United States Department of Labor
Employees' Compensation Appeals Board

J.H., Appellant	)	
and	)	**Docket No. 13-1129**
	)	**Issued: January 15, 2014**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Los Angeles, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 9, 2013 appellant filed a timely appeal from a December 17, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (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 sustained an injury on June 27, 2012 in the performance of duty.

[1] Appellant filed a timely request for oral argument. After exercising its discretion, pursuant to 20 C.F.R. § 501.5(a), the Board denied appellant's request on September 3, 2013. *Order Denying Request for Oral Argument*, Docket No. 13-1129 (issued September 3, 2013).

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 27, 2012 appellant, then a 52-year-old general expeditor, filed a traumatic injury claim alleging that on that date that she was "thrown forward by a defective ramp chain that popped up automatically…." She landed with her legs, back, feet and toes bent backward. Appellant stopped work on June 28, 2012.

In a work status report dated June 27, 2012, a physician's assistant diagnosed pain in the feet and low back and found that appellant could resume modified employment on June 29, 2012.

Dr. Oscar Moore, Jr., an internist, diagnosed in disability certificates a work-related lumbosacral injury and indicated that appellant was totally disabled from June 7 to 12, 2012[3] and from June 28 to August 28, 2012.

A physician found in a duty status report of July 5, 2012 that appellant could work with restrictions from July 6 to August 20, 2012.[4]

Appellant related, in a statement dated July 13, 2012, that on June 27, 2012 she was thrown forward when a defective pull ramp chain popped up automatically. She landed on both feet and bent her feet, toes, legs and low back backward. Appellant maintained that she injured her back.

A magnetic resonance imaging (MRI) scan study of appellant's left foot showed no fracture or tendon tear, mild degenerative arthritis and small dorsal effusions. An MRI scan study of the left ankle showed an osteochondral talar dome lesion with no evidence of a fracture or tendon tear.

By letter dated July 17, 2012, OWCP advised appellant that it had originally paid a limited amount of medical expenses as it appeared to be a minor injury not requiring time off work. It was now adjudicating her claim and requested that she submit additional factual and medical information, including a rationalized report from her attending physician explaining the relationship between any diagnosis and the June 27, 2012 work incident.

In a duty status report dated June 27, 2012, received by OWCP on August 8, 2012, a physician diagnosed strains of the low back and feet.[5] He checked "yes" that the condition corresponded to that provided on the form of appellant being thrown forward by a defective ramp chain. The physician found that she should remain off work June 27 and 28, 2012.

[3] In a disability certificate dated June 7, 2012, Dr. Moore indicated that appellant was disabled from June 7 to 12, 2012 as the result of an employment injury.

[4] The name of the physician is not legible. The record also contains the back page of a CA-16 form from a physician finding an unidentified employee able to work with restrictions beginning June 28, 2012.

[5] The name of the physician is not legible.

By decision dated August 22, 2012, OWCP denied appellant's claim after finding that the medical evidence was insufficient to establish that she sustained an injury causally related to the accepted work incident.

Dr. Moore provided a progress report dated August 21, 2012 which diagnosed lumbar strain and back pain as a result of a fall and determined that appellant could return to full duty on November 17, 2012. He referenced a different OWCP file number on the report.

On September 5, 2012 appellant requested reconsideration.[6] Dr. Moore indicated in an unsigned September 5, 2012 report, that she sustained a diagnosed condition on June 27, 2012 due to a ramp chain automatically popping up. He noted that there was a witness to the accident and a report of accident submitted to the employing establishment.

By decision dated December 17, 2012, OWCP denied modification of its August 22, 2012 decision. It noted that the September 5, 2012 report from Dr. Moore was not signed and contained no diagnosis.

On appeal appellant alleges that she sustained her injuries in the course of her federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA[7] 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; that an injury was sustained while 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.[8] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[9]

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.[10] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.[11] An employee may establish that the employment incident

[6] On September 18, 2012 appellant received treatment in the emergency room for back pain. She attributed her back pain to work injuries in 2011 and June 2012.

[7] 5 U.S.C. § 8101 *et seq*.

[8] *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

[9] *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

[10] *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

[11] *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.[12]

ANALYSIS

Appellant alleged that she sustained an injury to her back and feet on June 27, 2012 when a defective ramp chain pulled up and she was thrown forward. She has established that the June 27, 2012 incident occurred at the time, place and in the manner alleged. The issue, consequently, is whether the medical evidence establishes that appellant sustained an injury as a result of this incident.

The Board finds that appellant has not established that the June 27, 2012 employment incident resulted in an injury. The determination of whether an employment incident caused an injury is generally established by medical evidence.[13] On June 27, 2012 a physician's assistant diagnosed low back and bilateral foot pain.[14] A physician's assistant, however, is not considered a physician under FECA and thus the report is of no probative value.[15]

In a duty status report dated June 27, 2012, a physician diagnosed strains of the low back and feet, checked "yes" that the condition corresponded to that provided on the form of appellant being thrown forward by a defective ramp chain, and found that appellant should remain off work June 27 and 28, 2012. The Board has held, however, that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or fortified rationale for the conclusion reached, such report is insufficient to establish causal relationship.[16]

In a progress report dated August 21, 2012, Dr. Moore diagnosed lumbar strain and back pain due to a fall. He opined that appellant could resume her usual employment on November 17, 2012. Dr. Moore, however, did not specifically address whether the diagnosed condition resulted from the June 27, 2012 work incident. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.[17]

In an unsigned report dated September 5, 2012, Dr. Moore opined that appellant sustained a diagnosed condition on June 27, 2012 when a ramp chain automatically popped up.

---

[12] *Id.*

[13] *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

[14] Appellant also submitted evidence which predated her June 27, 2012 work injury indicating that she was receiving treatment from Dr. Moore for a back condition.

[15] *See* 5 U.S.C. § 8101(2); *Allen C. Hundley*, 53 ECAB 551 (2002).

[16] *Deborah L. Beatty*, 54 ECAB 334 (2003) (the checking of a box "yes" in a form report, without additional explanation or rationale, is insufficient to establish causal relationship).

[17] *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003).

He indicated that there was a witness to the accident and an accident form submitted. Dr. Moore, however, did not specify the diagnosis or provide any rationale for his opinion. A physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant's diagnosed medical condition.[18]

On appeal appellant maintains that she was injured in the performance of duty. An award of compensation, however, may not be based on surmise, conjecture, speculation, or upon her own belief that there is a causal relationship between her claimed condition and his employment.[19] Appellant must submit a physician's report in which the physician reviews those factors of employment identified by her as causing his condition and, taking these factors into consideration as well as findings upon examination and the medical history, explain how employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.[20] She failed to submit such evidence and therefore failed to discharge 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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that she sustained an injury on June 27, 2012 in the performance of duty.

[18] *John W. Montoya*, 54 ECAB 306 (2003).

[19] *D.E.*, 58 ECAB 448 (2007); *George H. Clark*, 56 ECAB 162 (2004); *Patricia J. Glenn*, 53 ECAB 159 (2001).

[20] *D.D.*, 57 ECAB 734 (2006); *Robert Broome*, 55 ECAB 339 (2004).

ORDER

IT IS HEREBY ORDERED THAT the December 17, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 15, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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