United States Department of Labor
Employees' Compensation Appeals Board

D.S., Appellant	)	
and	)	**Docket No. 11-2018**
	)	**Issued: May 7, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Rockwall, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 8, 2011 appellant filed a timely appeal from an August 15, 2011 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 case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a traumatic injury in the performance of duty on June 25, 2011.

FACTUAL HISTORY

On June 27, 2011 appellant, then a 49-year-old rural carrier, filed a traumatic injury claim alleging that she sustained lower back and left leg symptoms on June 25, 2011 due to excessive lifting, twisting and turning at the employing establishment's facility as well as pulling trays

[1] 5 U.S.C. § 8101 *et seq.*

while delivering mail on her motorized route. She stopped work on June 28, 2011 and did not return. The employing establishment controverted the claim, asserting that appellant neither reported an injury nor sought medical treatment immediately and that there were no eyewitnesses supporting her account.

In a work status report dated July 6, 2011, Dr. Les T. Sandknop, an osteopath specializing in family medicine, related that appellant injured herself on June 26, 2011 as a result of twisting, turning and lifting at work. He diagnosed lumbar pain and placed her off duty for the period June 27 to July 13, 2011. June 27 and July 6, 2011 notes signed by a physician assistant also diagnosed lumbar strain.

A July 7, 2011 physical therapy evaluation report signed by a physical therapist and a physician assistant stated that appellant was delivering mail on June 26, 2011 when she experienced lower back and left lower extremity pain. On physical examination, she exhibited straightening cervical and lumbar lordosis, thoracic kyphosis, forward head posture, rounded shoulders, restricted range of motion (ROM) of the trunk, diminished left lower extremity muscle strength and sensation to light touch, left foot tenderness to palpation and a positive left straight leg raise test. Appellant was diagnosed with lumbar strain and pain.

OWCP informed appellant in a July 11, 2011 letter that additional evidence was needed to establish her claim. It gave her 30 days to submit a factual statement detailing the June 25, 2011 employment incident and a medical report from a physician explaining how this alleged event caused or contributed to a lower back and left leg condition.

Appellant submitted medical evidence. In a June 27, 2011 duty status report, Dr. Sandknop noted her belief that "she hurt her back lifting, twisting [and] turning in her vehicle" in the performance of duty on June 25, 2011. He diagnosed lumbar strain and left leg pain and scheduled July 7, 2011 as the return-to-work date.[2] In attending physician's reports dated June 28, 2011, Dr. Sandknop specified that appellant injured her back by twisting, turning and lifting at work on June 27, 2011. He diagnosed lumbar sprain and checked a "yes" box indicating that the condition was causally related to employment activity. In July 13 and 27, 2011 work status reports, Dr. Sandknop remarked that appellant twisted, turned and lifted on June 26, 2011. He diagnosed lumbar pain and placed her off duty for the period July 13 to August 5, 2011.

Progress notes from the physician assistant dated June 27, July 13 and 27, 2011 diagnosed lumbar strain and pain and left foot numbness.

Appellant clarified in a July 13, 2011 statement that she initially experienced mild lower back pain, which later worsened and radiated to the left leg.

By decision dated August 15, 2011, OWCP denied appellant's claim, finding that she did not sufficiently establish that a June 25, 2011 employment incident occurred as alleged.

[2] Another June 27, 2011 note from Dr. Sandknop also diagnosed lumbar pain.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of her claim by the weight of reliable, probative and substantial evidence,[3] including that she is an "employee" within the meaning of FECA and that she filed her claim within the applicable time limitation.[4] The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.[5]

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 sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[6]

An employee's statement 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.[7] Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and her subsequent course of action. An employee has not met her burden in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such 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 doubt on an employee's statement in determining whether a *prima facie* case has been established.[8]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's 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, 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]

---

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[4] *R.C.*, 59 ECAB 427 (2008).

[5] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *T.H.*, 59 ECAB 388 (2008).

[7] *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

[8] *Betty J. Smith*, 54 ECAB 174 (2002).

[9] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

ANALYSIS

The Board finds that appellant sufficiently established that she lifted, twisted and turned at work and pulled trays on her delivery route on June 25, 2011. The employing establishment did not dispute her account that she performed these activities in the Form CA-1. Instead, it controverted the traumatic injury claim on the basis that appellant neither reported an injury nor sought medical treatment promptly and that there were no eyewitnesses supporting her account. The alleged date of appellant's injury June 25, 2011 was a Saturday. The case record shows, however, that she filed her claim and first received medical treatment two days later on Monday June 27, 2011. The fact that appellant took no action on Sunday, June 26, 2011 is not fatal to her claim. She stopped work on June 28, 2011 and was advised to remain off duty through August 5, 2011 due to a lumbar condition. The Board finds that appellant established that the June 25, 2011 employment incident occurred as alleged.

The Board finds that appellant did not establish her traumatic injury claim because the medical evidence did not sufficiently demonstrate that June 25, 2011 employment incident caused or contributed to a lower back and left leg condition. In a June 27, 2011 duty status report, Dr. Sandknop appears to be merely relating her belief that "she hurt her back lifting, twisting [and] turning in her vehicle" in the performance of duty on June 25, 2011.[10] To the extent that this represents his own opinion on causal relationship, he did not explain how this employment incident pathophysiologically caused or contributed to appellant's lumbar strain and left leg pain.[11] In addition, Dr. Sandknop's work status and attending physician's reports for the period June 28 to July 27, 2011 were of limited probative value because they identified the date of injury as either June 26 or 27, 2011.[12]

The remaining medical evidence of record lacked probative value. A medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician.[13] Because neither a physical therapist nor a physician assistant is a "physician" as defined under FECA,[14] the documents signed by these health care professionals cannot constitute competent medical evidence. In the absence of rationalized medical opinion evidence, appellant failed to meet her burden.

[10] *See P.K.*, Docket No. 08-2551 (issued June 2, 2009) (an award of compensation may not be based on a claimant's belief of causal relationship).

[11] *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994).

[12] *M.W.*, 57 ECAB 710 (2006); *James A. Wyrick*, 31 ECAB 1805 (1980) (medical opinions based on an incomplete or inaccurate history are of diminished probative value). The Board points out that none of these reports offered fortifying medical rationale. *See George Randolph Taylor*, 6 ECAB 986, 988 (1954).

[13] *See Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (medical opinion, in general, can only be given by a qualified physician).

[14] 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238, 242 (2005) (nurses and physician assistants); *Jennifer L. Sharp*, 48 ECAB 209 (1996) (physical therapists).

The Board notes that appellant submitted new evidence after issuance of the August 15, 2011 decision. The Board lacks jurisdiction to review evidence for the first time on appeal.[15] However, appellant may submit new evidence or argument as part of a formal 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 a traumatic injury in the performance of duty on June 25, 2011.

ORDER

IT IS HEREBY ORDERED THAT the August 15, 2011 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: May 7, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

[15] 20 C.F.R. § 501.2(c).