United States Department of Labor
Employees' Compensation Appeals Board

C.C., Appellant	)	
and	)	**Docket No. 18-1099**
	)	**Issued: December 21, 2018**
U.S. POSTAL SERVICE, POST OFFICE, St. Louis, MO, 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 7, 2018 appellant filed a timely appeal from a May 3, 2018 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 to consider the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish that her lumbar condition was causally related the accepted January 29, 2018 employment incident.

FACTUAL HISTORY

On February 28, 2018 appellant, then a 45-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 29, 2018 she injured her lower back when she lifted trays of mail while in the performance of her employment duties. She stopped work on

[1] 5 U.S.C. § 8101 *et seq.*

February 28, 2018. C.P., an employing establishment supervisor, controverted the claim as appellant had worked without apparent difficulty from January 29, 2018 until she reported the injury.[2]

In support of her claim, appellant submitted a duty status report (Form CA-17) and urgent care center report dated February 28, 2018, both signed by a physician assistant.

By development letter dated March 28, 2018, OWCP advised appellant of the type of medical and factual evidence needed to establish her claim, including a detailed description of the February 28, 2018 employment incident, and a narrative report from her physician explaining how and why that event would cause the claimed back condition. It notified her that physician assistants were not considered physicians under FECA. OWCP afforded appellant 30 days to submit the necessary evidence.

Appellant provided statements in which she described the sudden onset of left-sided low back pain with radiation into the left buttock when she lifted three trays of mail while at work on January 29, 2018. She noted that she had delayed filing her claim as she hoped that her symptoms would abate without treatment. As over-the-counter medications were ineffective in reducing her pain symptoms, appellant sought treatment at an urgent care clinic on February 9, 2018.[3]

In a February 9, 2018 discharge note from an emergency department, Dr. Justin A. Rapoff, an osteopathic physician, related appellant's diagnosis as left-sided low back pain with left-sided sciatica.

OWCP also received an urgent care report dated February 9, 2018 signed by Daniel Zwilling, a physician assistant, with discharge instructions.

In a report dated February 12, 2018, Dr. Faquir Muhammud, an attending Board-certified internist, held appellant off work from February 9 to 18, 2018. He returned appellant to work effective February 19, 2018.

In a report dated March 1, 2018, Dr. Chris Beuer, an attending physician Board-certified in anesthesiology and pain management, noted treating appellant from February 19 to March 4, 2018. He restricted appellant from "heavy lifting, repetitive bending, twisting, or walking due to lumbar disc injury for 30 days."

Appellant also provided an urgent care report dated March 14, 2018 signed by Andrew Wahle, a physician assistant; a March 28, 2018 report signed by Tiffany Meinert, a physician assistant; and an April 10, 2018 report by Philip Dudak, a nurse practitioner.

By decision dated May 3, 2018, OWCP denied appellant's traumatic injury claim. It found that the incident occurred as alleged, but denied the claim as the medical evidence of record was

[2] In a letter dated March 26, 2016, D.B., an employment establishment official, contended that appellant may not have injured herself at work.

[3] Appellant also submitted a witness statement dated April 4, 2018 from D.T., a coworker, who asserted that he witnessed appellant informing a supervisor of her injury on January 29, 2018.

insufficient to establish that the diagnosed medical condition was causally related to the accepted January 29, 2018 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[5] 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.[6]

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether fact of injury has been established. First, an employee has the burden of proof to demonstrate the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence.[7] Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[8] The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.[9] 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.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her lumbar condition was causally related to the accepted January 29, 2018 employment incident.

[4] *Supra* note 2.

[5] *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

[6] *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

[7] *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

[8] *G.N.*, Docket No. 18-0403 (issued September 13, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[9] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[10] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

Appellant was initially seen by Dr. Rapoff on February 9, 2018 who diagnosed left-sided sciatica; however, he offered no history of injury or opinion regarding the cause of this condition. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value regarding the issue of causal relationship.[11]

Dr. Muhammud provided a work absence slip dated February 12, 2018 holding appellant off from work from February 9 to 18, 2018 for an unspecified condition. He did not address causal relationship. To establish personal injury the medical evidence of record must document a diagnosed condition and must explain how that condition is causally related to the accepted employment incident. Lacking a firm diagnosis and rationalized medical opinion regarding causal relationship, Dr. Muhammud's report is of limited probative value.[12]

In a report dated March 1, 2018, Dr. Beuer diagnosed a lumbar disc injury and provided work restrictions. He did not, however, provide a firm diagnosis and a rationalized medical opinion, based upon a history of injury, explaining how the diagnosed condition was caused by the accepted January 29, 2018 employment incident. Dr. Beuer's report was therefore of limited probative value.[13]

Appellant also submitted reports from Mr. Zwilling, Mr. Wahle, and Ms. Meinert, physician assistants, and Mr. Dudak, a nurse practitioner. The Board has held that medical reports signed solely by a physician assistant or nurse practitioner are of no probative value as a physician assistant or nurse practitioner is not considered a physician as defined under FECA and therefore is not competent to provide a medical opinion.[14]

In a letter dated March 28, 2018, OWCP requested that appellant submit a comprehensive report from her treating physician which included a reasoned explanation as to how the accepted work incident had caused her claimed injury. An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.[15] Appellant's honest belief that the accepted January 29, 2018 employment incident caused an injury, however sincerely held, does not constitute medical evidence sufficient to establish causal relationship.[16]

[11] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[12] *See D.S.*, Docket No. 18-0061 (issued May 29, 2018).

[13] *See R.K.*, Docket No. 17-0599 (issued June 23, 2017).

[14] *See 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). *E.T.*, Docket No. 17-0265 (issued May 25, 2018) (physician assistants are not considered physicians under FECA). *S.J.*, Docket No. 17-0783, n.2 (issued April 9, 2018) (nurse practitioners are not considered physicians under FECA).

[15] *G.N.*, *supra* note 8; *D.D.*, 57 ECAB 734 (2006).

[16] *G.N.*, *supra* note 8. *See J.S.*, Docket No. 17-0967 (issued August 23, 2017).

Because appellant has not submitted reasoned medical evidence explaining how the diagnosed medical condition was caused by the accepted January 29, 2018 employment incident, she has not met her burden of proof.[17]

On appeal, appellant asserts that the medical evidence of record is sufficient to meet her burden of proof to establish causal relationship. As noted above, OWCP properly denied appellant's traumatic injury claim as her physicians' reports contained insufficient medical reasoning to establish that the accepted employment incident caused the claimed injury.

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 that her lumbar condition was causally related the accepted January 29, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the May 3, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 21, 2018
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

[17] *G.N.*, *supra* note 8, *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).