United States Department of Labor
Employees' Compensation Appeals Board

J.O., Appellant	)	
and	)	**Docket No. 12-1833**
	)	**Issued: February 13, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Sugarland, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 5, 2012 appellant, through her attorney, filed a timely appeal of an August 3, 2012 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 to consider the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof to establish that she sustained a traumatic injury in the performance of duty on October 17, 2011.

FACTUAL HISTORY

On November 8, 2011 appellant, then a 40-year-old rural carrier, filed a traumatic injury claim alleging that she sprained her right lower leg on October 17, 2011 stepping from her vehicle to the curb in the performance of duty. A witness stated that she returned from her route

[1] 5 U.S.C. § 8101 *et seq.*

at 12:40 p.m. on October 17, 2011 and was limping. Appellant stated that she fell while delivering a parcel.

In a letter dated November 18, 2011, OWCP requested additional medical and factual evidence in support of appellant's claim. Dr. Mark W. Maffet, a Board-certified orthopedic surgeon, examined appellant on November 8, 2011 and diagnosed proximal gastroc strain. He stated that she injured her right leg twisting and stepping backwards on October 17, 2011. Appellant reported persistent pain and swelling.

Appellant submitted a narrative statement dated November 9, 2011 noting that on October 17, 2011 she was delivering parcels. She exited the postal vehicle and then reached into the vehicle to retrieve her scanner losing her footing on the curb. Appellant stated that she felt immediate pain in her right calf. She finished her route and returned to the employing establishment. Appellant encountered her supervisor on her return and informed him of her accident. She stated that she had pulled a muscle and would ice it at home. Jimmie Huff, appellant's supervisor, provided her with a "withdrawal for treatment" statement.

Dr. Maffet examined appellant on November 21, 2011 and stated that her calf pain was not improving. He stated that she had a work-related injury. Dr. Maffet stated, "It never has looked exactly like a true isolated calf strain although the mechanism of injury was consistent with this. I think this is proving to be more of a radicular type situation." He directed appellant for electrodiagnostic testing.

The employing establishment completed a statement on December 13, 2011 and noted that appellant reported twisting her foot on October 17, 2011 delivering a package. Appellant had not believed that she required medical treatment. She returned on November 2, 2011 and stated that her leg was not improving and that she was seeking medical treatment.

By decision dated December 23, 2011, OWCP denied appellant's claim on the grounds that she had not established that the events occurred as she described. It stated that she withdrew her report of injury on October 17, 2011 and submitted a traumatic injury claim on November 2, 2011.

In a form report dated December 16, 2011, Dr. Maffet described appellant's history of injury as "Mail carrier twisted right foot on October 17, 2011. Right leg tightened up. Pain right buttock down right leg to calf. Limps." He diagnosed sprain right leg, lumbar strain and lumbar right radiculopathy. Dr. Maffet indicated with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity and stated, "Given patient history."

Counsel requested an oral hearing before an OWCP hearing representative on December 29, 2011. Appellant submitted a statement dated December 28, 2011. On October 17, 2011 when she had returned to the employing establishment, she informed Mr. Huff that she had injured herself, but at that time did not think it was serious. Appellant stated, "I tried on a daily basis from October 17, 2011 until November 1, 2011 to keep my leg iced, heated and elevated. When I awoke for work on November 2, 2011 my leg was severely swollen, hurt extremely bad and had a huge knot in the back of my right calf." She reported to the employing establishment and received instructions to visit her physician. Appellant noted that, when she filed her claim,

the employing establishment informed her that there was no light duty for rural carriers. She described her meeting with postal inspectors. Appellant noted that she had not worked at the volunteer fire department since September 2011.

Appellant underwent a cervical spine magnetic resonance imaging (MRI) scan on January 21, 2012 which demonstrated a prior fusion at C6-7, disc bulging at C3-4 and C5-6 as well as disc protrusion with extension and canal stenosis at C4-5.

Appellant testified at the oral hearing on April 17, 2012. She described her October 17, 2011 employment incident as reaching back into her vehicle from the curb for her scanner. Appellant stated that she was on her toes reaching for the scanner and her right leg twisted under her causing her to fall onto the seat of her vehicle. She experienced shooting pain up from her leg. Appellant continued to deliver her route. She reported her injury to two supervisors when she returned to the employing establishment. Appellant's supervisors were unable to access a traumatic injury claim form on line due to computer difficulties. Appellant then informed her supervisors that she was going to attempt home remedies of ice, rest and elevation for her leg prior to seeking medical treatment. She signed a withdrawal of treatment form as she was not immediately reporting to a physician. Appellant testified that she had not worked as a volunteer firefighter since September 7, 2011.

Following the hearing, appellant submitted reports from Dr. Jennifer Gwozdz, a Board-certified family practitioner, describing appellant's back pain beginning November 2, 2011. Dr. Gwozdz stated that appellant's back pain began at work and diagnosed lumbar spondylosis, cervical spondylosis and radiculitis.

By decision dated July 5, 2012, the hearing representative affirmed and modified OWCP's decision. The hearing representative stated, "[T]he factual evidence and medical evidence is sufficient to establish that appellant sustained an injury in the time, place and manner alleged, and sought medical care for a condition in connection with the reported injury; however, the medical evidence is insufficient to establish that she sustained a medical condition causally related to the work injury." The hearing representative found that Dr. Maffet diagnosed a gastroc strain and provided a history of injury noting that appellant had persistent pain and swelling since the October 17, 2011 employment injury, however, she found that he did not provide medical opinion regarding the relationship between appellant's strain and her work injury.

Counsel requested reconsideration on July 9, 2012 and submitted an additional note from Dr. Gwozdz who stated that she examined appellant on December 27, 2011 for severe back and neck pain. Dr. Gwozdz stated that this back pain followed an incident at work on October 17, 2011 while delivering parcels. She stated, "While reaching into vehicle to get scanner her injury occurred while stretching too far over the steering wheel of the vehicle. Overstretching caused pain to begin in appellant's right calf and progressed to both knees and lower back." Dr. Gwozdz diagnosed lumbar spondylosis, disc desiccation multiple levels and cervical spondylosis with bilateral facet arthropathy at C4-5.

Appellant submitted her lumbar MRI scan which demonstrated mild lumbar spondylosis including degenerative disc disease at L1-2, disc desiccation at L2-3 and L3-4 as well as bulging discs at L4-5 and L5-S1.

By decision dated August 3, 2012, OWCP denied modification of its prior decision finding that Dr. Gwozdz attributed her injuries to stretching rather than originating in her calf. It noted that the Branch of Hearings and Review, "ruled that you had met the requirement for fact of injury both factual and medical, however, you had failed to provide a well-reasoned medical opinion causally relating you condition to the work incident." OWCP further found that on reconsideration appellant had not submitted the necessary medical opinion evidence to establish a causal relationship between her diagnosed conditions and her accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of FECA and that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[3] 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.[4]

OWCP defines a traumatic injury as, "[A] condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected."[5] To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "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, place and in the manner alleged.[6] Second, the employee must submit sufficient evidence, generally only in the form a medical evidence, to establish that the employment incident caused a personal injury.[7]

A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.[8] Medical rationale includes a physician's opinion on the issue

[2] 5 U.S.C. §§ 8101-8193.

[3] *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

[4] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[5] 20 C.F.R. § 10.5(ee).

[6] *John J. Carlone*, 41 ECAB 354 (1989).

[7] *J.Z.*, 58 ECAB 529 (2007).

[8] *T.F.*, 58 ECAB 128 (2006).

of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, must be one of reasonable medical certainty, and must be supported by medical reasoning explaining the nature of the relationship between the diagnosed condition and specific employment activity or factors identified by the claimant.[9]

ANALYSIS

OWCP has accepted that appellant sustained an employment incident on October 17, 2011. It has found, however, that she has not submitted sufficient medical opinion evidence to establish a relationship between her employment incident on October 17, 2011 and a diagnosed medical condition.

The Board notes that the hearing representative's July 5, 2012 decision inaccurately stated that appellant had established an employment injury. The hearing representative stated that appellant sustained an employment incident at the time, place and in the manner alleged, but referred to this legal finding as "injury." The Board has consistently referred to such a finding as an employment incident. The hearing representative also concluded that appellant had not established a diagnosed condition as a result of her employment incident due to deficiencies in the medical evidence. As noted above, a medical condition can only be established with supportive medical evidence. The hearing representative found that the medical evidence was insufficient to establish appellant's diagnosed condition. As defined by the Board, the hearing representative found that appellant had not established an injury. Therefore, the legal determination by the hearing representative in the July 5, 2012 decision is accurately described as a finding of fact of incident rather than a finding of fact of injury as she stated.

Appellant has described her employment incident of October 17, 2011 as reaching into her postal vehicle to obtain her scanner, when her right leg twisted and she fell against the seat of her vehicle. She described right leg pain shooting up from her calf. Dr. Maffet initially examined appellant on November 9, 2011 and diagnosed proximal gastroc strain. He stated that she injured her right leg twisting and stepping backwards on October 17, 2011. Dr. Maffet next examined appellant on November 21, 2011 and stated that her calf pain was not improving. He stated that she sustained a work-related injury. Dr. Maffet also suggested that appellant might have radicular pain rather than a true isolated calf strain. He completed a form report on December 16, 2011 describing her history of injury as "Mail carrier twisted right foot on October 17, 2011. Right leg tightened up. Pain right buttock down right leg to calf. Limps." Dr. Maffet diagnosed sprain right leg, lumbar strain and lumbar right radiculopathy. He indicated with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity and stated, "Given patient history."

Dr. Maffet's reports are not sufficiently detailed to establish a causal relationship between appellant's various diagnosed conditions and her accepted employment incident on October 17, 2011. He initially diagnosed a right leg sprain and noted that she twisted her leg. Eventually Dr. Maffet included the information that appellant was injured at work, but at the

[9] *A.D.*, 58 ECAB 149 (2006).

same time suggested that the injury originated in her back rather than her leg. Due to the discrepancies of findings, diagnoses and the lack of explanation as to how she sustained a back injury resulting from the twisting of her right leg, these reports are not sufficient to meet her burden of proof. Although Dr. Maffet completed a form report indicating that, based on appellant's history, her back and leg conditions were due to her employment incident, 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.[10]

Dr. Gwozdz examined appellant noting that her back pain began November 2, 2011 at work. She diagnosed lumbar spondylosis, cervical spondylosis and radiculitis. Dr. Gwozdz stated that this back pain followed an incident at work on October 17, 2011 while delivering parcels. She stated, "While reaching into vehicle to get scanner her injury occurred while stretching too far over the steering wheel of the vehicle. Overstretching caused pain to begin in her right calf and progressed to both knees and lower back." Dr. Gwozdz diagnosed lumbar spondylosis, disc desiccation multiple levels and cervical spondylosis with bilateral facet arthropathy at C4-5. Her history of injury does not comport with appellants. Appellant did not report overstretching. She stated that her right leg twisted and immediately felt painful. Appellant has not included back pain in any of her narrative statements. Without an explanation of how appellant's back injury occurred in relation to her description of the employment incident, Dr. Gwozdz's reports are not sufficient to meet appellant's burden of proof in establishing an injury as a result of her accepted employment incident.

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 submitted sufficiently detailed medical opinion evidence to establish that her accepted employment incident on October 17, 2011 resulted in an injury in the performance of duty.

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

ORDER

IT IS HEREBY ORDERED THAT the August 3, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 13, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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