United States Department of Labor
Employees' Compensation Appeals Board

C.R., Appellant	)	
	)	**Docket No. 16-0664**
and	)	**Issued: June 8, 2016**
	)	
U.S. POSTAL SERVICE, MAIN POST OFFICE, New Bern, NC, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 22, 2016 appellant filed a timely appeal from a January 27, 2016 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 over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish an abdominal injury on July 8, 2015 while in the performance of duty.

On appeal, appellant contends that she sustained a work-related injury for which she underwent surgery.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 8, 2015 appellant, then a 45-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that she experienced pain and a burning sensation on the right side of her abdomen while positioning a lift at work at 7:20 a.m. on that date. She did not stop work. The employing establishment controverted the claim, contending that appellant had had a prior nonwork-related hernia. It received notice of the injury on July 8, 2015.

In a duty status report (Form CA-17) and physician work report dated July 8, 2015, Wendy Fulford, a nurse practitioner, diagnosed abdomen pain and possible hernia. In the July 8, 2015 Form CA-17 report, she provided a history that appellant felt pain in her abdomen while positioning a lift on that date. Ms. Fulford advised that the diagnosed conditions were due to her injury. She found that appellant could not perform her regular work, but she could resume work with restrictions. In the July 8, 2015 report, Ms. Fulford indicated that appellant had sustained a new work injury. She advised that appellant could work a maximum of eight hours a day within restrictions.

By letter dated July 21, 2015, OWCP notified appellant of the deficiencies of her claim and afforded her 30 days to submit additional medical and factual evidence.

In a July 20, 2015 Form CA-17 report, Ms. Fulford diagnosed worsening abdomen pain. She advised that this condition was due to appellant's July 8, 2015 injury. Ms. Fulford further advised that she could not resume work.

In a July 20, 2015 medical report, Dr. Mary B. Kirby, a Board-certified family practitioner, noted appellant's abdomen complaints, provided physical examination findings, and assessed abdominal pain.

Appellant submitted several medical reports, diagnostic test results, and discharge instructions dated July 20, 2015 from Carolina East Medical Center. A July 20, 2015 report authenticated by Dr. Carmella D. Percy, an emergency medicine physician, provided a history of injury that appellant's pain started several weeks ago when she lifted an object at work. She also provided a history of her medical and social background, findings on physical examination, diagnostic test results, and diagnoses of abdominal pain and hypokalemia.

On August 3, 2015 Dr. Jennifer A. Ratley, an osteopath, reported that appellant presented with abdominal pain, constipation, and concern that her previously repaired hernia had returned. She provided examination findings and assessed abdominal pain.

In an August 26, 2015 decision, OWCP accepted that the July 8, 2015 incident occurred as alleged. However, it denied appellant's claim as the medical evidence did not establish a diagnosed medical condition in connection with the accepted employment incident.

On September 10, 2015 appellant requested a review of the written record by an OWCP hearing representative.

In a July 8, 2015 report, Dr. Kirby noted a history of injury that appellant was pushing and pulling a cart at work on that date when she felt a pull on the right side of her abdomen.

Appellant reported her injury to her supervisor and was sent to Dr. Kirby's office. Dr. Kirby reported findings on physical examination, reiterated her assessment of abdominal pain, and provided appellant's physical restrictions.

In an August 13, 2015 attending physician's report (Form CA-20), Dr. Ratley provided a history that on July 8, 2015 appellant felt a pop in her abdomen when she pushed and pulled. She diagnosed tender periumbilical. Dr. Ratley indicated with a checkmark "yes" that the diagnosed condition was caused or aggravated by an employment activity. She explained that a pop was heard and felt in the abdominal area. Dr. Ratley advised that the period of appellant's total disability and date she could resume work were unknown. She reviewed an August 31, 2015 report signed by Cheryl Pettis, a certified medical assistant (CMA) on behalf of Dr. Ratley. Dr. Ratley noted that appellant presented for a follow-up examination of her hernia condition. She had been completely pain free until she felt a pop in her abdomen. Dr. Ratley reported appellant's active problems and physical examination findings. She again assessed abdominal pain and also diagnosed a hernia.

An undated and unsigned surgical information sheet indicated that appellant was scheduled to undergo laparoscopic ventral hernia repair on October 1, 2015 by Dr. David L. Harshman, a Board-certified surgeon.

In a January 27, 2016 decision, the OWCP hearing representative found that the medical note dated August 3, 2015 on a CA-20 form dated August 13, 2015 did not contain a diagnosis. Further it was found that the August 31, 2015 report was signed by a certified medical assistant and not a qualified physician. As such the hearing representative affirmed, as modified, the August 26, 2015 decision finding that the claimed work event did not occur as alleged, but affirmed that the medical evidence was insufficient to establish causal relationship.

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 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.[2] 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.[3]

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. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at

[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *id*.

the time, place, and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[4]

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[5] Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and his subsequent course of action. An employee has not met his burden in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.[6]

ANALYSIS

Appellant alleged that on July 8, 2015 she sustained an abdominal injury when she positioned a lift at work. OWCP denied her claim finding that the incident had not occurred as alleged. The Board finds, however, that the evidence submitted is sufficient to establish that the July 8, 2015 incident occurred as alleged by appellant.

As noted, an employee's statement alleging that an incident occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[7] Appellant filed a traumatic injury claim stating that at 7:20 a.m. on July 8, 2015 she experienced pain and a burning sensation on the right side of her abdomen when she positioned a lift at work. She reported her injury to the employing establishment on the date of injury. Appellant further sought medical treatment on the same day as the alleged incident. Ms. Fulford, a nurse practitioner, reported that she examined appellant on July 8, 2015 after appellant felt pain in her abdomen from positioning a lift on that date. The history of injury provided in the July 8 and 20 and August 13, 2015 reports from Dr. Kirby, Dr. Percy, and Dr. Ratley, respectively, that appellant lifted, pushed, and pulled an object at work on July 8, 2015, is generally consistent with her account of events and the record contains no contemporaneous factual evidence indicating that the claimed incident did not occur as alleged.[8]

The employing establishment challenged the occurrence of the work incident, maintaining that appellant had a preexisting nonwork-related hernia. However, it did not dispute that she positioned a lift at work on July 8, 2015.

[4] *T.H.*, 59 ECAB 388 (2008).

[5] *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

[6] *Betty J. Smith*, 54 ECAB 174 (2002).

[7] *See* cases cited, *supra* note 5.

[8] *See Thelma Rogers*, 42 ECAB 866 (1991).

The Board finds that the evidence of record does not contain inconsistencies sufficient to cast serious doubt on appellant's version of the employment incident. As such, the Board finds that the evidence of record is sufficient to establish an incident occurred at the time, place and in the manner alleged by appellant on July 8, 2015.[9] Thus, appellant has met the first component of fact of injury.

The remaining issue is whether the medical evidence establishes that appellant sustained an injury causally related to the established employment incident. In order to establish a causal relationship between the diagnosed condition and any resulting disability and the employment incident, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such causal relationship.[10]

Dr. Ratley's August 13, 2015 Form CA-20 report found that appellant had a tender periumbilical. She provided a history of the established July 8, 2015 employment incident and indicated with a checkmark "yes" that the diagnosed condition was caused or aggravated by an employment activity. Dr. Ratley related that a pop was heard and felt in the abdominal area. Dr. Ratley's opinion is generally supportive of causal relationship, but is of diminished probative weight because she did not support her opinion with sound medical reasoning. The Board has long held that medical conclusions, unsupported by rationale, are of little probative value.[11] Dr. Ratley did not identify any examination findings to support that the established employment incident had caused or aggravated appellant's abdominal condition, and she did not otherwise explain how she came to her conclusion to a reasonable medical certainty. The need for medical reasoning is particularly important since she noted in her August 3, 2015 report that appellant had a preexisting hernia condition. In this report, she provided findings on physical examination and assessed abdominal pain. In an August 31, 2015 report, Dr. Ratley reiterated her assessment of abdominal pain and assessed a hernia. The report indicates that it was electronically signed by a CMA; however, contained within the signature explanation Dr. Ratley indicates that the information contained within was at her direction and reflects her examination and decision making. Dr. Ratley stated that the CMA was only a scribe. She did not provide a medical opinion explaining how appellant's abdominal pain and hernia were caused or aggravated by the established work incident. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[12]

Similarly, Dr. Kirby's July 8 and 20, 2015 reports are of limited probative value on the issue of causal relationship. She assessed abdominal pain, but did not provide a medical

[9] *See e.g., Leonard T. Munson*, Docket No. 98-1478 (issued December 23, 1999).

[10] *T.H.*, 59 ECAB 388 (2008); *James Mack*, 43 ECAB 321 (1991).

[11] *Willa M. Frazier*, 55 ECAB 379 (2004); *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

[12] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

diagnosis for this condition.[13] While Dr. Kirby noted appellant's history of injury, she did not specifically relate a diagnosed condition to the July 8, 2015 employment incident.[14]

Likewise, Dr. Percy's July 20, 2015 report, which provided a history of the July 8, 2015 employment incident and diagnosed abdominal pain and hypokalemia, did not specifically relate the diagnosed conditions to the established work incident.[15]

The reports from Ms. Fulford, a nurse practitioner, found that appellant's abdomen pain and possible hernia were causally related to the established July 8, 2015 employment incident. This evidence, however, has no probative medical value as a nurse practitioner is not considered a physician as defined under FECA.[16]

The undated and unsigned surgical information sheet which indicated that appellant was scheduled to undergo hernia surgery on October 1, 2015 has no probative medical value. The Board has held that a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8101(2).[17] Reports lacking proper identification do not constitute probative medical evidence.[18]

The Board finds that appellant has failed to submit any rationalized probative medical evidence to establish that she sustained an abdominal injury causally related to the July 8, 2015 employment incident. Appellant did not meet her burden of proof.

On appeal, appellant contends that she sustained a work-related injury for which she underwent surgery. As found above, the Board finds that appellant did not submit any rationalized probative medical evidence supporting a causal relationship between her diagnosed abdominal conditions and the established employment incident.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an abdominal injury on July 8, 2015 while in the performance of duty.

[13] Pain is not considered a compensable medical diagnosis. *See Robert Broome*, 55 ECAB 339, 342 (2004).

[14] *See* cases cited, *supra* note 12.

[15] *Id.*

[16] The term 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. § 8102(2); *L.D.*, 59 ECAB 648 (2008) (a nurse practitioner is not a physician as defined under FECA).

[17] *V.R.*, Docket No. 14-1695 (issued January 9, 2015).

[18] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the January 27, 2016 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: June 8, 2016
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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