United States Department of Labor
Employees' Compensation Appeals Board

Y.T., Appellant	)	
and	)	**Docket No. 17-1559**
	)	**Issued: March 20, 2018**
U.S. POSTAL SERVICE, POST OFFICE, West Sacramento, CA, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 10, 2017 appellant filed a timely appeal from a June 22, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] 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 this case.

ISSUE

The issue is whether appellant met her burden of proof to establish back, neck, left leg, and head injuries causally related to the accepted June 30, 2016 employment incident.

[1] Appellant timely requested an oral argument before the Board pursuant to section 501.5(b) of the Board's *Rules of Procedure*. 20 C.F.R. § 501.5(b). By order dated December 20, 2017, the Board exercised its discretion and denied the request, finding that the arguments on appeal could adequately be addressed based on the case record. *Order Denying Request for Oral Argument*, Docket No. 17-1559 (issued December 20, 2017).

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 19, 2016 appellant, then a 41-year-old retail specialist, filed a traumatic injury claim (Form CA-1) alleging that at 3:00 p.m. on June 30, 2016 she injured the left side of her upper and lower back, neck, and upper side of her left leg, and experienced vertigo while in an elevator at work that stopped and dropped. She stopped work on July 5, 2016.

In a July 21, 2016 letter, the employing establishment controverted the claim, contending that, at the time of the claimed June 30, 2016 incident, appellant was asked if she felt alright and she responded "yes." She did not indicate that she was injured. Appellant returned to work the next day with no complaints, but left early because she was not feeling well. On July 5, 2016 she texted her manager stating that she was not coming to work and wanted to use sick leave. Appellant never mentioned an injury or related her condition to the June 30, 2016 incident. The employing establishment noted that she was treated on July 6, 2016, but no medical documentation showed a causal relation to her work or the June 30, 2016 incident. Appellant was deemed totally disabled from July 5 to 8, 2016 with no diagnosis or medical rationale. She had prescheduled annual leave for the following week and, after returning to work two weeks later, she alleged that her condition was work related. The employing establishment noted that appellant had been an acting human resources manager and was aware of the protocol for timely reporting injuries and accidents.

The employing establishment submitted a July 20, 2016 statement from T.R., appellant's manager, who indicated that on June 30, 2016 she overheard appellant inform S.D., a marketing manager, and D.W., a consumer affairs manager, that the elevator malfunctioned and dropped while she was riding in it to the second floor. Appellant reported that the elevator started to go up and opened on the third floor. T.R. and the managers asked appellant if she was okay and she responded "yes." At no time did appellant claim that there was an accident or that she was injured. T.R. noted that on July 5, 2016 appellant texted her about using sick leave, but did not mention an accident or injury. She indicated that appellant had previously mentioned having issues with irregular breathing and a rapid heartbeat for which she used sick leave. T.R. related that, during the afternoon on July 6, 2016 appellant again texted her stating that, her physician had placed her off work for the rest of the week. She noted that a copy of the physician's work status report was attached to the text message. T.R. placed appellant on pending Federal and Medical Leave Act (FMLA) leave from July 6 to 8, 2016. She noted that appellant had scheduled annual leave from July 11 to 15, 2016. When appellant returned to work on July 18, 2016 she related that she was going to see her regular physician on July 21, 2016 because she did not feel well. She also related that she had gone to urgent care. In a July 21, 2016 e-mail, T.R. related that on July 1, 2016 appellant worked until after 3:00 p.m. and left work because she did not feel well and planned to see her physician. She again maintained that appellant did not mention that her condition was related to the elevator incident.

The employing establishment also submitted a copy of appellant's July 5, 2016 text message to T.R. and an illegible work status report dated July 6, 2016 from Dr. Tony T. Tran, a Board-certified family practitioner.

OWCP, by development letter dated July 25, 2016, advised appellant of the deficiencies of her claim. It attached a development questionnaire for her completion and afforded her 30 days to submit additional evidence.

OWCP received office visit reports and progress notes dated July 2, 2016 from Dr. Juan P. Moreno, a Board-certified internist, who noted a history that on June 30, 2016 appellant was in an elevator when it suddenly and unexpectedly jerked and dropped a few floors and then stopped suddenly. Appellant experienced a neck whiplash motion and ongoing nagging stiffness and pain in her neck and left knee. T.R. also had a mild bronchospastic cough a few times a week for many months. Dr. Moreno discussed findings on physical and x-ray examination and provided an initial primary encounter diagnosis of whiplash neck injury. He also diagnosed left knee sprain, initial, and asymptomatic cough.

OWCP also received x-ray reports dated July 2, 2016 from Dr. Hon Woo and Dr. Antonio E. Vasquez, Board-certified radiologists. Dr. Woo reported that a cervical spine x-ray revealed no acute fracture. A left knee x-ray revealed no acute fracture or dislocation. Dr. Vasquez noted that a chest x-ray showed no acute cardiopulmonary disease.

In a July 6, 2016 progress note, Dr. Tran reported a history that appellant unexpectedly fell inside an elevator that suddenly jerked and dropped a few floors. He noted her complaints of pain in the neck, back, left knee, left shoulder, and left lower back and dizziness. Dr. Tran further noted a history of appellant's medical and employment background. He reported physical examination findings and assessed an initial primary encounter diagnosis of whiplash neck injury. Dr. Tran also assessed lumbar muscle strain, subsequent, and dysuria.

In industrial work status reports dated July 21 and 28, 2016, Dr. Anya Ren Meyers, a physiatrist, noted a June 30, 2016 date of injury. She described examination findings and advised that appellant was able to return to full-capacity work as of each examination date.

In a partial progress note dated July 21, 2016, Dr. Vasilios Paraskos Tzoumas, a Board-certified family practitioner, reviewed urinalysis test results and diagnosed renal colic. He advised that a thoracic lumbar spine x-ray revealed thoracic pain without trauma.

On August 10, 2016 appellant responded to OWCP's development questionnaire and restated her account of the claimed June 30, 2016 incident. She related that she immediately reported the incident to S.D. and D.W. and responded "yes" when asked if she was okay by T.R. Appellant also reported the elevator incident to D.W. who was covering for a maintenance manager. D.W. noted being aware that the elevator was not working. Appellant worked two hours and then went home. She returned to work on July 1, 2016 and later that day she had pain, dizziness, and nausea for which she sought medical treatment. On July 5, 2016 appellant did not work and she requested sick leave. She received medical treatment on July 6 and 8, 2016, was on scheduled annual leave from July 11 to 15, 2016, and returned to work on July 18, 2016. Appellant informed S.D. about her medical treatment. S.D. became upset because appellant did not tell her that the June 30, 2016 incident was an accident or that she had an injury on that day. Appellant denied S.D.'s contentions. T.R. informed appellant that she did not understand that appellant's medical appointments were related to the elevator accident. On July 19, 2016 appellant requested a CA-1 form. She was evaluated on July 21, 2016 by Dr. Tzoumas for ongoing pain in her neck

and back, headaches, and dizziness. Appellant noted that she was later seen by Dr. Meyers. She claimed that she remained symptomatic since the June 30, 2016 incident.

Appellant resubmitted a copy of Dr. Tran's July 6, 2016 work status report. Dr. Tran placed her off work from July 5, 2016 to an illegible date in July 2016. Appellant submitted e-mails dated July 1, 2016 between herself and S.D. regarding the malfunctioning elevator and repair of the elevator. She also submitted copies of text messages regarding her use of sick or FMLA leave following the June 30, 2016 incident and her medical treatment. Appellant also submitted evidence from a medical assistant and nurses.

By decision dated September 1, 2016, OWCP denied appellant's claim as the factual evidence failed to establish that the June 30, 2016 incident occurred as alleged.

In a September 29, 2016 letter, appellant requested an oral hearing before an OWCP hearing representative. OWCP received a complete copy of Dr. Tzoumas' July 21, 2016 progress note and his August 9, 2016 progress note. Dr. Tzoumas reported appellant's complaints of neck and low back pain post-accident on June 30, 2016 and foul smelling urine. He discussed findings and diagnosed neck pain, primary encounter, and migraine. Dr. Tzoumas reiterated his prior diagnosis of renal colic.

In an August 22, 2016 progress note, Dr. Sean K. Fujioka, a Board-certified family practitioner, indicated that additional information was necessary. He instructed a nurse to inform appellant to seek medical treatment in an emergency room if she experienced further symptoms. Dr. Scott W. Kwiatkowksi, a family practitioner, advised in a September 7, 2016 progress note, that more work was necessary before performing a magnetic resonance imaging (MRI) scan. In a September 9, 2016 progress note, Dr. Roger J. Raimundo, a Board-certified family practitioner, provided a primary encounter diagnosis of neck muscle strain, subsequent.

Dr. Meyers, in progress notes dated July 21 to August 8, 2016, indicated a history that on June 30, 2016 appellant walked into an elevator and pushed a button for the second floor. The elevator started and then suddenly stopped. It fell at full speed and appellant lost ground and jumped. Appellant pushed various buttons to open the door, but none of them worked. The elevator paused for a couple of seconds and then it went to the third floor. The door opened and appellant got out of the elevator. She took the stairs to her office on the second floor and when she arrived her manager asked her why she was so pale. Dr. Meyers noted a history of appellant's complaints and medical and occupational background. She reported findings on x-ray and physical examination and diagnosed neck muscle strain, subsequent, lumbar muscle strain, initial, and left knee sprain, subsequent. Dr. Meyers opined that the stated mechanism was consistent with her clinical findings and no information had been presented that would indicate a cause other than the alleged employment event/exposure. She advised that appellant could perform full-duty work. Appellant also provided additional evidence from a physical therapist and a nurse.

By decision dated June 22, 2017, an OWCP hearing representative affirmed the September 1, 2016 decision, as modified. She found that the evidence of record established that the claimed June 30, 2016 incident occurred as alleged, but denied the claim as the medical evidence of record was insufficient to establish that the diagnosed conditions were caused by the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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,[4] 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.[5]

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.[6] There are two components involved in establishing 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.[7]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[8] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing causal relationship between the claimed condition and the identified factors.[9] The belief of the claimant that a condition was caused or aggravated by the employment incident is insufficient to establish causal relationship.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that she sustained a traumatic injury causally related to the June 30, 2016 employment incident. Appellant failed to submit sufficient medical evidence to establish that she had back, neck, left leg, and head injuries causally related to the accepted employment incident.

Appellant submitted progress notes dated July 21 to August 8, 2016 from Dr. Meyers who provided a history of the June 30, 2016 employment incident, reported findings, and diagnosed neck muscle strain, lumbar muscle strain, and left knee sprain. She opined that the stated mechanism of injury was consistent with her clinical examination findings. Dr. Meyers noted that she had no information to indicate a cause other than the alleged employment event/exposure.

[3] *Id.*

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

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

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

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

[8] *John J. Carlone*, 41 ECAB 354 (1989); *see supra* note 2 at § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

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

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

Although her opinion generally supported causal relationship between the accepted employment incident and appellant's diagnosed conditions, she did not provide sufficient rationale explaining this conclusion. Dr. Meyers' opinion is largely based on appellant's opinion as to what caused her injuries, rather than by her independent analysis of the cause of the condition. She did not explain the process by which appellant's employment incident caused or contributed to the diagnosed conditions.[11] A mere conclusion without the necessary rationale explaining how and why the physician believes that a claimant's accepted incident resulted in the diagnosed condition is insufficient to meet appellant's burden of proof.[12] The Board finds that Dr. Meyers failed to provide a supported medical opinion. Further, the Board finds that her remaining industrial work status reports dated July 21 and 28, 2016 are insufficient to meet appellant's burden of proof. Dr. Meyers failed to provide a firm diagnosis of a particular medical condition[13] or a specific opinion as to whether the accepted June 30, 2016 employment incident caused or aggravated appellant's condition.[14]

Appellant also submitted reports and progress notes dated July 2, 2016 from Dr. Moreno who noted a history of the June 30, 2016 work incident and diagnosed whiplash neck injury, left knee sprain, and asymptomatic cough. However, Dr. Moreno did not opine whether her conditions were caused by the accepted work incident.[15] Thus, the Board finds that his reports and progress notes are insufficient to meet appellant's burden of proof.

Similarly, the July 21, August 9, and September 9, 2016 progress notes of Dr. Tzoumas and Dr. Raimundo are insufficient to establish appellant's burden of proof. These physicians did not offer an opinion on whether appellant's medical conditions were caused or aggravated by the June 30, 2016 work incident.[16] Likewise, Dr. Tran's July 6, 2016 work status report failed to provide an opinion as to whether appellant's disability from work from July 5, 2016 to an illegible date in July 2016 was causally related to the accepted work incident.[17]

The diagnostic test reports dated July 2, 2016 from Dr. Woo and Dr. Vasquez found that appellant had no cervical spine or left knee facture or dislocation and no acute cardiopulmonary disease. The August 22 and September 7, 2016 progress notes of Dr. Fujioka and Dr. Kwiatkowski indicated that additional information or work was necessary before further medical treatment and testing. None of these physicians diagnosed a medical condition causally

[11] *See D.L.*, Docket No. 15-0866 (issued November 23, 2015); *J.S.*, Docket No. 14-0818 (issued August 7, 2014).

[12] *D.L.*, *id.*; *G.M.*, Docket No. 14-2057 (issued May 12, 2015).

[13] *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).

[14] *See C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006) (medical evidence that does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[15] *Id.*

[16] *Id.*

[17] *Id.*

related to the accepted work incident. Therefore, their reports and progress notes are insufficient to establish appellant's claim.

The record also contains evidence from a medical assistant, nurses, and a physical therapist. However, the Board has held that these providers are not considered physicians as defined under FECA.[18] Thus, their medical findings are of no probative value for purposes of establishing entitlement to FECA benefits.

The Board finds that appellant has failed to submit rationalized probative medical evidence to establish that she sustained back, neck, left leg, and head injuries causally related to the June 30, 2016 employment incident. Appellant has not met her burden of proof.

On appeal, appellant asserts that she sustained a work-related injury. She contends that her attending physician's opinion is sufficient to establish causal relationship between her injury and resultant disability and the accepted employment incident. For the reasons stated above, the Board finds that the weight of the medical evidence does not establish that appellant sustained back, neck, left leg, and head conditions causally related to the accepted June 30, 2016 work 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 not met her burden of proof to establish back, neck, left leg, and head injuries causally related to the accepted June 30, 2016 employment incident.

[18] *See* 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.W.*, Docket No. 16-1729 (issued May 12, 2017); *L.C.*, Docket No. 16-1717 (issued March 2, 2017) (nurses); *R.S.*, Docket No. 16-1303 (issued December 2, 2016) (medical assistants); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

ORDER

IT IS HEREBY ORDERED THAT the June 22, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 20, 2018
Washington, DC

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

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

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