United States Department of Labor
Employees' Compensation Appeals Board

S.K., Appellant	)	
and	)	**Docket No. 12-1808**
	)	**Issued: March 15, 2013**
ENVIRONMENTAL PROTECTION AGENCY, REGION III, Philadelphia, PA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 29, 2012 appellant, through her attorney, filed a timely appeal of the June 13, 2012 decision of the Office of Workers' Compensation Programs (OWCP) which affirmed the denial of her claim. 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 the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a traumatic injury in the performance of duty.

FACTUAL HISTORY

On October 27, 2011 appellant, then a 41-year-old environmental engineer, filed a traumatic injury claim alleging that, on October 26, 2011, she injured her back while going through a defective security turnstile gate. She did not stop work.

[1] 5 U.S.C. §§ 8101-8193.

Appellant was treated in an emergency room by a nurse practitioner on October 26, 2011. She was diagnosed with back pain and muscle spasm. The nurse practioner prescribed Naprosyn and Valium and recommended that appellant follow up with her treating physician. In an attending physician's report dated November 4, 2011, Dr. Laura Picciano, an osteopath, noted that appellant reported tripping over a bar at her workplace. Her history was significant for degenerative joint disease and a prior motor vehicle accident. Appellant reported fully recovering from the automobile accident prior to this injury. Dr. Picciano noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. She opined that appellant was totally disabled from October 26 to December 7, 2011 and could return to regular duty on December 8, 2011. Appellant underwent a magnetic resonance imaging (MRI) scan of the lumbar spine on November 2, 2011 which revealed multilevel degenerative changes of the lower lumbar spine with central disc bulges at L3-4, L4-5 and L5-S1. An MRI scan of the cervical spine dated November 2, 2011 revealed degenerative changes of the cervical spine with central disc bulges at C3-4 and C4-5. Appellant submitted a November 10, 2011 referral slip for physical therapy from Dr. Jay Zampini, a Board-certified orthopedic surgeon. She underwent physical therapy on November 17, 2011.

By letter dated November 18, 2011, OWCP advised appellant of the evidence needed to establish her claim. It requested that she submit a physician's reasoned opinion addressing the causal relationship of her claimed back condition to the October 26, 2011 incident.

Appellant submitted a November 29, 2010 MRI scan of the cervical spine showing a C4-5 subligamentous disc herniation paramedian to the right, C3-4 disc protrusion, and minimal cervical spondylosis at C2-3, C6-7 and C7-T1. A November 29, 2010 MRI scan of the lumbar spine revealed spondylosis at L3, L4-5 and L5-S1 with disc protrusions and stenosis with a small annular tear at L5-S1.

On November 30, 2010 appellant was treated by Dr. Francis A. Kralick, an osteopath, for low back pain which originated in 2005. Dr. Kralick noted that motor strength was normal and sensation was diminished over the left lateral aspect of the leg. He diagnosed L5-S1 radiculopathy secondary to disc protrusion, disc bulging at L4-5 and L5-S1, cervical spine compression without myelopathy and mechanical low back. In a November 4, 2011 attending physician's report, Dr. Picciano diagnosed cervical and lumbar spine degenerative disc disease and cervical and lumbar strain. She noted that appellant reported tripping over a door at work on October 26, 2011 and injuring her back. Dr. Picciano noted that appellant had preexisting degenerative disc disease and a history of a motor vehicle accident from which she reported being fully recovered. She checked a box "yes" that the condition was caused or aggravated by work activity and noted that the injury occurred during ambulation at work. Dr. Picciano noted that appellant was totally disabled from October 26 to November 7, 2011. Appellant also submitted physical therapy notes.

The employing establishment submitted treatment notes from an employing establishment nurse who saw appellant on October 26, 2011 for low back pain. Appellant reported getting caught in the turnstile doors. The nurse recommended ibuprofen. On the same day, appellant reported the pain was not resolving and she was referred to Hahnemann Hospital for evaluation. The employing establishment also submitted two DVD discs from a security camera on October 26, 2011 showing appellant at the first floor security gate. A witness

statement from Sergeant Robert Conway noted that, on October 26, 2011, he witnessed appellant approach the gates which opened only half way and then stopped.

A July 25, 2011 MRI scan of the lumbar spine revealed three disc abnormalities in the lower lumbar spine from L3-4 through L5-S1, no change in the central protrusion at L3-4 and L4-5, with a small right central herniation at L5-S1 equal or smaller than previously seen. A July 25, 2011 MRI scan of the cervical spine showed unchanged central herniation at C3-4 with cord impingement, small right central disc herniation at C4-5 with cord impingement slightly decreased and slight bulging at C7-T1.

A November 25, 2011 attending physician's report from Dr. Picciano diagnosed C4-5 and L5-S1 spinal stenosis. Appellant reported crashing into the turnstile doors on October 26, 2011. Dr. Picciano checked a box "yes" that appellant's condition was caused or aggravated by her work. She opined that appellant was totally disabled since October 26, 2011 and her condition was uncertain due to myelopathy and worsening degenerative joint disease. In a December 9, 2011 report, Dr. Picciano noted treating appellant since 2007. Appellant presented on October 28, 2011 and reported that while at work she walked through a turnstile door which malfunctioned causing her to strike the door and experience shooting back pain. She noted recovering from her prior back injuries before the work accident in October 2011. Dr. Picciano noted findings upon examination of limited range of motion of the cervical and lumbar spine secondary to pain with no focal weakness. She diagnosed cervical and lumbar strain with a history of degenerative disc disease. Dr. Picciano opined that appellant aggravated her herniated disc from a previous injury and had increased impingement of the spinal cord and radiculopathy.

In a statement dated December 4, 2011, appellant noted that on October 26, 2011 while exiting the security doors at the employing establishment she approached the doors and they stopped only part way open and she impacted the stationary doors. She reported shooting pain through the low back into the legs. Appellant noted a preexisting back injury including herniated discs and pain.

On December 30, 2011 OWCP denied appellant's claim on the grounds that the medical evidence was insufficient to establish that her back condition was related to the October 26, 2011 incident.

On January 9, 2012 appellant requested a telephonic oral hearing which was held on March 5, 2012. She submitted physical therapy notes from November 17 to December 15, 2011, previously of record.

In a decision dated June 13, 2012, an OWCP hearing representative affirmed the December 30, 2011 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing 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 filed within the applicable time limitation

of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[2]

To determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[3] The second component of fact of injury is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[4]

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 identified by the claimant.[5] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[6]

ANALYSIS

OWCP accepted that appellant worked as an environmental engineer and that on October 26, 2011 as she struck security doors at work. On November 18, 2011 it advised her of the medical evidence needed to establish her claim. The Board finds that appellant did not submit a sufficient medical evidence from a physician explaining how the October 26, 2011 work incident caused or aggravated her back condition.

In a December 9, 2011 report, Dr. Picciano noted a history of injury and diagnosed cervical and lumbar strain with a history of degenerative disc disease. She opined that appellant aggravated a herniated disc from a prior injury and had increased impingement of the spinal cord

[2] *Gary J. Watling*, 52 ECAB 357 (2001).

[3] *Michael E. Smith*, 50 ECAB 313 (1999).

[4] *Id*.

[5] *Leslie C. Moore*, 52 ECAB 132 (2000).

[6] *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

and radiculopathy. Although Dr. Picciano generally supported causal relationship, she did not explain the basis of her conclusion regarding the causal relationship between appellant's herniated disc, impingement of the spinal cord and radiculopathy and the October 26, 2011 work incident.[7] Dr. Picciano did not explain the nature by which appellant struck the turnstile or the reason such incident contributed to appellant's preexisting degenerative disease. She did not address other nonwork factors, including a prior motor vehicle accident in which she sustained lumbar and cervical conditions. In a November 4, 2011 attending physician's report, Dr. Picciano noted that appellant reported tripping over a bar at her workplace on October 26, 2011, a history different than striking a turnstile door. She diagnosed cervical and lumbar spine degenerative disc disease and cervical and lumbar strain. Dr. Picciano checked a box "yes" that the condition was caused or aggravated by her work, noting that the injury occurred during ambulation at work. In a November 25, 2011 attending physician's report, she diagnosed C4-5 and L5-S1 spinal stenosis and checked a box "yes" that appellant's condition was employment related. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[8]

The other medical reports submitted by appellant are insufficient to establish her claim as they either predate the claimed October 26, 2011 incident or do not address whether the October 26, 2011 work incident caused or aggravated her back condition.

Appellant also submitted records from nurses. However, this evidence is of no probative medical value. The Board has held that nurses are not competent to render a medical opinion under FECA.[9] Likewise, evidence records from physical therapists are of no probative medical value in establishing appellant's claim.[10] Therefore, these reports are insufficient to meet appellant's burden of proof.

For these reasons, OWCP properly found that appellant did not meet her burden of proof in establishing her claim.

[7] *See T.M.*, Docket No. 08-975 (issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

[8] *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

[9] *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

[10] *See id.; Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

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 did not meet her burden of proof to establish that her claimed conditions were causally related to her employment.

ORDER

IT IS HEREBY ORDERED THAT the June 13, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 15, 2013
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board