United States Department of Labor
Employees' Compensation Appeals Board

T.J., Appellant	)	
and	)	**Docket No. 18-1500**
	)	**Issued: May 1, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Denver, CO, 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 August 1, 2018 appellant filed a timely appeal from a June 7, 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 over the merits of this case.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted November 26, 2017 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On December 4, 2017 appellant, then a 64-year-old laborer/custodian, filed a traumatic injury claim (Form CA-1) alleging that, on November 26, 2017, she sustained a chest wall muscle spasm when pulling a shampooer through a confined space while in the performance of duty. She stopped work on November 26, 2017 and returned on December 4, 2017. On the reverse side of the claim form, appellant's supervisor contended that the injury was caused by willful misconduct.

In a November 26, 2017 narrative statement, appellant's supervisor, D.W., explained that, on November 26, 2017, appellant complained of foot pain and asserted that she was unable to push the scrubber to the work site as required. He explained that he demonstrated the proper way to use the machine and how to push the scrubber to the job site.

In a November 30, 2017 duty status report (Form CA-17), Dr. Natalie Ronshaugen, a family medicine specialist, noted that appellant was pulling a shampoo machine and pulled a muscle. She diagnosed chest wall muscle spasm. Dr. Ronshaugen indicated that appellant could return to light-duty work on December 4, 2017.

In a development letter dated December 29, 2017, OWCP informed appellant that additional factual and medical information was required to establish the claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. In a separate development letter, also dated December 29, 2017, OWCP requested that the employing establishment provide further clarification of the facts of appellant's claim. It afforded both parties 30 days to respond.

Thereafter, OWCP received November 26, 2017 hospital records and treatment notes. Dr. John Lemery, Board-certified in emergency medicine, noted that appellant was "lifting a heavy shampoo device at work today at 1530." He diagnosed bilateral low back pain without sciatica of unspecified chronicity. Dr. Lemery also noted that appellant's pain radiated to her back, but not her left arm. He also noted that she had similar symptoms in 2015 with a diagnosis of a pulled muscle.

In a November 26, 2017 emergency department treatment note, Dr. Alexander Quinones, an emergency medicine specialist, determined that appellant had bilateral low back pain without sciatica of unspecified chronicity.

In a January 25, 2018 statement, D.W. provided photographs of the carpet cleaning machine, which had wheels. He explained that appellant's duties included moving the carpet cleaner and cleaning on both November 12 and 26, 2017. D.W. explained that, despite being instructed on how to push the carpet cleaner, appellant pulled the carpet cleaner.

By decision dated February 1, 2018, OWCP denied appellant's claim. It found the evidence of record was insufficient to establish that the event occurred as described. OWCP explained that appellant claimed that she was "pulling a shampooer at work thru a confined space." It explained that despite being provided guidance on how to push the shampoo machine between job sites, appellant pulled the shampooer instead of using the guidance to push the shampooer,

which cast doubt on her claim. OWCP also found that she had not responded to the December 29, 2017 request for additional information.[3]

In a narrative report dated November 30, 2017, Dr. Ronshaugen indicated that appellant was seen for "severe chest wall muscle spasm from pulling a shampooer at work." She recommended physical therapy and light duty until appellant's pain resolved, at which time she could resume full[-]duty activity at work."

In a February 1, 2018 statement, appellant explained that she had to pull the carpet cleaner through the doors because they were not automatic doors. She explained that she could not push the machine without assistance.

In a February 1, 2018 report, Dr. Susan Piggot, a family medicine specialist, noted appellant was seen on November 30, 2017 for an injury. She diagnosed "chest wall muscle spasm" and recommended physical therapy.

OWCP received a February 22, 2018 duty status report (Form CA-17) with an illegible signature. The diagnosis was chest pain and muscle spasm.

On March 7, 2018 OWCP's Branch of Hearings and Review received a request for a review of the written record before an OWCP hearing representative.

By decision dated June 7, 2018, OWCP's hearing representative affirmed the February 1, 2018 decision, as modified. He accepted that the claimed incident occurred as alleged, but found that appellant had not established a medical condition causally related to the accepted November 26, 2017 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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,[4] that an injury 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

[3] On January 17, 2018 appellant sought an appeal from a purported decision of OWCP dated December 29, 2017. The Board assigned Docket No. 18-0521. However, the Board found that there was no final adverse OWCP decision at the time appellant filed her appeal. The Board determined that the purported December 29, 2017 decision was, in actuality, an initial development letter from OWCP advising appellant of the deficiencies in her claim and requesting specific factual and medical evidence. The Board concluded that the appeal must be dismissed. *Order Dismissing Appeal*, Docket No. 18-0521 (issued February 16, 2018).

[4] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

employment injury.[5] These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[6]

To determine if an employee has 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 that allegedly occurred.[7] The second component is whether the employment incident caused a personal injury.[8]

Rationalized medical opinion evidence is 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 medical condition and the specific employment incident.[9]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted November 26, 2017 employment incident.

OWCP received November 26, 2017 hospital records and treatment notes from Dr. Lemery. Dr. Lemery described the November 26, 2017 employment incident, noted appellant's history of similar symptoms in 2015, when she was diagnosed with a pulled muscle. He indicated that appellant's current diagnosis was bilateral low back pain without sciatica of unspecified chronicity. The Board notes that pain is a symptom, not a compensable medical diagnosis.[10] Dr. Lemery did not diagnose an actual medical condition causing the pain.[11] His report is therefore of limited probative value.

Appellant was also treated on November 26, 2017 by Dr. Quinones. His treatment notes similarly are of limited probative value because he also diagnosed bilateral low back pain without

[5] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

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

[8] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[9] *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

[10] *C.M.*, Docket No. 18-0146 (issued August 16, 2018).

[11] *See D.K.*, Docket No. 17-1186 (issued June 11, 2018).

sciatica of unspecified chronicity. As previously noted, pain is a symptom, not a compensable medical diagnosis.[12]

Dr. Ronshaugen saw appellant on November 30, 2017 for "severe chest wall muscle spasm from pulling a shampooer at work." In a February 1, 2018 report, Dr. Piggot also diagnosed "chest wall muscle spasm." A muscle spasm has also been found to be a symptom, not a diagnosis.[13] The Board has held that a medical report is of no probative value if it does not provide a firm diagnosis of a particular medical condition, or offer a specific opinion as to whether the accepted employment incident caused or aggravated the claimed condition.[14] As neither Dr. Ronshaugen nor Dr. Piggot diagnosed an actual medical condition causing appellant's symptoms, their reports lack probative value and are insufficient to establish the claim.[15]

OWCP received a February 22, 2018 duty status report (Form CA-17) with an illegible signature. A report that is unsigned or bears an illegible signature lacks proper identification and cannot be considered probative medical evidence.[16]

The Board finds that appellant has not submitted rationalized, probative medical evidence sufficient to establish a diagnosed medical condition causally related to her employment incident of November 26, 2017.[17] Appellant, therefore, has not met her burden of proof.

On appeal appellant questions her supervisor's controversion of her claim, contending that he did not witness the injury. The Board notes, however, that the November 26, 2017 employment incident has already been accepted as having occurred as alleged. For the reasons set forth above, the claim is denied because the medical evidence of record is insufficient to establish a diagnosed medical condition causally related to the accepted November 26, 2017 employment incident. Therefore, appellant has not met her burden of proof to establish an employment-related 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 a medical condition causally related to the accepted November 26, 2017 employment incident.

[12] *Id.*

[13] *See J.G.*, Docket No. 17-1382 (issued October 18, 2017).

[14] *See M.J.*, Docket No. 18-1114 (issued February 5, 2019).

[15] *See supra* note 11.

[16] *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

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

ORDER

IT IS HEREBY ORDERED THAT the June 7, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 1, 2019
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