United States Department of Labor
Employees' Compensation Appeals Board

D.M., Appellant	)	
	)	**Docket No. 16-1885**
and	)	**Issued: February 15, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Macclesfield, NC, 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 September 26, 2016 appellant filed a timely appeal from a July 21, 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.[2]

ISSUE

The issue is whether appellant met her burden of proof to establish a back injury causally related to the accepted May 27, 2016 employment incident.

On appeal, appellant contends that she still has issues/problems that have kept her off work since May 2016.

[1] 5 U.S.C. § 8101 *et seq.*

[2] Following the issuance of the July 21, 2016 OWCP decision, appellant submitted new evidence to OWCP. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. Therefore, the Board lacks jurisdiction to review this additional evidence. *See* 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On June 2, 2016 appellant, then a 49-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 27, 2016 she experienced right lower back pain that was diagnosed as a subluxation. She advised that the pain went down her right thigh to her calf area when she tried to turn to her left to move long mail trays that she was holding on her lap. Appellant stopped work on the date of injury.

In a June 2, 2016 work excuse note, Dr. James Carraher, an attending chiropractor, indicated that appellant was unable to work through June 9, 2016.

In letters dated June 3, 2016, the employing establishment controverted appellant's claim. It noted that she was being treated by a chiropractor who had not provided a medical diagnosis.

By letter dated June 14, 2016, OWCP advised appellant that her claim initially appeared to be a minor injury that resulted in minimal or no lost time from work and her claim was administratively handled to allow a limited amount of medical payments. However, appellant's claim was now being reopened because she had not returned to work. OWCP informed her of the type of medical evidence needed to support her claim and advised that medical evidence must be from a qualified physician. It noted how a chiropractor can be considered a physician under FECA.

In a June 3, 2016 duty status report (Form CA-17), Dr. Carraher noted May 27, 2016 as the date of injury, listed clinical findings, and diagnosed degenerative joint disease at L5 due to injury. He placed appellant off work for one week. On June 13, 2016 Dr. Carraher completed another Form CA-17 with the same date of injury. He listed a clinical finding of lower back pain. Dr. Carraher released appellant to return to full-time regular work with restrictions.

In a June 10, 2016 disability certificate, Dr. Chawki A. Lahoud, a Board-certified internist, advised that appellant could return to work on June 17, 2016. In Forms CA-17 dated June 22 and July 1, 2016, he noted the date of injury as May 27, 2016, listed clinical findings, and diagnosed muscular contracture and degenerative joint disease due to injury. Dr. Lahoud related that appellant could not perform her regular work, but she could perform light work indoors with restrictions and not much work in the field. On July 1, 2016 he advised that she could perform such work two hours a day.

In an order dated June 20, 2016, Dr. William D. Hage, a Board-certified orthopedic surgeon, diagnosed bursitis of the left shoulder and advised that appellant could return to work with restrictions.

The employing establishment offered appellant a modified temporary position on July 1, 2016. Appellant declined the job offer as she did not want to give up her day off, which was Saturday.

By decision dated July 21, 2016, OWCP accepted that the May 27, 2016 incident occurred as alleged. However, it denied appellant's claim finding that fact of injury was not established as the medical evidence did not contain a medical diagnosis in connection with the accepted employment incident.

LEGAL PRECEDENT

An employee 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[3] including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[4]

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.[5] There are two components involved in establishing the fact of injury. 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]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[7] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[8] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[9]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that she sustained a traumatic injury caused by the accepted May 27, 2016 employment incident. Appellant failed to submit sufficient medical evidence to establish that she had a back injury causally related to the accepted employment incident.

Dr. Lahoud's June 22 and July 1, 2016 CA-17 forms found that appellant had muscular contracture and degenerative joint disease due to the May 27, 2016 employment incident. However, he did not address how work duties on May 27, 2016 caused or aggravated the diagnosed conditions. As Dr. Lahoud provided no medical rationale to support causal

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[4] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[6] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[7] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

[8] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[9] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

relationship, his reports are of limited probative value.[10] His June 10, 2016 disability certificate is also of limited probative value as this evidence failed to provide a history of injury,[11] examination findings, a firm diagnosis of a particular medical condition,[12] or a specific opinion as to whether the accepted May 27, 2016 employment incident caused or aggravated appellant's condition and resultant disability.[13]

Dr. Hage's June 20, 2016 report diagnosed bursitis of the left shoulder and found that appellant could return to work with restrictions. He did not provide any medical opinion addressing whether the diagnosed condition and resultant disability were caused or aggravated by the accepted May 27, 2016 employment incident.[14] Further, the Board notes that appellant did not allege that she sustained a left shoulder injury as a result of the accepted work incident.

In a work excuse note dated June 2, 2016 and CA-17 forms dated June 3 and 13, 2016, Dr. Carraher, appellant's attending chiropractor, addressed her lumbar conditions, the causal relationship between these conditions and the accepted employment incident, and her work capacity. Under FECA a chiropractor is considered a "physician" only to the extent that the reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.[15] Dr. Carraher did not document that he obtained x-rays to diagnose a spinal subluxation.[16] Without a diagnosis of spinal subluxation from an x-ray, a chiropractor is not considered a physician under FECA and his opinion does not constitute medical evidence.[17] Thus, Dr. Carraher's reports are insufficient to establish a work-related diagnosis from a qualified physician under FECA.

The Board finds that appellant has failed to submit any rationalized probative medical evidence to establish that she sustained a back injury causally related to the May 27, 2016 employment incident. Appellant, therefore, did not meet her burden of proof.

[10] *F.T.*, Docket No. 09-919 (issued December 7, 2009) (medical opinions not fortified by rationale are of diminished probative value); *Sedi L. Graham*, 57 ECAB 494 (2006) (medical form reports and narrative statements merely asserting causal relationship generally do not discharge a claimant's burden of proof).

[11] *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history have little probative value).

[12] *See Deborah L. Beatty*, 54 ECAB 340 (2003) (where the Board found that in the absence of a medical report providing a diagnosed condition and a reasoned opinion on causal relationship with the employment incident, appellant did not meet her burden of proof).

[13] *See J.F.*, Docket No. 09-1061 (issued November 17, 2009) (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).

[14] *Id.*

[15] 5 U.S.C. § 8101(2).

[16] OWCP's implementing regulations define subluxation to mean an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrated on x-ray. *See* 20 C.F.R. § 10.5(bb).

[17] *See Jay K. Tomokiyo*, 51 ECAB 361 (2000).

On appeal, appellant contends that she still has issues/problems that have kept her off work since May 2016. As found above, the Board finds that appellant did not submit any rationalized probative medical evidence supporting a causal relationship between her diagnosed back and left shoulder conditions, resultant disability, and the established 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 failed to meet her burden of proof to establish a back injury causally related to the accepted May 27, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the July 21, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 15, 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