United States Department of Labor
Employees' Compensation Appeals Board

M.S., Appellant	)	
and	)	**Docket No. 17-1023**
	)	**Issued: September 15, 2017**
DEPARTMENT OF VETERANS AFFAIRS, PHILADELPHIA REGIONAL BENEFIT OFFICE, Philadelphia, PA, 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
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 10, 2017 appellant filed a timely appeal from a March 10, 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 an injury causally related to an August 31, 2016 employment incident.

FACTUAL HISTORY

On September 6, 2016 appellant, then a 44-year-old claims assistant, filed a traumatic injury claim (Form CA-1) alleging that she injured her right knee, right wrist, and back due to an

[1] 5 U.S.C. § 8101 *et seq.*

August 31, 2016 work-related fall.[2] The injury reportedly occurred on the employing establishment premises while she was walking down the courtyard steps/stairs. Appellant indicated that she "did not see last step before landing." She stopped work on August 31, 2016.

August 31, 2016 treatment records from Dr. Gerald M. O'Neill, a Board-certified emergency medicine specialist, diagnosed fall, knee pain, and wrist pain. Joshua Wallace, a registered nurse, indicated that appellant was able to return to "school" on September 3, 2016.

In a September 13, 2016 note, Dr. Raymond J. Kent, a chiropractor, advised that appellant was currently under active care for a spine-related condition.

Dr. Jarrad Teller, a chiropractor, initially examined appellant on September 14, 2016 and reported that she had fallen at work on August 31, 2016 and banged her right knee and right wrist. He also noted that on the date of injury appellant was first seen by an employing establishment nurse who then sent her to the emergency department. X-rays obtained in the emergency department were reportedly all normal. However, over the next couple of days appellant awoke with low back pain. On physical examination, Dr. Teller noted swelling in the right knee and pain in the medial meniscus area. Valgus and varus stress tests were positive. With respect to appellant's back, Dr. Teller noted that she "originally hurt [her] low back in Florida about [two to three] years ago, but she was only out of work a couple of days and went back to work." Appellant's current pain was a lot worse than before and she had not quite been able to recover. Dr. Teller recommended both lumbar and right knee magnetic resonance imaging (MRI) scans, as well as physical therapy. He advised that appellant was excused from work beginning August 31, 2016, and recommended that she remain off work until October 16, 2016.

In an attending physician's report (Form CA-20) dated October 3, 2016, Dr. Teller diagnosed lumbar and right knee sprain/strain due to a fall at work on August 31, 2016. He also noted that appellant had a history of mild degenerative joint disease based on x-rays from 2012.

In an October 10, 2016 report, Dr. Michael J. Schina Jr., a Board-certified surgeon and pain management specialist, noted that appellant fell and landed on her right knee at work on August 31, 2016.[3] He diagnosed right knee effusion, right knee pain, low back pain, left-sided lumbago with sciatica, and lumbar spondylosis without myelopathy or radiculopathy.

In an October 20, 2016 letter, OWCP advised appellant that both the factual and medical evidence of record was insufficient to establish her claim. After explaining the basic elements of a claim, it advised her of the type of evidence necessary to establish her claim, and afforded her at least 30 days to submit the requested factual and medical evidence.

OWCP subsequently received October 5, 2016 lumbar and right knee MRI scans. The lumbar MRI scan revealed a broad-based disc protrusion at L5-S1 and the right knee MRI scan showed intact menisci, ligaments, and tendons, and a minimal lateral tilt of the patella.

[2] Appellant advised that she received Department of Veterans Affairs (VA) benefits for service-connected carpal tunnel syndrome.

[3] Dr. Schina and Dr. Teller are colleagues.

OWCP also received an October 31, 2016 report from Daveda Graham, a certified nurse practitioner, who reported that appellant fell and landed on her right knee on August 31, 2016. Appellant's diagnoses included low back pain, lumbosacral intervertebral disc degeneration, and lumbar spondylosis without myelopathy or radiculopathy.

By decision dated November 21, 2016, OWCP denied the claim because appellant failed to establish that the August 31, 2016 incident occurred as alleged. It noted that she had not responded to its October 20, 2016 request for additional information regarding the alleged employment incident.

OWCP subsequently received chiropractic treatment records from Dr. Kent dated September 12, 13, and 14, 2016. Dr. Kent noted that appellant had injuries as a result of an August 31, 2016 work-related incident. He also noted that she was going down a spiral staircase in her workplace courtyard when she missed a step and fell down the stairs. Appellant reported having landed on her right knee and right palm. She also reported having experienced immediate right knee pain and right wrist pain, as well as a right knee laceration. Appellant reported that a guard escorted her to a nurse, who bandaged her knee and gave her pain medication. Dr. Kent diagnosed sprain of ligaments of the lumbar spine, strain of lower back, lumbar spondylosis without myelopathy or radiculopathy, lumbar intervertebral disc degeneration, low back pain, other muscle spasm, segmental and somatic dysfunction of the lumbar region, right knee sprain, and right wrist sprain. He opined that appellant's lumbar, right knee, and right wrist conditions were causally related to the August 31, 2016 employment incident.

On December 19, 2016 appellant requested reconsideration. She submitted a statement regarding the August 31, 2016 employment incident, as well as treatment records from the employing establishment's occupational health unit.

In a December 12, 2016 narrative statement, appellant indicated that on August 31, 2016 she fell on the spiral stairs outside of her work building. She reported that the spiral steps were uneven and when she told other people of her fall, they said that they had tripped on those steps as well. Appellant explained that she was holding her lunch and fell straight onto her right knee and then put her hands out to brace her fall. After she fell, another employee came from behind her within seconds, and then two minutes later a security officer arrived from ahead of her. Appellant was stunned that she had fallen and her right knee was huge, swollen, and bleeding.

The employing establishment's occupational health unit records indicate that on August 31, 2016 appellant, who was noted to be visually impaired, missed the last step walking down the staircase. Appellant complained of right knee, right wrist, and bilateral elbow pain. She received pain medication (Ibuprofen) and a bandage for her right knee. Appellant then left with her husband to go to an urgent care facility for additional treatment. On November 23, 2016 she returned to the health unit and advised that her treating physician had diagnosed a herniated disc and that she was receiving epidural injections for left lower extremity pain. The healthcare provider was identified as a registered nurse.

By decision dated March 10, 2017, OWCP accepted that the August 31, 2016 incident occurred as alleged, but denied the claim because the medical evidence failed to establish a diagnosis causally related to the employment incident, thus, concluding that appellant had not established the medical component of fact of injury.

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, 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.[4]

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.[5] The second component is whether the employment incident caused a personal injury.[6] 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.[7]

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[8] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[9] Additionally, chiropractors are considered physicians only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray.[10]

ANALYSIS

OWCP accepted that the August 31, 2016 work-related fall occurred as alleged. However, it denied appellant's traumatic injury claim finding that the medical evidence did not include a specific diagnosis in connection with the accepted employment incident/event, and, thus, fact of injury was not established. The Board finds that, although the medical evidence of

[4] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

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

[6] *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.*

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

[8] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[9] *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

[10] 5 U.S.C. § 8101(2); *see Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

record includes a specific diagnosis, appellant has failed to meet her burden of proof to establish an injury causally related to an August 31, 2017 employment incident.

In his October 10, 2016 report, Dr. Schina noted that while at work on August 31, 2016 appellant fell and landed on her right knee. His diagnoses included right knee effusion and lumbar spondylosis. The Board finds that Dr. Schina diagnosed right knee effusion. However, as discussed *infra*, the medical evidence of record fails to establish that appellant's diagnosed right knee and/or lumbar conditions are causally related to the accepted August 31, 2016 employment incident.

On August 31, 2016 Dr. O'Neill examined appellant in the emergency department. He reported findings of knee pain and wrist pain. However, knee and/or wrist pain is a description of a symptom rather than a clear diagnosis of a medical condition.[11] Thus, the Board finds that Dr. O'Neill's report is insufficient to establish that appellant sustained an employment-related injury.

The August 31 and November 23, 2016 health unit employee treatment records are also insufficient to establish causal relationship. First, apart from noting appellant's complaints of right knee, right wrist, and bilateral elbow pain, the records do not include a specific medical diagnosis.[12] Second, the healthcare provider was identified as a registered nurse. Evidence from a nurse does not constitute competent medical evidence under FECA as a nurse is not considered a physician as defined under section 8101(2) of FECA.[13]

Appellant submitted lumbar and right knee MRI scans dated October 5, 2016, which revealed a broad-based disc protrusion at L5-S1 and a minimal lateral tilt of the patella. However, these diagnostic studies do not specifically address the etiology of appellant's right knee and lumbar conditions. As such, these studies are of limited probative value on the issue of causal relationship.[14]

With respect to the reports from appellant's chiropractors, Drs. Teller and Kent, they are of no probative value because neither physician specifically diagnosed a spinal subluxation as demonstrated by x-ray.[15] Appellant also submitted an October 31, 2016 report from a certified nurse practitioner. This latter document does not constitute competent medical evidence because a nurse practitioner is not a "physician" as defined under FECA.[16] Consequently, the above-

[11] The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. *See P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[12] *See supra* note 11. The November 23, 2016 treatment notes indicated that appellant informed the health unit that her treating physician diagnosed a herniated disc, but there was no medical diagnosis in the record.

[13] 5 U.S.C. § 8101(2) provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *See A.M.*, Docket No. 16-1552 (issued July 5, 2017); *L.C.*, Docket No. 16-1717 (issued March 2, 2017).

[14] *See E.W.*, Docket No. 16-1729 (issued May 12, 2017).

[15] *See supra* note 10.

[16] *See supra* notes 8, 9.

noted evidence is insufficient to satisfy appellant's burden of proof with respect to causal relationship.

In his October 10, 2016 report, Dr. Schina noted that appellant fell at work on August 31, 2016 and landed on her right knee. His diagnoses included right knee effusion and lumbar spondylosis. Dr. Schina noted that appellant's conditions occurred while she was at work, but such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how her physical activity at work actually caused or aggravated the diagnosed conditions.[17] Dr. Schina's opinion was based, in part, on temporal correlation. However, the Board has held that neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a causal relationship.[18] Dr. Schina did not sufficiently explain how or why the August 31, 2016 employment incident either caused or contributed to the diagnosed conditions. Therefore, his October 10, 2016 report is insufficient to establish a causal relationship between appellant's right knee and/or lumbar conditions and the August 31, 2016 employment incident.

As appellant has not submitted any well-rationalized medical evidence to establish causal relationship, she has failed to meet her burden of proof to establish an injury causally related to an August 31, 2016 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 an injury causally related to an August 31, 2016 employment incident.

[17] *See K.W.*, Docket No. 10-0098 (issued September 10, 2010).

[18] *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

ORDER

IT IS HEREBY ORDERED THAT the March 10, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 15, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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