United States Department of Labor
Employees' Compensation Appeals Board

M.P., Appellant	)	
and	)	**Docket No. 17-1221**
	)	**Issued: August 21, 2017**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, West Palm Beach, FL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 15, 2017 appellant filed a timely appeal from a January 30, 2017 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 a back injury causally related to a November 14, 2016 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 29, 2016 appellant, then a 61-year-old voluntary services officer, filed a traumatic injury claim (Form CA-1) for a lower back sprain/strain she allegedly sustained on November 14, 2016 while "bringing in donations of books, clothing, *etc.*"[2]

On November 15, 2016 appellant sought medical treatment at the employing establishment's emergency department. In a November 15, 2016 report, Dr. Jean S. Pierre, an attending Board-certified emergency medicine physician, noted that appellant complained of low back pain radiating into her left leg after lifting heavy boxes at work. He reported that, upon physical examination, appellant exhibited tenderness at the L4, L5, and S1 spinal levels, straight leg raising to 80 degrees, and the ability to cross her legs. The neurologic portion of the examination revealed good symmetrical strength and coordination with no gross focal weakness, sensory deficit, or tremor. Dr. Pierre diagnosed low back pain and left sciatica and noted that there was an abnormal computerized tomography (CT) scan of appellant's lumbar spine.[3] In another November 15, 2016 report pertaining to appellant's emergency room visit, Joyce Anderson, an attending staff nurse, noted that appellant complained of low back pain which radiated down her left leg.

In a November 17, 2016 report, Dr. Scott Norris, an attending osteopath, noted that appellant returned for repeat evaluation of her lower back and complained of discomfort about her lower back which began two days prior.[4] Appellant reported that she engaged in lifting, pushing, and carrying, and noted increased back pain with radiation to the left leg. Dr. Norris advised that physical examination revealed intact motor functions with positive straight leg raising on the right. He diagnosed low back pain and neuritis and/or radiculitis due to displacement of lumbar intervertebral disc. Dr. Norris prescribed pain medication, and referred appellant for physical therapy treatment.

In a November 17, 2016 duty status report (Form CA-17), Dr. Norris listed the date of injury as November 14, 2016 and the mechanism of injury as lifting and pushing books. He diagnosed exacerbation of lumbar disc disease and indicated that appellant could not perform any work.

In a November 17, 2016 form entitled Authorization for Examination and/or Treatment (Form CA-16), Dr. Norris indicated in the attending physician's report portion that he first examined appellant on November 17, 2017 and he listed a diagnosis of lumbar degenerative disc disease. He checked the box marked "Yes" indicating that the condition found was caused or

[2] Appellant had stopped work from November 17 to 28, 2016.

[3] Dr. Pierre obtained a November 15, 2016 CT scan of appellant's lumbar spine which contained an impression of mild lumbar spine scoliosis, at least moderate multilevel degenerative disc disease, dorsal epidural lipomatosis, multilevel facet joint degenerative disease, multilevel foraminal narrowing (very severe in the left neural foramen at LS-S1), and large extruded disc fragment extending from L3-4 to the mid L4 vertebral body, resulting in severe effacement of the spinal canal at L3-4 and compression of the left L4 nerve root.

[4] The report included a "case injury date" of November 14, 2016 at the top.

aggravated by the employment activity described, which was noted to be "lifting." He also indicated that appellant was totally disabled from November 17 to 28, 2016.

In a November 28, 2016 narrative report, Dr. Norris indicated that, upon physical examination, appellant exhibited continued spasm in the lumbar region, positive straight leg raising on the left, and discomfort upon back rotation and lateral bending. He diagnosed low back pain and neuritis and/or radiculitis due to displacement of intervertebral disc. In a November 28, 2016 Florida Workers' Compensation form, Dr. Norris diagnosed low back pain and indicated that appellant had no functional limitations identified or restrictions prescribed as of November 28, 2016. In another November 28, 2016 report, Dr. Norris diagnosed low back pain and noted that appellant reported that she felt she could return to full duty.

In reports dated December 5, 6, and 7, 2016, Kay Deerman, an attending physical therapist, described appellant's physical therapy sessions.[5]

In a December 12, 2016 report, Dr. Norris noted that appellant continued to complain of back pain. He listed a case injury date of November 14, 2016 and diagnosed neuritis and/or radiculitis due to displacement of intervertebral disc. Dr. Norris indicated that appellant remained on full duty and recommended that she continue with physical therapy.

In a December 19, 2016 letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim, including a physician's opinion supported by a medical explanation as to how the reported employment factors caused or aggravated the claimed injury. It allotted appellant 30 days to submit the requested information.

Appellant submitted a December 29, 2016 report from Dr. Norris who listed a case injury date of November 14, 2016 and diagnosed low back pain neuritis and/or radiculitis due to displacement of intervertebral disc. Dr. Norris recommended that appellant undergo a lumbar magnetic resonance imaging (MRI) scan.[6] Appellant also submitted an undated Form CA-17 in which Dr. Norris indicated that she could not work.

In a January 30, 2017 decision, OWCP determined that appellant failed to meet her burden of proof to establish a November 14, 2016 injury. It accepted that the November 14, 2016 employment incident occurred as alleged and that a medical condition had been diagnosed. However, appellant failed to establish that the diagnosed lumbar condition was causally related to the accepted employment incident.

LEGAL PRECEDENT

A claimant seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence,

[5] Appellant also submitted several administrative documents from December 2016, including medical appointment forms, medical referral forms, pharmacy receipts, Medical Travel Refund Request forms (Form OWCP-957), and Claim for Medical Reimbursement forms (Form OWCP-915).

[6] The record contains a December 29, 2016 imaging order for an MRI scan.

including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[7]

To determine if an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[8] The second component is whether the employment incident caused a personal injury.[9] An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[10]

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[11] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[12]

ANALYSIS

Appellant claimed that on November 14, 2016 she suffered a lower back sprain/strain at work while "bringing in donations of books, clothing, *etc*." OWCP found that appellant established fact of injury; however, it denied her traumatic injury claim because the medical evidence failed to establish a causal relationship between the diagnosed lumbar condition and the accepted November 14, 2016 employment incident. The Board finds that appellant failed to meet her burden of proof to establish that her claimed lumbar condition was employment related.

In a November 15, 2016 report, Dr. Pierre, an attending physician, noted that appellant complained of low back pain radiating into her left leg after lifting heavy boxes at work. He diagnosed low back pain and left sciatica and noted an abnormal lumbar CT scan. The Board

[7] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[8] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

[10] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[11] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[12] *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

finds that this report is of limited probative value with respect to appellant's claimed November 14, 2016 work injury because Dr. Pierre did not provide a clear opinion that she sustained a diagnosed condition due to the accepted November 14, 2016 employment incident. The Board has held that medical evidence which does not offer a clear opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[13]

In a November 17, 2016 report, Dr. Norris, an attending physician, noted that appellant returned for repeat evaluation of her lower back and complained of discomfort about her lower back which began two days prior.[14] Appellant reported that she engaged in lifting, pushing, and carrying, and noted increased back pain with radiation to the left leg. Dr. Norris diagnosed low back pain and neuritis and/or radiculitis due to displacement of intervertebral disc, prescribed pain medication, and referred appellant for physical therapy treatment. The Board finds that this report is of limited probative value with respect to establishing a November 14, 2016 work injury. Although Dr. Norris provided a description of the November 14, 2016 employment incident, he did not provide any opinion that the diagnosed conditions, low back pain and neuritis and/or radiculitis due to displacement of intervertebral disc, were related to these factors.[15] Additionally, his November 17, 2016 CA-16 and CA-17 failed to explain how the reported "lifting" incident either caused or aggravated appellant's lumbar degenerative disc disease.[16]

In a November 28, 2016 narrative report, Dr. Norris reported physical examination findings and diagnosed low back pain and neuritis and/or radiculitis due to displacement of intervertebral disc.[17] In a December 12, 2016 report, he listed a case injury date of November 14, 2016 and diagnosed neuritis and/or radiculitis due to displacement of intervertebral disc. On December 29, 2016 Dr. Norris listed a case injury date of November 14, 2016 and diagnosed low back pain neuritis and/or radiculitis due to displacement of intervertebral disc. His above-noted reports are of limited probative value on the relevant issue in that they do not contain an opinion on the cause of the diagnosed conditions. None of Dr. Norris' reports constitutes a rationalized medical opinion relating a diagnosed medical condition to an accepted employment factor. To establish her claim for a November 14, 2016 work injury, appellant must submit rationalized medical evidence establishing that an employment factor caused a personal injury and she has not submitted such evidence in the present case.[18]

Appellant submitted a November 15, 2016 report from Joyce Anderson, a nurse, and December 5, 6, and 7, 2016 reports of Kay Deerman, a physical therapist. The Board notes that

[13] *See Charles H. Tomaszewski*, 39 ECAB 461 (1988).

[14] The report included a "case injury date" of November 14, 2016 at the top.

[15] *See supra* note 13.

[16] *See Victor J. Woodhams*, *supra* note 9.

[17] In two form reports dated November 28, 2016, Dr. Norris listed a case injury date of November 14, 2016 and a diagnosis of low back pain.

[18] *S.T.*, Docket No. 17-0913 (issued June 23, 2017).

these reports are of no probative value with respect to appellant's claim for a November 14, 2016 work injury because under FECA, the report of a nurse[19] or a physical therapist[20] does not constitute probative medical evidence as they are not physicians under FECA.[21]

For these reasons, appellant failed to establish a November 14, 2016 work injury and, has thus failed to meet 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(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 she sustained a back injury causally related to a November 14, 2016 employment incident.

[19] *P.S.*, Docket No. 17-0598 (issued June 23, 2017) (a nurse is not a physician under FECA).

[20] *S.T.*, Docket No. 17-0913 (issued June 23, 2017) (physical therapists are not considered physicians under FECA).

[21] *See* 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t); *L.L.*, Docket No. 13-829 (issued August 20, 2013).

ORDER

IT IS HEREBY ORDERED THAT the January 30, 2017 decision of the Office of Workers' Compensation Programs is affirmed.[22]

Issued: August 21, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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

[22] The record contains a Form CA-16 dated November 17, 2016 and signed by the employing establishment. A properly executed CA-16 form can form a contractual agreement for payment of medical expenses, even if the claim is not accepted. *See* 20 C.F.R. § 10.300; *Val D. Wynn*, 40 ECAB 666 (1989); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.3(a)(3) (February 2012). Upon return of the case record, OWCP should address this issue.