United States Department of Labor
Employees' Compensation Appeals Board

G.S., Appellant	)	
and	)	**Docket No. 19-0996**
	)	**Issued: September 23, 2019**
DEPARTMENT OF HEALTH & HUMAN SERVICES, CLAREMORE INDIAN HOSPITAL, Claremore, OK, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 9, 2019 appellant filed a timely appeal from a February 22, 2019 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 a lumbar condition causally related to the accepted July 31, 2018 employment incident.

FACTUAL HISTORY

On August 14, 2018 appellant, then a 57-year-old licensed practical nurse, filed a traumatic injury claim (Form CA-1) alleging that on July 31, 2018 she injured her low back while in the

[1] 5 U.S.C. § 8101 *et seq.*

performance of duty. She explained that, as she was getting ready to sit in a desk chair, the chair slipped out from under her. Appellant further explained that she managed to catch herself with her hand before hitting the floor, but she twisted her body to prevent herself from falling. On the reverse side of the claim form the employing establishment indicated that appellant was injured in the performance of duty and that she stopped work on August 13, 2018.

In an August 23, 2018 development letter, OWCP informed appellant that additional factual and medical evidence was required to establish her claim. It afforded her 30 days to submit the requested factual and medical evidence.

An August 13, 2018 lumbosacral spine x-ray revealed a subtle superior endplate L3-4 compression fracture of 5 to 10 percent which was not present in appellant's 2016 magnetic resonance imaging (MRI) scan. It also displayed spondylotic endplate changes. The x-ray related that the subtle superior endplate compression was probably connected to chronic degenerative changes. An August 13, 2018 lumbar spine MRI scan displayed facet arthropathy at L2-3 and L3-4, facet arthropathy with a small disc bulge and bilateral neural foraminal stenosis at L4-5, and no substantial central canal stenosis. There was also evidence of L4-5 degenerative disc disease with bilateral neural foraminal stenosis.

August 13, 2018 medical records from Claremore Indian Hospital, signed by Kelly D. Reid, a nurse practitioner, indicated that appellant presented with back pain extending to her lower left back due to falling off a chair and twisting at her workplace one to two weeks ago. Appellant also stated that her lower back was tender and inflamed by movement, and her overall pain was so severe that she was unable to accomplish work tasks. Her medical history included the insertion of an artificial disc 8 years prior at L5-S1, abdominal pain radiating towards her back, head and neck pain, and chronic low back pain. Appellant also had five injections in tendon sheaths/ligaments in 2013 and lysis of adhesions in 1995. Her physical examination revealed a limited range of motion, spinal process and paraspinal tenderness, an abnormal left leg raise, and no saddle paresthesia. Ms. Reid diagnosed low back pain and provided an injection. She noted that appellant should refrain from returning to work for the rest of the week and avoid anything that causes pain.

On August 20, 2018 Dr. William L. Buchanan, a family practitioner, noted that appellant was excused pending a follow-up appointment in a week, as her back pain had not improved. In an August 27, 2018 follow-up note, he indicated that she presented with acute low back pain from a workplace injury, was unable to sit for any prolonged period of time, and should only go back to work if permitted by the back specialist with whom she had a scheduled appointment.

An August 31, 2018 narrative report by Dr. Steven Anagnost, a Board-certified orthopedic surgeon, noted that appellant presented with extreme low back pain which extended sensations of numbness, weakness, and burning into her legs extending down to her calves due to a workplace incident involving falling off a chair and twisting on July 31, 2018. He noted her medical history of L5-S1 disc arthroplasty and that she had been able to work for the past 10 years, but was currently in too much pain to perform her work tasks. Appellant reported that her leg pain increased when extended and her overall pain decreased when leaning on something or lying down. Her back pain was more severe than her leg pain and her left side was more painful than her right. Appellant's overall pain increased with activity and she struggled with basic self-care activities.

A physical examination revealed that she had an antalgic gait, left leg numbness in the S1 distribution, left foot gastrocnemius weakness, and increased pain upon extension in the lumbosacral junction and legs. Completing range of motion tests on her back was painful for appellant as was getting up from sitting. The results of the straight leg test were positive for her left leg and negative for her right leg, and her left leg lacked an S1 reflex.

Dr. Anagnost diagnosed left leg pain with radiculopathy and back pain. He noted that appellant's August 13, 2018 x-ray of her lumbar spine probably displayed a fracture. Dr. Anagnost opined that her "major cause and need for treatment" was her workplace fall. He also listed the stenosis of the lumbar spine, disc displacement in the lumbar region, lumbar spinal instabilities, lumbar spine radiculopathy, left-side sciatica, and muscle weakness as problems appellant had and concluded that the onset of all of these issues was on August 31, 2018. Dr. Anagnost recommended a computerized tomography myelogram to get more information about the possible fracture.

By decision dated September 28, 2018, OWCP denied appellant's traumatic injury claim finding that the medical evidence of record failed to establish causal relationship between her diagnosed condition and the accepted work event.

On October 11, 2018 appellant requested a review of the written record before an OWCP hearing representative.

OWCP subsequently received an October 9, 2018 narrative report from Dr. David Ring, a Board-certified family practitioner, who opined that appellant's workplace fall caused a back injury. Dr. Ring noted that the back pain and extending leg pain that resulted from her back injury indicated that she had a nerve impingement. He opined that appellant's fall caused her back injury and resulting symptoms because of the timing of her symptoms. Dr. Ring concluded that a referral to a spine specialist was medically necessary.

By decision dated February 22, 2019, an OWCP hearing representative affirmed OWCP's September 28, 2018 decision denying appellant's traumatic injury claim.

LEGAL PRECEDENT

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 timely filed within the applicable time limitation of FECA,[3] 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

[2] *Id.*

[3] *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

the employment injury.[4] 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.[5]

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.[6] 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] 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.[8] An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[9]

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 condition and the specific employment incident.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a lumbar condition causally related to the accepted July 31, 2018 employment incident.

Dr. Anagnost's August 31, 2018 narrative report noted that appellant presented with extreme low back pain radiating into her legs due to a workplace incident involving falling off a chair and twisting on July 31, 2018. He also noted her medical history of L5-S1 disc arthroplasty. Dr. Anagnost diagnosed left leg pain with radiculopathy and back pain and noted that appellant's x-ray probably displayed a fracture. He opined that a "major cause and need for treatment" was due to her workplace fall. Additionally, Dr. Anagnost does not explain how appellant's fall caused her diagnosis of left leg radiculopathy. To be of probative medical value, a medical opinion must explain how physiologically the movements involved in the employment incident caused or

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

[5] *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *R.B.*, Docket No. 17-2014 (issued February 14, 2019); *B.F.*, Docket No. 09-0060 (issued March 17, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[7] *S.F.*, Docket No. 18-0296 (issued July 26, 2018); *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

[8] *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras, supra* note 6.

[9] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

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

contributed to the diagnosed conditions.[11] Therefore, the report of Dr. Anagnost is insufficient for appellant to establish her claim.

In Dr. Ring's October 9, 2018 narrative report, he opined that appellant's workplace fall caused a back injury. He noted that the back pain and extending leg pain that resulted from her back injury indicated that she had a nerve impingement. Dr. Ring also noted that he was sure that appellant's fall caused her injury because of the timing of her symptoms. The Board has held that 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 a causal relationship.[12] Additionally, while Dr. Ring explains how appellant's symptoms of pain indicate her diagnosis of a nerve impingement, he does not explain how her accepted employment incident physiologically caused her nerve impingement diagnosis. As explained above, to be of probative value, a medical opinion must explain how physiologically the movements involved in the employment incident caused or contributed to the diagnosed conditions.[13]

On August 20 and 27, 2018 Dr. Buchanan excused appellant from work due to her low back pain, which he attributed to an on-the-job injury. As previously noted, pain does not constitute the basis for payment of compensation, as pain is a symptom rather than a specific diagnosis.[14]

August 13, 2018 hospital records signed by Ms. Reid related that appellant presented with back pain due to a workplace fall and was diagnosed with lower back pain. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[15] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[16]

Appellant also submitted a lumbosacral spine x-ray and a lumbar spine MRI scan. The Board has explained that diagnostic studies lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.[17]

[11] *A.W.*, Docket No. 19-0327 (issued July 19, 2019).

[12] *F.R.*, Docket No. 18-1576 (issued July 17, 2019).

[13] *Supra* note 11.

[14] *J.P.*, Docket No. 19-0303 (issued August 13, 2019).

[15] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[16] *See M.F.*, Docket No. 17-1973 (issued December 31, 2018); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

[17] *N.B.*, Docket No. 19-0221 (issued July 15, 2019).

The Board finds that the record lacks rationalized medical evidence establishing causal relationship between appellant's lumbar condition and the July 31, 2018 accepted employment incident. Thus, appellant 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a lumbar condition causally related to the accepted July 31, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the February 22, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 23, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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