United States Department of Labor
Employees' Compensation Appeals Board

E.W., Appellant	)	
and	)	**Docket No. 13-741**
	)	**Issued: June 3, 2013**
U.S. CUSTOMS & BORDER PROTECTION, LOS ANGELES INTERNATIONAL AIRPORT, Los Angeles, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 11, 2013 appellant filed a timely appeal from the January 31, 2013 Office of Workers' Compensation Programs' (OWCP) decision which found that she did not sustain an injury in the performance of duty. 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.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an injury on February 26, 2009.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 2, 2009 appellant, then a 49-year-old secretary, filed a traumatic injury claim alleging that on February 26, 2009 she sustained a contusion to the coccyx or sacrum after attempting to sit in her chair. It tilted and caused her to fall to the floor, hitting the right side of her body on an open drawer and the chair on top of her. Appellant stopped work on February 26, 2009 and returned on March 2, 2009.[2]

On January 25, 2010 appellant filed a notice of recurrence of disability commencing on December 5, 2009.

In a letter dated February 5, 2010, OWCP requested additional factual and medical evidence from appellant and the employing establishment. It noted that her case was received as a simple uncontroverted claim handled to allow up to $1,500.00 in medical payments. OWCP noted that it would formally adjudicate appellant's claim.

In a February 11, 2010 statement, appellant described her injury noting that she was attempting to sit in her chair when it tilted and caused her to fall to the floor. The right side of her body struck an area where the drawers were opened and the chair fell on top of her. Appellant submitted hospital discharge instructions for a coccyx or sacrum contusion but she indicated that "a physician was not assigned."

By decision dated March 10, 2010, OWCP denied appellant's claim finding that she did not establish an injury as alleged. It found that the medical evidence was insufficient to establish a back condition caused by the employment incident. OWCP noted that there was no medical evidence signed by a physician that provided a diagnosis.[3]

On October 11, 2011 OWCP received appellant's undated request for reconsideration. Appellant noted that she did not receive the initial decision. She explained that she was not given the opportunity to appeal the decision.

In a May 2, 2011 first report of injury, Dr. Max Lebow, Board-certified in emergency medicine, noted that appellant related that, while at work, she fell from her chair and landed on her back. He noted tenderness and spasm in the left lumber paravertebral muscles. Dr. Lebow diagnosed a sprain and strain of the lumbosacral spine. He indicated that his diagnosis was consistent with appellant's account of injury and noted that diagnostic testing was ordered.

In a May 12, 2011 work status summary, Dr. Lora Bofill, a Board-certified family practitioner and associate of Dr. Lebow, provided a "work comp -- follow up" noting appellant's diagnosis and work status. In a May 19, 2011 report, she noted appellant's history of injury and examined appellant. Dr. Bofill diagnosed a sprain and strain of the lumbosacral spine and

[2] On May 26, 2009 OWCP received a Los Angeles City Fire Department Emergency Medical Service Report related to the February 26, 2009 incident.

[3] The record reflects the decision was returned to sender.

opined that appellant's case was work related. OWCP also received records from a physician assistant and physical therapy notes.

By decision dated February 8, 2012, OWCP found that the medical evidence was insufficient to establish that appellant's back condition was causally related to the February 26, 2009 chair incident.

On February 17, 2012 appellant provided OWCP with a current copy of her mailing address.

On January 31, 2013 OWCP reissued the February 8, 2012 decision to appellant's updated mailing address.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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 timely filed within the applicable time limitation period of FECA[5] and that an injury was sustained in the performance of duty.[6] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[7]

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.[8] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[9]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. 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,

[4] 5 U.S.C. §§ 8101-8193.

[5] *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[7] *Delores C. Ellyet*, 41 ECAB 992 (1990).

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

[9] *Id*.

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 employee.[10]

ANALYSIS

Appellant alleged that on February 26, 2009 her chair tilted and she fell on the floor, striking the right side of her body. There is no dispute that her chair tilted and she fell on the floor on February 26, 2009. OWCP found that the claimed incident occurred as alleged.

The Board finds that the medical evidence is insufficient to establish that the employment incident caused an injury. The medical reports of record do not sufficiently address the issue of causal relation or how falling on the floor on February 26, 2009 caused a personal injury. The medical evidence contains no reasoned explanation of how the chair falling incident caused or contributed to the diagnosed lumbosacral sprain.

In a May 2, 2011 report, Dr. Lebow diagnosed a sprain and strain of the lumbosacral spine. He indicated generally that his diagnosis was consistent with appellant's account of injury; but did not further explain how he arrived at his conclusion on causal relationship. As noted, a claimant's burden of proof includes the submission of a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the accepted employment incident.[11] Dr. Lebow first treated appellant several years following the incident. He identified symptoms beyond the low back noting that she reported no other past injuries on the intake sheet. Dr. Lebow provided no explanation for the basis of his conclusion on causal relationship.

In a May 19, 2011 treatment report, Dr. Bofill, noted appellant's history of injury and examined appellant. She diagnosed a sprain and strain of the lumbosacral spine and stated that she had determined appellant's case to be work related. Dr. Bofill also did not provide a rationalized opinion addressing how appellant's low back condition was work related. The report is insufficient to establish causal relationship. Other reports from Drs. Lebow and Bofill do not explain how the February 26, 2009 work incident caused or contributed to the diagnosed medical condition.

Appellant also submitted evidence from physical therapists and physician assistants. The Board has held that lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA.[12] Consequently this evidence does not constitute competent medical evidence it is insufficient to establish causal relationship.

[10] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[11] *See id.*

[12] *David P. Sawchuk*, 57 ECAB 316 (2006). *See* 5 U.S.C. § 8101(2) (provides that the term "physician" includes surgeons, podiatrist, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

In the present case, there is insufficient medical evidence from a physician explaining how the employment incident of February 26, 2009 caused or aggravated appellant's lumbar condition.

For these reasons, appellant has not established that the February 26, 2009 employment incident caused or aggravated a specific injury.

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 in establishing that she sustained an injury in the performance of duty on February 26, 2009.

ORDER

IT IS HEREBY ORDERED THAT the January 31, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 3, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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