United States Department of Labor
Employees' Compensation Appeals Board

C.F., Appellant	)	
and	)	**Docket No. 18-1156**
	)	**Issued: January 22, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Bath, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 17, 2018 appellant filed a timely appeal from a January 29, 2018 merit decision and a May 4, 2018 nonmerit 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.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish pelvis and back conditions causally related to the accepted December 9, 2017 employment incident; and (2) whether OWCP properly denied appellant's request for a review of the written record as untimely filed pursuant to 5 U.S.C. § 8124.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 9, 2017 appellant, then a 63-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she developed pelvic pain due to a fall on snow in the performance of duty. She stopped work on the date of injury. In an accompanying undated narrative statement, appellant related that, on December 9, 2017, she parked her car at an address to deliver two parcels and that the car started to slide backwards down a snow covered and icy driveway into a road and a tree. As she tried to grab the door of the truck, she slipped. On the reverse side of the claim form, the employing establishment controverted the claim, contending that the vehicle could not have slid 132 feet because it was not running and it was against policy to leave a vehicle running while unattended.

In support of her claim, appellant submitted two medical reports from Dr. Faton Bilali, a Board-certified family practitioner. In his narrative medical report dated December 9, 2017, Dr. Bilali indicated that she was evaluated that day for left low back pain. He ordered diagnostic tests and placed appellant off work until her next evaluation. In his duty status report (Form CA-17), also dated December 9, 2017, Dr. Bilali diagnosed a left pelvis contusion due to an injury on that date. He advised that appellant could not resume work.

A December 12, 2017 pelvis magnetic resonance imaging (MRI) scan report from Dr. Amit Malhotra, a radiologist and an internist, was received by OWCP. Dr. Malhotra provided an impression of no bone contusion or fracture, degenerative disc disease of the lower lumbar spine, mild levoscoliosis, minimal effusion of the right hip joint space with minimal changes of osteoarthritis, and minimal arthrosis of the sacroiliac joints with minimal subchondral edema. He also provided an impression of mild-to-moderate tendinopathy at the origin of the hamstrings tendons with small intrasubstance delaminating tears at the origin of the hamstrings tendon bilaterally, mild-to-moderate tendinopathy at the insertion of the gluteus minimus and gluteus medius tendon, and heterogeneous appearance of the uterus with possible fibroids.

OWCP received a series of reports from Dr. Troy Wood, an attending physiatrist. In narrative reports dated December 11 and 20, 2017, Dr. Wood noted appellant's history, discussed examination findings, and assessed left low back pain. In his December 11, 2017 report, he placed her off work until her next evaluation. In his December 20, 2017 report, Dr. Wood advised that appellant could return to unrestricted activity as of the date of his evaluation. In an accompanying December 20, 2017 Form CA-17 report, he noted a history that she fell on December 9, 2017. Dr. Wood diagnosed lumbago due to injury and released appellant to return to full-time work with no restrictions.

On December 21, 2017 the employing establishment offered appellant a modified rural carrier position which she accepted on that date.

A December 26, 2017 treatment note signed by Alicia Kresley, a physical therapist, listed a diagnosis of low back pain and addressed the treatment of appellant's diagnosed condition.

By development letter dated December 29, 2017, OWCP advised appellant of the deficiencies of her claim and requested that she respond to a form questionnaire in order to establish that she actually experienced the incident alleged to have caused an injury and a medical

report from her attending physician including a diagnosis, history of the injury, examination findings, and a rationalized opinion explaining how the reported work incident caused or aggravated her medical condition. The questionnaire requested that she describe the nature of her injury, how the injury occurred, and any prior similar injuries or medical conditions. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP received an additional treatment note dated December 21, 2017 by Ms. Kresley who addressed the treatment of appellant's diagnosed low back pain and assessed that her condition was secondary to a fall at work on December 9, 2017.

OWCP also received additional reports from Dr. Wood. In a narrative report and Form CA-17 report dated December 30, 2017, Dr. Wood reiterated his assessment of left lower back pain. In the narrative report, he indicated that appellant related a history that she sustained an injury at work. In the Form CA-17 report, Dr. Wood obtained a history that on December 9, 2017 she fell trying to grab a truck. He opined that the diagnosed back condition was due to appellant's injury. Dr. Wood continued to advise that she could perform full-duty work.

In a January 22, 2018 letter, Dr. Wood noted a history of appellant's treatment in his clinic which commenced on December 9, 2017 by a different physician who reported a mechanism of injury that she fell onto her lower back on an icy ground from a recent snowfall as she tried to grab a side view mirror to stop a vehicle, which was sliding down an incline. Appellant immediately felt pain. Dr. Wood noted that she was diagnosed with left lower back pain based on the December 9, 2017 evaluation. He indicated that appellant initially presented to him on December 11, 2017 and reported the December 9, 2017 slip and fall and development of low back pain to him. Dr. Wood discussed her medical treatment and related that she was feeling well and had returned to full-duty work. He opined that the reported mechanism of injury was consistent with appellant's symptoms, physical examination, and diagnostic findings. Dr. Wood related that an assessment code used throughout her most recent treatment was lower back pain (M54.5) secondary to the fall in question. He indicated that, upon physical examination during her initial visit, appellant was visibly in pain. Appellant had an antalgic gait, tenderness of the left lumbar surrounding musculature, decreased range of lumbar range of motion which also caused her pain with normal reflexes, and muscle testing of the lower extremities. Dr. Wood concluded that her fall was directly related to the subsequent pain and injury that developed. A review of appellant's medical chart revealed that she was evaluated for right-sided low back pain in 2013. She had fully recovered at that time with physical therapy. Dr. Wood believed that those issues and symptoms were unrelated to the injury in question. He concluded that the current injury was separate from the complaints, treatment, and condition in 2013.

Appellant also submitted a December 28, 2017 treatment note in which Ms. Kresley again addressed the treatment of appellant's low back pain and assessed her limitations.

By letter dated January 24, 2018, the employing establishment further challenged appellant's claim. It contended that, while she stated that she fell in the snow, she failed to mention the events leading up to the fall. The employing establishment indicated that a surveillance video from a homeowner showed appellant pulling into a driveway and as she exited the vehicle, the lights and wipers were still on. It was assumed that she left the vehicle running. The surveillance video also showed the wheels on the vehicle turning backwards and the vehicle moving down the

driveway. The surveillance video showed appellant running to catch her vehicle and then falling face first. The employing establishment indicated that on December 8, 2017 she received a safety talk in which proper procedures for backing up and preventing rollaway/runaway were reviewed. It further claimed that the medical documentation indicated a diagnosis of left low back pain, but that pain is a symptom rather than a medical condition. The employing establishment asserted that appellant had not met her burden of proof to establish a work-related condition and, thus, requested that OWCP deny her claim.

By decision dated January 29, 2018, OWCP denied appellant's traumatic injury claim. It noted that while the employing establishment disputed her claim that she fell in snow based on the homeowner's surveillance video, it "accepted [that she] did slip and fall while trying to secure the run-away vehicle." OWCP related that it had made no decision at that time on whether there was any willful misconduct on appellant's part as further information was needed to make that determination. It further found that the medical evidence of record did not contain a diagnosed medical condition in connection with the December 9, 2017 employment incident.

OWCP received a February 14, 2018 letter in which Dr. Wood essentially reiterated the opinions, findings, and conclusions that he set forth in his January 22, 2018 letter.

In a February 24, 2018 appeal request form, postmarked April 2, 2018, and received by OWCP on April 6, 2018, appellant requested a review of the written record by an OWCP hearing representative.

By decision dated May 4, 2018, an OWCP hearing and review examiner denied appellant's request for a review of the written record as it was untimely filed. She found that the request was not postmarked within 30 days of the issuance of the January 29, 2018 OWCP merit decision. After exercising appellant's discretion, the hearing representative further found that the issue in the case could equally well be addressed through the reconsideration process.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA[2] 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.[3] 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.[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. There are two components involved in establishing fact of injury. First, the employee must submit

[2] *Id.*

[3] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[5] 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.[6] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[7]

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence sufficient to establish such causal relationship.[8] Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 claimant.[9]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish pelvic and back conditions causally related to the accepted December 9, 2017 employment incident.

Appellant submitted a series of reports from her attending physician, Dr. Wood. In Form CA-17 reports dated December 20 and 30, 2017, Dr. Wood diagnosed lumbago and low back pain due to the accepted December 9, 2017 employment incident and released her to return to full-time work with no restrictions. However, he provided no medical rationale explaining how the employment incident caused the diagnosed conditions and disability from work.[10] Dr. Wood did not explain how the mechanism of injury would have physiologically caused the diagnosed condition.[11] Thus, the Board finds that his reports are insufficient to establish causal relationship.

[5] *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).

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

[7] *See M.J.*, Docket No. 17-0725 (issued May 17, 2018); *see also Lee R. Haywood*, 48 ECAB 145 (1996); *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

[8] *K.V.*, Docket No. 18-0723 (issued November 9, 2018).

[9] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 4.

[10] *See T.M.*, Docket No. 08-0975 (issued February 6, 2009) (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).

[11] *R.R.*, Docket No. 16-1901 (issued April 17, 2017).

Dr. Wood, in a December 30, 2017 report, noted that appellant related a history that she sustained a work injury. He assessed left lower back pain and advised that she could continue to perform full-duty work. However, pain is a symptom and not a compensable diagnosis.[12] Furthermore, Dr. Wood appears merely to repeat the history of injury as reported by appellant without providing his own opinion regarding whether her condition was work related.[13] For these reasons, his report is insufficient to meet her burden of proof.

Similarly, in a January 22, 2018 report, Dr. Wood opined that appellant had lower back pain secondary to the accepted December 9, 2017 fall. He maintained that the mechanism of injury was consistent with her symptoms, physical examination findings, and diagnostic test results. Dr. Wood advised that appellant's right back pain in 2013, from which she had fully recovered, was not related to her current back condition. It is not possible to establish the cause of a medical condition if the physician has not provided a diagnosis, but only notes pain.[14] The Board has consistently held that a diagnosis of pain does not constitute the basis for the payment of compensation.[15] Without further explanation or rationale regarding causal relationship between a diagnosed condition and the accepted work incident, this report is of limited probative value.[16]

Dr. Wood's remaining reports are also insufficient to meet appellant's burden of proof. Within these additional reports, he again diagnosed low back pain, which as noted above, is not a compensable diagnosis.[17] Moreover, Dr. Wood failed to provide an opinion concluding that the accepted December 9, 2017 employment incident caused or aggravated appellant's diagnosed back condition, disability status, medical treatment, and work restrictions.[18]

Dr. Bilali's narrative report and Form CA-17 report dated December 9, 2017 diagnosed left low back pain and a left pelvis contusion and placed appellant off work. In his CA-17 form report, he advised that her left pelvis contusion was due to an injury on December 9, 2017. However, Dr. Bilali did not offer medical rationale explaining how the accepted work incident caused the diagnosed condition and resultant disability.[19] Thus, his reports are insufficient to establish appellant's burden of proof.

Dr. Malhotra's December 12, 2017 diagnostic test report addressed appellant's pelvis conditions, but failed to offer a medical opinion addressing whether the diagnosed conditions were

[12] *See supra* note 10.

[13] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018). (Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship).

[14] *See C.L.*, Docket No. 18-0363 (issued July 19, 2018); *A.C.*, Docket No. 16-1587 (issued December 27, 2016).

[15] *See supra* note 8.

[16] *C.L.*, Docket No. 17-0354 (issued July 10, 2018); *Beverly A. Spencer*, 55 ECAB 501 (2004).

[17] *See supra* note 10.

[18] *See T.M.*, Docket No. 16-1456 (issued January 10, 2017); *S.E.*, *supra* note 13.

[19] *Id.*

caused or aggravated by the December 9, 2017 employment incident. The Board has held that reports of diagnostic tests lack probative value as they do not provide an opinion on causal relationship between appellant's employment incident and a diagnosed condition.[20]

The December 21, 26, and 28 2017 treatment notes signed by Ms. Kresley, a physical therapist, have no probative medical value. A physical therapist is not considered a "physician" as defined under FECA.[21] As such, this evidence is also insufficient to meet appellant's burden of proof.

The Board finds that appellant has not submitted any rationalized, probative medical evidence sufficient to establish pelvis and back injuries causally related to the accepted December 9, 2017 employment incident. Appellant, therefore, has not met her burden of proof.

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.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of FECA provides that "a claimant for compensation not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his [or her] claim before a representative of the Secretary."[22] Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.[23] A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carrier's date marking and before the claimant has requested reconsideration.[24] Although there is no right to a review of the written record or an oral hearing if not requested within the 30-day time period, OWCP may within its discretionary powers grant or deny appellant's request and must exercise its discretion.[25]

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

[21] 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 Jennifer L. Sharp*, 48 ECAB 209 (1996) (physical therapist); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

[22] 5 U.S.C. § 8124(b)(1).

[23] 20 C.F.R. §§ 10.616, 10.617.

[24] *Id.* at § 10.616(a).

[25] *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for review of the written record.

Appellant's February 24, 2018 request for a review of the written record was postmarked on April 2, 2018, more than 30 days after the issuance of OWCP's January 29, 2018 merit decision. Because the postmark date was more than 30 days after the date of OWCP's January 29, 2018 decision, the Board finds that the request was untimely filed and she was not entitled to a review of the written record as a matter of right.[26]

Although appellant's request for a review of the written record was untimely filed, OWCP has the discretionary authority to grant the request and it must exercise such discretion.[27] In its May 4, 2018 decision, OWCP's hearing and review examiner properly exercised her discretion by notifying appellant that she had considered the matter in relation to the issue of whether she had established an injury in the performance of duty and determined that the issue involved could be equally well addressed by a request for reconsideration before OWCP. The Board finds that the hearing and review examiner properly exercised her discretionary authority in denying appellant's request for a review of the written record.[28] The Board has held that the only limitation on OWCP's authority is reasonableness. An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.[29] In this case, the evidence of record does not indicate that OWCP abused its discretion by denying appellant's request for a review of the written record. Accordingly, the Board finds that OWCP properly denied appellant's request for a review of the written record.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish pelvic and back conditions causally related to the accepted December 9, 2017 employment incident. The Board further finds that OWCP properly denied her request for a review of the written record as untimely filed pursuant to 5 U.S.C. § 8124.

[26] The 30-day period for determining the timeliness of an employee's request for an oral hearing or review commences the day after the issuance of OWCP's decision. *See Donna A.Christley,* 41 ECAB 90 (1989).

[27] *See supra* note 25.

[28] *M.B.*, Docket No. 18-0717 (issued September 5, 2018); *Mary B. Moss,* 40 ECAB 640, 647 (1989).

[29] *Samuel R. Johnson*, 51 ECAB 612 (2000).

ORDER

IT IS HEREBY ORDERED THAT the May 4 and January 29, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 22, 2019
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