

**United States Department of Labor
Employees' Compensation Appeals Board**

R.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Knoxville, TN, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 13-245
Issued: May 24, 2013**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 13, 2012 appellant filed a timely appeal of the May 23, July 10 and August 13, 2012 decisions of the Office of Workers' Compensation Programs denying her claim for compensation. Pursuant to the Federal Employees' Compensation Act¹ (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 established that she sustained an injury in the performance of duty on December 20, 2011, as alleged.

On appeal, appellant disagreed with OWCP's decision. She noted that she did not have pain before she lifted the package on December 20, 2011 and that her surgeon told her that her condition was work related.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 12, 2012 appellant, then a 52-year-old rural carrier, filed a traumatic injury claim alleging that on December 20, 2011 she picked up a package on her route and injured her low back, right leg and foot. In a separate statement, she noted that on December 20, 2011 she lifted a package that was heavier than usual, and that her low back became painful and she felt weak. The pain became progressively worse. Appellant submitted a February 1, 2012 office dictation by a nurse practitioner who stated that she saw appellant that day and assessed low back pain and cervicalgia. She discussed her medical treatment. In a January 2, 2012 note, Dr. Joseph F. Amato, a chiropractor, stated that appellant came to his office on December 28, 2011 and that “[u]pon examination” it was determined that she had incurred a lumbar subluxation (L5) complex with associated lumbar disc degeneration and sciatica. He advised that she remain out of work through Friday, January 6, 2012. Appellant also submitted the results of a magnetic resonance imaging (MRI) scan of the lumbar spine conducted on January 28, 2012 that was interpreted by an unknown person as showing multilevel degenerative changes.

By letter dated April 20, 2012, OWCP informed appellant that she must submit a physician’s opinion on causal relation.

In response, appellant submitted reports by Dr. Chad E. Bates, a Board-certified family practitioner. In a March 19, 2012 note, Dr. Bates assessed low back pain. He noted that she was much improved and able and willing to return to full duty at work. In an April 26, 2012 report, Dr. Bates stated that appellant reported that her current low back and right lower extremity symptoms were the result of a fall occurring at work in September 2011 while employed by the employing establishment. He opined that there did not appear to be a temporal relationship between the September 2011 fall and the January 2012 symptoms. Dr. Bates noted that, although appellant went back to work, her symptoms worsened and she was given a work excuse and referred to a back surgeon.

Appellant submitted an additional report by a nurse practitioner dated April 19, 2012 assessing lumbar radiculopathy and low back pain.

Appellant submitted an additional statement dated April 25, 2011. She discussed her injury and subsequent medical treatment.

In a May 23, 2012 decision, OWCP denied appellant’s claim, finding that the medical evidence did not establish that the claimed back condition was related to the accepted December 20, 2011 incident.

On June 18, 2012 appellant requested reconsideration. She noted that she had the same back pain as in December 2011. Appellant discussed her medical treatment and noted that she missed many months of work. In December 2011 something went wrong when she lifted the package. Appellant noted that she was scheduled for surgery.

In a February 2, 2012 note, Dr. Amato stated that, upon examination, both radiographically and spinal, he determined that appellant sustained a lumbar subluxation (L5)

with disc and sciatic nerve root involvement. Appellant had responded to chiropractic adjustment but he recommended that she remain out of work through February 20, 2012.

In a February 17, 2012 report, Dr. Michael S. Dew, a Board-certified neurologist, noted an abnormal electrodiagnostic study indicating a right S1 radiculopathy. He stated that this was consistent with appellant's clinical history.

In a July 10, 2012 decision, OWCP denied appellant's request for reconsideration without a merit review. It found that the medical evidence was not relevant as it did not provide any physician's opinion on causal relation.

On August 2, 2012 appellant requested reconsideration. In an April 30, 2012 report, Dr. John Sefter, an osteopath, listed a history that appellant had a fall back in September that he believed was unrelated to her right leg pain which started in December. He noted that he had not yet "nailed" a diagnosis for her symptoms. In a May 15, 2012 report, Dr. Sefter assessed appellant with lower back pain and lumbar radiculopathy. He recommended a repeat MRI scan.

An MRI scan was conducted on May 21, 2012 that was interpreted by Dr. Thomas F. Pugh, a Board-certified radiologist, as demonstrating marked degenerative facet arthropathy L5-S1 on the right with an adjacent synovial cyst in the right lateral recess causing severe compression of the right S1 nerve root. Dr. Pugh also noted degenerative disc changes L5-S1, L4-5 and to a lesser extent L1-2.

In a May 25, 2012 report, Dr. Sefter discussed appellant's work history and noted that in December 2011 she was lifting packages when she felt a "pop" in her back and pain to her lower extremity. He noted that appellant was doing poorly with increased pain and weakness of push off strength and a decreased Achilles reflex on the right as well as continued straight leg raising pain on the right. Dr. Sefter recommended a lumbar spinal decompression, foraminotomy, partial facetectomy and cleaning out of the synovial cyst. He stated that surgery was required and that it was "tied into a work[-]related injury back in December 2011." On June 21, 2012 Dr. Sefter performed a lumbar laminectomy, foraminotomy, partial facetectomy L5-S1 on the right with removal of a large cyst pressing on the S1 root. The record also contains the results of a June 21, 2012 x-ray of appellant's lumbar spine which was interpreted as showing slight spondylolisthesis at L5-S1 level.

By decision dated August 13, 2012, OWCP denied modification of its prior decisions.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing 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 of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. 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.²

In order to determine whether an employee actually sustained an 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, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.³ In order to meet his or her burden of proof to establish the fact that he or she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he or she actually experienced the employment injury or exposure at the time, place and in the manner alleged.⁴

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁵ The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.⁶

ANALYSIS

OWCP denied appellant's claim as it found that she had not established a medical condition that was causally related to the accepted employment event. The Board finds that she has failed to provide sufficient medical evidence to establish that she suffered an injury causally related to the accepted December 20, 2011 employment incident.

As noted above, medical evidence is needed to establish causal relationship.⁷ The Board finds that the medical evidence of record is not sufficient to establish that appellant's back condition was causally related to the employment incident of December 20, 2011. Dr. Bates assessed her with low back pain and right lower extremity symptoms. He discussed a history of a fall in September 2011 but did not address the December 20, 2011 lifting incident. Dr. Bates

² *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

³ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁴ *Linda S. Jackson*, 49 ECAB 486 (1998).

⁵ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

⁶ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

⁷ *J.R.*, Docket No. 12-1704 (issued February 12, 2013).

opined that there did not appear to be a temporal relationship between the September 2011 incident and appellant's symptoms in January 2012.

Appellant also submitted notes from her chiropractor, Dr. Amato. A chiropractor is considered to be a physician to the extent that his reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.⁸ Dr. Amato reported on February 2, 2012 that appellant sustained a lumbar subluxation based on his examination, both radiographically and spinal. He is considered a physician under FECA. But, Dr. Amato did not provide an opinion relating appellant's lumbar subluxation to the December 20, 2011 employment incident. His report is therefore of diminished probative value.

The physicians who interpreted the diagnostic studies, including the MRI scan of January 28 and May 21, 2012 and Dr. Dew's electrodiagnostic study of February 17, 2012 do not address causal relationship.

Appellant also submitted notes by nurse practitioners. However reports of a nurse practitioner are of no probative medical value as a nurse practitioner is not a physician under FECA.⁹

On June 21, 2012 Dr. Sefter performed a lumbar spine laminectomy, foraminotomy, partial facetectomy L5-S1 on the right with removal of a large cyst pressing on the S1 root. On May 25, 2012 he discussed appellant's employment history of December 2011 and indicated that the required surgery was "tied into a work-related injury back in December 2011." Dr. Sefter did not specifically address the nature of the lifting performed that day or provide a rationalized opinion as to how the surgery was related to the December 2011 incident. The Board finds that his opinion is insufficient to establish causal relationship. Dr. Sefter did not definitely state that appellant's back injury and resulting surgery was caused or aggravated by the December 20, 2011 lifting incident. Appellant underwent a series of diagnostic studies; but they do not address causal relation. The Board notes that medical conclusions unsupported by medical rationale are of diminished probative value and are insufficient to establish causal relation.¹⁰

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition worsened during a period of employment nor her belief that her condition was caused by her employment is sufficient to establish causal relationship.¹¹ Accordingly, as she did not submit rationalized medical evidence that her medical condition was causally related to the December 20, 2011 employment incident, she failed to establish her claim.

⁸ 5 U.S.C. § 8101(2); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

⁹ *M.B.*, Docket No. 12-1695 (issued January 29, 2013).

¹⁰ *Albert C. Brown*, 52 ECAB 152 (2000).

¹¹ *M.J.*, Docket No. 12-534 (issued July 26, 2012).

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 did not establish that she sustained an injury in the performance of duty on December 20, 2011, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 13, July 10 and May 23, 2012 are affirmed.

Issued: May 24, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board