United States Department of Labor
Employees' Compensation Appeals Board

A.C., Appellant	)	
and	)	**Docket No. 18-0096**
	)	**Issued: January 21, 2020**
U.S. POSTAL SERVICE, TEMPE SOUTH POST OFFICE, Tempe, AZ, 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
JANICE B. ASKIN, Judge

JURISDICTION

On October 16, 2017 appellant filed a timely appeal from a September 27, 2017 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 traumatic injury in the performance of duty on May 19, 2017, as alleged.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that following the September 27, 2017 decision, OWCP received additional evidence. 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 evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On May 20, 2017 appellant, then a 46-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on May 19, 2017, she was unloading a heavy parcel out of her route hamper and then felt sudden left-sided back pain while in the performance of duty. She indicated that the May 19, 2017 incident caused a lumbar sacral strain. On the reverse side of the Form CA-1, the employing establishment noted that its knowledge of the facts of this claimed injury were in agreement with appellant's statement of injury. Appellant did not initially stop work.

OWCP received a duty status report (Form CA-17) dated May 20, 2017 from an unidentified provider. The report noted that appellant worked as a letter carrier and that she was lifting a heavy package from a container on May 19, 2017 when she felt pain in her lower back. They provided work restrictions and noted a diagnosis of lumbar strain/sprain. OWCP also received a May 20, 2017 attending physician's report (Form CA-20) on which a care provider with an illegible signature diagnosed lumbar sacral strain and checked a box marked "yes" that the condition was caused or aggravated by an employment activity.[3]

A June 8, 2017 diagnostic report of the lumbosacral spine read by Dr. Andrew M. Pohl, a Board-certified diagnostic radiologist, revealed: degeneration of the lumbar or lumbosacral intervertebral disc, other intervertebral disc degeneration, lumbosacral region; low back pain; and L5-S1 mild-to-moderate degenerative disc disease.

In a June 27, 2017 report, Dr. Georgia L. Tsingine, Board-certified in family medicine, noted that appellant went to pick up a heavy parcel on the bottom of a hamper and felt a pull in her left lower back. She reported that appellant's injury was approximately five weeks and three days prior, and she reported a worsening of pain. Dr. Tsingine continued appellant on restricted-duty work and diagnosed sprain of ligaments of lumbar spine and cervical spine.

In a June 29, 2017 narrative report and an accompanying duty status report (Form CA-17), Dr. William Boyd, a pain management physician, noted that appellant went to pick up a heavy parcel on the bottom of a hamper and felt a pull in the lower back on the left. He advised that her chief complaint was pain in the left lower back. Dr. Boyd examined appellant and diagnosed a sprain of the ligaments of the lumbar spine. He opined that the cause of this diagnosis was related to work activities. Dr. Boyd placed appellant on restricted duties.

In a July 10, 2017 report, Dr. Michael Chang, a Board-certified orthopedic surgeon, noted that appellant presented for evaluation of low back pain. He indicated that she explained that on May 22, 2017 she was picking up a heavy parcel, while working as a mail carrier, and she felt a twinge in her lower back. Dr. Chang noted that appellant indicated that she continued working, but that evening she had severe back pain. He indicated that she went to an emergency room and was diagnosed with a muscle strain and given a muscle relaxant. Dr. Chang opined that appellant's symptoms were "likely due to simple mechanical injury of the back." He explained that part of the reason that she had not noticed substantial improvement in her symptoms was because she had a condition known as pyelonephritis. Dr. Chang explained that this personal condition was a

[3] OWCP also received a May 20, 2017 discharge report and notes from physician assistants dated June 8 and 21, 2017, in which they diagnosed sprains of the lumbar and cervical areas of the spine.

separate issue unrelated to appellant's employment injury, and that the inflammatory response from this condition could aggravate her symptoms. He opined that, as a result, it was difficult to tell how much true progress she had in terms of back pain at that time. Dr. Chang also noted that appellant denied back pain prior to the event and was otherwise in excellent health and wanted to get back to work.

In an August 7, 2017 report, Dr. Chang noted that appellant worked as a mail carrier and had sustained a mechanical injury of the back complicated by pyelonephritis. He advised that he wanted a magnetic resonance imaging (MRI) scan. Dr. Chang explained that appellant had indicated that she had improvement in her condition.[4]

In a development letter dated August 24, 2017, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a factual questionnaire for her completion, which made specific inquiry into the claimed mechanism of injury and her preexisting health history. OWCP afforded appellant 30 days to submit the necessary information. Appellant did not respond to the factual inquiries set forth in the development letter.[5]

By decision dated September 27, 2017, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that she sustained an injury in the performance of duty, as alleged. It noted that she had not provided a consistent statement describing a work incident or factors to which she attributed her back condition and had therefore not established fact of injury. OWCP therefore found that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA[6] has the burden of proof to establish the essential elements of his or her claim, including 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,[7] 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

[4] OWCP also received a June 21, 2017 report from a physician assistant and physical therapy notes dated June 22, 28, and 29, July 3, 6, 18, 25, and 27, and August 3 and 10, 2017.

[5] OWCP subsequently received physical therapy notes dated June 22 and July 25, 2017, a copy of a July 20, 2017 physical therapy prescription and an August 31, 2017 claim for compensation (Form CA-7).

[6] *Supra* note 1.

[7] *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.[8] 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.[9]

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[10] The second component is whether the employment incident caused a personal injury.[11]

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.[12] The employee has not met his or her burden of proof to establish the occurrence of an injury when there are inconsistencies in the evidence that cast serious doubt upon the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether the claim has been established. An employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[13]

ANALYSIS

The Board finds that this case is not in posture for a decision.

In her May 20, 2017 traumatic injury claim (Form CA-1) appellant alleged that, on May 19, 2017, she was unloading a heavy parcel out of her route hamper when she felt a sudden left-sided back pain while in the performance of duty. The employing establishment acknowledged that its understanding of the facts of this claimed injury were in agreement with appellant's statement of injury. The medical reports of record provided a consistent history of her history of injury due to bending over to pick up a heavy parcel out of a mail hamper.[14] No other mechanism of injury has been suggested in the record. Although Dr. Chang reported the incident had occurred on May 22,

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

[9] *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).

[10] *R.E.*, Docket No. 17-0547 (issued November 13, 2018; *Elaine Pendleton*, 40 ECAB 1143 (1989).

[11] *D.C.*, Docket No. 18-1664 (issued April 1, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[12] *M.F.*, Docket No. 18-1162 (issued April 9, 2019).

[13] *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464 (2007).

[14] *B.S.*, Docket No. 19-0524 (issued August 8, 2019).

2017, that is a minor discrepancy as he identifies the correct mechanism of injury and this is a date after appellant had already reported the May 19, 2017 employment incident. In all other aspects, the reports of Dr. Chang provide a consistent mechanism of injury in accord with the Form CA-1. Finally, although Dr. Chang noted that appellant had a preexisting medical condition which could impact her healing from a back strain the Board finds that such a preexisting condition is irrelevant to the issue of whether the employment incident occurred as alleged.[15] Therefore, the Board finds that appellant has met her burden of proof to establish that the May 19, 2017 employment incident occurred in the performance of duty, as alleged.

As appellant has established that the May 19, 2017 employment incident factually occurred in the performance of duty, the question becomes whether this incident caused a personal injury.[16] Causal relationship is a medical issue and the evidence required to establish causal relationship is rationalized medical opinion evidence.[17] The Board will, therefore, remand the case for consideration of the medical evidence. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met her burden of proof to establish a condition causally related to the accepted May 19, 2017 employment incident.

CONCLUSION

The Board finds that this case is not in posture for a decision.

[15] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); (the Board has held that in a case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition).

[16] *S.W.*, Docket No. 19-0653 (issued November 21, 2019).

[17] *M.B.*, Docket No. 17-1999 (issued November 13, 2018).

ORDER

IT IS HEREBY ORDERED THAT the September 27, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 21, 2020
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board