United States Department of Labor
Employees' Compensation Appeals Board

K.R., Appellant	)	
and	)	**Docket No. 17-2018**
	)	**Issued: August 9, 2018**
U.S. DEFENSE AGENCIES, MARCH ARB Commissary, Riverside, CA, Employer	)	

Appearances:
Sezade Dse'Monchet, for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 28, 2017 appellant, through her representative, filed a timely appeal from the July 6, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 the claim.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a back injury causally related to the accepted March 31, 2016 employment incident.

FACTUAL HISTORY

On April 23, 2016 appellant, then a 33-year-old store associate, filed a traumatic injury claim (Form CA-1) alleging that on March 31, 2016 she reinjured her back. She noted that she had initially injured her back on October 7, 2015. Appellant was under a doctor's care from October 2015 to January 2016 and only had minor back pain.[3] She alleged that the March 31, 2016 injury was a "reinjury." Appellant related that on March 31, 2016 she experienced a stiff back while consolidating candy on the cue line. She was unable to walk the next day because of the back pain. Appellant noted she went to the hospital after the reinjury. On her first trip to the hospital, she was first told she had a pinched nerve, but on her second trip to the hospital she was told she had sciatica from her previous work injury.

Evidence received in support of her claim included an April 11, 2016 Riverside Community Hospital Emergency Department slip which listed an October 7, 2015 date of injury and diagnosed sciatica.

By development letter dated May 13, 2016, OWCP informed appellant that she had not submitted sufficient factual and medical evidence to establish her claim for a March 31, 2016 traumatic injury. It informed her of the evidence needed and afforded appellant 30 days to submit the necessary evidence.

In response, OWCP received an April 11, 2016 emergency room provider report from a physician assistant.[4] The physician assistant noted that appellant had a back injury at work in October and that she continued with back pain. Appellant denied any new injury. An impression of sciatica was provided.[5]

In a May 6, 2016 duty status report (Form CA-17), Dr. Jayaraja Yogaratnam, an orthopedic surgeon, noted the date of injury as March 31, 2016. In a box labeled "diagnos(es) due to injury," Dr. Yogaratnam diagnosed lumbosacral sprain. An accompanying May 6, 2016 work status report released appellant to perform modified work from May 6 to 20, 2016.

In a May 31, 2016 statement, appellant explained that from the time of her initial injury in October 2015 until January 2016, she was in a lot of pain with her back and unable to bend or lift anything heavy for several weeks. While her back pain slowly eased over time, she never reached 100 percent recovery. On March 31, 2016 appellant did a lot of bending and was on her knees consolidating candy. Her back stiffened and she had tingling in her legs. As she only had 15

[3] Under OWCP File No. xxxxxx965, OWCP accepted an October 7, 2015 traumatic injury claim (Form CA-1) for sprain of muscle fascia and tendons of the lower back.

[4] Although the supervising physician was noted, the report was not countersigned by the supervising physician.

[5] These reports were also not countersigned by a physician.

minutes left on her shift, appellant finished working and went home. The next morning, she was in so much pain that she was unable to walk.

In a June 14, 2016 work status report, Dr. Yogaratnam noted an injury date of October 7, 2016 and advised that appellant could return to work with restrictions.

Information predating appellant's claim was also provided along with evidence which referenced her October 7, 2015 work injury under OWCP File No. xxxxxx965. This included an October 9, 2015 x-ray of the lumbosacral spine, and a January 12, 2016 work status report.

By decision dated December 22, 2016, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that appellant's sciatica was causally related to the accepted employment incident. It indicated that there was no medical evidence which contained a physician's opinion, supported by a medical explanation, as to how the reported incident of March 31, 2015 caused or aggravated a medical condition.

On January 24, 2017 OWCP received appellant's December 22, 2016 request for oral hearing before an OWCP hearing representative. On May 15, 2017 a telephonic hearing was held. At the hearing, appellant testified that on the date of the alleged injury she worked all day pulling candy from underneath the shelfs on all fours. She experienced back pain when she stood up at the end of her shift. The hearing representative informed appellant of the type of medical evidence that was needed to establish her claim and held the record open for 30 days for submission of additional medical evidence.

On June 27, 2017 OWCP received additional evidence. In a June 8, 2017 report, Dr. Anthony T. Fenison, a Board-certified orthopedic surgeon, noted the history of appellant's October 2015 work injury and that her condition had stabilized after approximately two or three months. He also noted that she was declared permanent and stationary in January 2016 and that she continued to work and perform her usual and customary duties. Dr. Fenison reported that in late March 2016 appellant rose from a seated position and reinjured her lower back. Appellant indicated that the episode happened near the end of her shift and she was off work the next day. Dr. Fenison noted that appellant ended up in the emergency room for evaluation as her symptoms had worsened. He advised that appellant reported being on modified duties since the October 2015 work injury. Dr. Fenison reviewed an October 9, 2015 x-ray report, with normal findings, and a June 16, 2017 magnetic resonance imaging (MRI) scan of the lumbar spine, which revealed disc bulges at L4-5 and L5-S1 levels. He provided an assessment of chronic lumbar myofascial back pain and left sciatica.

Dr. Fenison opined that, taking into consideration the previous injury and the close proximity of the second episode, it was his opinion that the two employment injuries were related. He noted that even though appellant had been released in January 2016, she had not recovered 100 percent. Dr. Fenison reasoned that the previous injury predisposed appellant to having additional difficulties with her lower back and therefore this minor episode was enough to cause her pain. He opined that the second injury should be covered under workers' compensation as she had enough pain to warrant medical evaluation and treatment; she was not able to return to her usual and customary duties without formal restrictions; and she had enough documented pathology for her physicians to put her on steroids in April 2016. Dr. Fenison therefore opined that, "but for"

the original episode in October 2015, which led her to be put on permanent modified duty, she would not have been predisposed to the second episode.

A June 16, 2017 MRI scan of the lumbar spine, indicated annular fissures and posterior disc bulges four to five millimeters at L4-5 and five millimeters at L5-S1 with mild L4-5 central canal narrowing.

By decision dated July 6, 2017, an OWCP hearing representative affirmed the denial of the claim, finding that the medical evidence of record was insufficient to establish that appellant's diagnosed sciatica was causally related to the accepted employment incident. The hearing representative also indicated that OWCP should administratively combine the instant case with OWCP File No. xxxxxx965.[6]

LEGAL PRECEDENT

An employee seeking benefits under FECA[7] has the burden of proof to establish 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 timely filed within the applicable time limitation period of FECA, that an injury[8] was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[9]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established. A fact of injury determination is based on two elements. 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. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her condition relates to the employment incident.[10]

[6] The hearing representative noted that some evidence contained in OWCP File No. xxxxxx965. However, the complete case record under OWCP File No. xxxxxx965 is not part of the record associated with the current claim, OWCP File No. xxxxxx132. The Board notes that OWCP had not combined the claims at the time of appeal and evidence mentioned is not relevant to the issue of causal relationship in the present case.

[7] *Supra* note 2.

[8] OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events of incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

[9] *T.H.*, 59 ECAB 388, 393 (2008); *see Steven S. Saleh*, 55 ECAB 169, 171-72 (2003); *Elaine Pendleton*, 40 ECAB 1143, 1145(1989).

[10] *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

The claimant has the burden of proof to establish by the weight of reliable, probative, and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[11] An award of compensation may not be based on appellant's belief of causal relationship. 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 causal relationship.[12]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[13] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and compensable employment factors.[14] The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[15]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a back injury causally related to the accepted March 31, 2016 employment incident.

Appellant submitted a May 6, 2016 duty status report (Form CA-17) and May 6 and June 14, 2016 work status reports from Dr. Yogaratnam. While Dr. Yogaratnam diagnosed lumbosacral sprain due to a March 31, 2016 injury on his Form CA-17, his report is of limited probative value on the relevant issue of the case. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.[16] In his May 6, 2016 duty status report, as well as in his June 14, 2016 report, Dr. Yogaratnam did not provide any description of the March 31, 2016 incident or explain how it could have caused a lumbosacral sprain. His reports of therefore of limited probative value.[17]

In his June 8, 2017 report, Dr. Fenison provided an impression of chronic lumbar myofascial back pain and left sciatica which he opined was an employment injury. He noted the

[11] *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[12] *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[13] *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-56 (2006); *D'Wayne Avila*, 57 ECAB 642, 649 (2006).

[14] *J.J.*, Docket No. 09-0027 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

[15] *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[16] *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

[17] *Id.*

history of the October 2016 employment injury and that appellant reinjured her back in late March 2016 when she rose from a seated position. Dr. Fenison opined that taking into consideration the previous injury and the close proximity of the second episode, it was his opinion that the two work injuries were related and the second injury of March 2016 should be covered by workers' compensation. While Dr. Fenison provided several reasons as to how the October 7, 2015 event predisposed appellant to another event, he did not provide any medical explanation as for his opinion on causal relationship of the March 31, 2016 event. Dr. Fenison did not explain the medical process through which the March 31, 2016 employment incident could have caused the sciatica condition he diagnosed. Rather, he simply reported his conclusion on causal relationship without any rationalized elaboration.[18]

Appellant also submitted an April 11, 2016 emergency room provider report and general emergency room discharge instructions from a physician assistant, who provided an impression of sciatica. However, a physician assistant is not considered a physician under FECA. Their reports do not qualify as probative medical evidence supportive of a claim for federal workers' compensation, unless such reports are countersigned by a physician.[19] However, none of the physician assistant reports were countersigned by a physician. Therefore, these reports do not constitute probative medical evidence on the issue of causal relationship.

The June 16, 2017 MRI scan report is of limited probative value on the issue of causal relationship. The Board has held that reports of diagnostic tests are of limited probative value as they fail to provide an opinion on the causal relationship between appellant's employment duties and the diagnosed conditions.[20]

The remainder of the evidence submitted is not relevant to the issue of causal relationship of the March 31, 2016 employment incident.

The record is devoid of a rationalized opinion from a qualified physician on the issue of the causal relationship between appellant's diagnosed back condition and the incident of March 31, 2016. None of the medical reports of record provide a sufficient explanation regarding the mechanism of how the March 31, 2016 incident caused appellant's diagnosed condition.[21] As such, the Board finds that appellant has not met her burden of proof to establish a back injury causally related to the accepted March 31, 2016 employment incident.

[18] *See L.B.*, Docket No. 17-1600 (issued March 9, 2018).

[19] *See M.M.*, Docket No. 17-1641 (issued February 15, 2018); *K.J.*, Docket No. 16-1805 (issued February 23, 2018); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law).

[20] *See S.G.*, Docket No. 17-1054 (issued September 14, 2017).

[21] *See G.M.*, Docket No. 14-2057 (issued May 12, 2015).

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 not met her burden of proof to establish a back injury causally related to the accepted March 31, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the July 6, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 9, 2018
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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