 2018 fall, a February 26, 2021 magnetic resonance imaging (MRI) scan of the pelvis found a left acetabular tear, and she underwent conservative management. She reported that appellant was seen in clinic on March 19, 2021 for an exacerbation of her hip pain and noted examination findings. Dr. Ilizarov opined that appellant's bilateral hip pain was due to left labral tear and greater trochanteric bursitis. She recommended light duty and provided a work restriction note also dated May 28, 2021.

By decision dated June 15, 2021, OWCP denied appellant's July 25, 2018 traumatic injury claim, finding that the medical evidence failed to contain a medical diagnosis in connection with the injury and/or event. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA. OWCP further advised that appellant's claimed recurrence of March 9, 2021 would not be further addressed since she did not establish her claim for an initial injury.

In a June 11, 2021 work status note, Dr. Ni held appellant off work until July 11, 2021 due to an orthopedic problem related to the left hip.

In a July 23, 2021 report, Dr. Ni reported that appellant presented with acute onset of three years of activity related pain in lateral left hip from a July 25, 2018 workers' compensation related injury. He provided an assessment of greater trochanter bursitis of left hip and tear of left acetabular labrum and opined that she was totally disabled from work.

On May 28, 2022 appellant, through counsel, requested reconsideration. Counsel submitted legal arguments alleging that appellant had sustained disabling injuries and conditions causally related to the July 25, 2018 employment incident. A duplicate copy of Dr. Ni's July 23, 2021 report was submitted. OWCP also received MRI scans dated February 26, 2021. The pelvis MRI scan revealed tear of the anterior aspect of the left acetabular labrum, mild bilateral hip chondromalacia, no acute fracture or avascular necrosis, and mild inflammation in the bilateral greater trochanteric bursae. The lumbar spine MRI scan revealed mild degenerative disc disease at L4-L5 and L5-S1, not significantly changed, with no evidence of cauda equina compression.

By decision dated August 22, 2022, OWCP modified its June 15, 2021⁴ decision to find that appellant had established a medical diagnosis. The claim remained denied, however, as causal relationship had not been established.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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

⁴ OWCP erroneously referred to its initial decision as dated June 21, 2021.

⁵ *Supra* note 2.

limitation of FECA,⁶ 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.⁷ 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.⁸

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. There are two components involved in establishing fact of injury. The first component is that 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. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁹

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.¹⁰ 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.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted July 25, 2018 employment incident.

OWCP accepted that appellant fell on July 25, 2018. In support of her claim, appellant submitted work excuse notes dating from 2018 until 2021 from Drs. Ng, Ilizarov, Belkin, Klingbeil, and Brusalis. These physicians either simply noted appellant's work restrictions or indicated that appellant's work restrictions were due to leg pain or back pain. The Board has explained that medical reports which lack a complete history or injury, firm diagnosis, and rationalized opinion regarding causal relationship are insufficient to establish appellant's claim.¹²

⁶ *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).

⁷ *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).

⁸ *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).

⁹ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *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).

¹¹ *P.C.*, Docket No. 20-0855 (issued November 23, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹² *L.T.*, Docket No. 20-0582 (issued November 15, 2021); *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

The Board has also held that pain is a description of a symptom, not a clear diagnosis of a medical condition.¹³ A medical report lacking a diagnosis is of no probative value.¹⁴ This evidence, therefore, is insufficient to establish the claim.

In a May 5, 2021 note, Dr. Ni diagnosed greater trochanteric bursitis of left hip and tear of left acetabular labrum. This note is of limited probative value as Dr. Ni failed to provide a history of injury or offer an opinion regarding the cause of appellant's left hip condition.¹⁵ In his July 23, 2021 report, Dr. Ni reported that appellant presented with acute onset of three years of activity related pain in lateral left hip from a July 25, 2018 workers' compensation-related injury. He provided an assessment of greater trochanter bursitis of left hip and tear of left acetabular labrum. However, he did not offer his own medical opinion regarding causal relationship between appellant's diagnosed left hip condition and the accepted employment incident. 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.¹⁶ For these reasons, Dr. Ni's reports are insufficient to meet appellant's burden of proof.

In her May 28, 2021 report, Dr. Ilizarov provided an accurate history of injury and opined that appellant's bilateral hip pain was due to left labral tear and greater trochanteric bursitis. However, her report is also of no probative value on the issue of causal relationship as she did not offer an opinion causally relating appellant's diagnosed conditions to the accepted July 25, 2018 employment incident.¹⁷ For this reason, this medical evidence is insufficient to meet appellant's burden of proof.

Appellant also submitted reports from physical therapists. However, certain healthcare providers such as physician assistants, nurses, nurse practitioners, physical/occupational therapists, and social workers are not considered physicians as defined under FECA.¹⁸

¹³ See *D.M.*, Docket No. 21-1244 (issued March 25, 2022); *E.S.*, Docket No. 21-0189 (issued November 16, 2021); *C.S.*, Docket No. 20-1354 (issued January 29, 2021); *D.R.*, Docket No. 18-1408 (issued March 1, 2019); *D.A.*, Docket No. 18-0783 (issued November 8, 2018).

¹⁴ *L.T.*, Docket No. 20-0582 (issued November 15, 2021); *E.S.*; *C.S.*, *id.*; *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

¹⁵ *S.B.*, Docket No. 21-0646 (issued July 22, 2022); *J.D.*, Docket No. 21-1422 (issued May 24, 2022); *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁶ *Id.*; see also *M.C.*, Docket No. 18-0951 (issued January 7, 2019).

¹⁷ *Id.*

¹⁸ 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); *K.D.*, Docket No. 22-0756 (issued November 29, 2022) (a physician assistant and a physical therapist are not considered physicians as defined under FECA); *E.T.*, Docket No. 19-0948 (issued July 27, 2020) (a physical therapist is not considered a physician under FECA).

Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹⁹

Appellant also submitted diagnostic studies. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship, as they do not provide an opinion as to whether the employment incident caused any of the diagnosed conditions.²⁰

As appellant has not submitted rationalized medical evidence establishing a medical condition causally related to the accepted July 25, 2018 employment incident, the Board finds that she has not met her burden of proof to establish her claim.

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 July 25, 2018 employment incident.

¹⁹ *K.D.*, *id.*; *J.B.*, Docket No. 20-1566 (issued August 31, 2021); *D.P.*, Docket No. 19-1295 (issued March 16, 2020); *G.S.*, Docket No. 18-1696 (issued March 26, 2019); *see M.M.*, Docket No. 17-1641 (issued February 15, 2018); *K.J.*, Docket No. 16-1805 (issued February 23, 2018); *David P. Sawchuk*, *id.*

²⁰ *See L.B.*, Docket No. 21-0353 (issued May 23, 2022); *K.C.*, Docket No. 20-1325 (issued May 5, 2021); *C.B.*, Docket No. 20-0464 (issued July 21, 2020).

ORDER

IT IS HEREBY ORDERED THAT the August 22, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 12, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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