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K.E., Appellant)	
)	
and)	Docket No. 12-1784
)	Issued: February 25, 2013
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS ADMINISTRATION, Houston, TX,)	
Employer)	
)	

Case Submitted on the Record

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

On August 23, 2012 appellant filed a timely appeal from a May 8, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 claim.

The issue is whether appellant sustained an injury in the performance of duty on June 20, 2011.

On June 27, 2011 appellant, then a 55-year-old loan specialist, filed a traumatic injury claim alleging that on June 20, 2011 she experienced severe low back and leg pain after lifting

¹ 5 U.S.C. § 8101 *et seq.*

files from another desk. She stopped work, June 20, 2011 and returned July 11, 2011. With her claim, appellant submitted medical authorization requests on an April 26, 2011 note from Dr. Steven Seefeldt, an internist Board-certified in sports medicine, which referred appellant to physical therapy for her lumbar degenerative disc disease and an August 9, 2011 report from Dr. Eduardo A. Garcia, a Board-certified anesthesiologist, diagnosing low back sprain and referring appellant to physical therapy.

In a September 1, 2011 letter, OWCP advised appellant that it required additional factual and medical evidence in support of her claim. It requested a comprehensive medical report from a physician. Appellant was given 30 days to submit the requested information in support of her claim. No further evidence was received.

By decision dated October 5, 2011, OWCP denied appellant's claim as the evidence did not support that the injury or events occurred as described and there was no medical evidence containing a medical diagnosis in connection with the injury or events.

On January 17, 2012 appellant requested reconsideration. In an October 28, 2011 statement, she indicated that she originally sustained an injury to her back in 2004 and had other claims for her back, for which she provided claim numbers. Appellant indicated that her new injuries include lumbar disc and lumbar radicular pain along the sciatic nerve from her bulging disc. She stated that she was not sure if anyone saw her when she picked up the legal-sized files, as everyone was working, but she knew she needed medical attention. Appellant noted that her boss was in a meeting so she told a coworker she was going to the clinic. Later that day, she talked to her boss and a team leader.

Appellant submitted copies of physical therapy notes dated June 13 to October 19, 2011, an October 14, 2011 magnetic resonance imaging (MRI) scan of the lumbar spine and material related to a claimed recurrence of October 26, 2011.²

In a June 20, 2011 clinic note, Dr. Anisa S. N Ssengoba-Ubogu, a Board-certified family physician, diagnosed lumbar radicular pain and lumbago and referred appellant to physical therapy.

Medical reports from Dr. Lan K. Nguyen, a Board-certified physiatrist, were received. In a June 21, 2011 report, Dr. Nguyen diagnosed lumbago, lumbar disc herniation L4-5, lumbar radicular pain and coccydynia. He referred appellant to the spine center. Dr. Nguyen stated in a June 21, 2011 status report that she could return to work that date with no prolonged sitting. He also referred appellant to physical therapy. On August 25, 2011 Dr. Nguyen stated that she could return to work on August 25, 2011 with no prolonged sitting. In an October 19, 2011 letter, he indicated that appellant was under his care for low back and leg pain. Dr. Nguyen stated that, if her condition did not improve with physical therapy, she would need to be considered for lumbar epidural injections or see a surgeon for back surgery. On October 19, 2011 he referred appellant to physical therapy for the condition of lumbago, lumbar disc

² In a December 1, 2011 letter, OWCP advised appellant that it could not consider a recurrence on a denied claim and, thus, no action would be taken on her recurrence claim. Matters pertaining to her prior claims are not before the Board on the present appeal.

herniation and lumbar radicular pain. In a November 1, 2011 letter, Dr. Nguyen stated that she was incapacitated for work for two weeks due to her back and leg pain.

By decision dated May 8, 2012, OWCP modified the previous denial to reflect that the incident was accepted but denied the claim because she had not provided a medical report detailing how the June 20, 2011 work incident was related to her current back condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden to establish that 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.³ 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.⁴

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 which is alleged to have occurred.⁵ The second component of fact of injury is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁶

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.⁷ The weight of medical evidence is determined by its reliability, its probative

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Michael E. Smith*, 50 ECAB 313 (1999).

⁶ *Id.*

⁷ *Leslie C. Moore*, 52 ECAB 132 (2000).

value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁸

ANALYSIS

The record supports that on June 20, 2011 appellant was lifting files at work. The Board finds, however, that the medical evidence is insufficient to establish that she sustained a back injury on or about June 20, 2011 causally related to the accepted lifting incident.

In a June 20, 2011 clinic note, Dr. Ssengoba-Ubogu diagnosed lumbar radicular pain and lumbago and referred appellant to physical therapy. However, he did not provide any opinion on causal relationship of her condition. Dr. Nguyen examined appellant on June 21, 2011 and diagnosed lumbago, lumbar disc herniation L4-5, lumbar radicular pain and coccydynia. He referred her to the spine center and opined that she could return to work on June 21, 2011 with no prolonged sitting. However, Dr. Nguyen provided no opinion in his June 20, 2011 report or subsequent reports on the causal relationship of appellant's condition or her work restrictions. Dr. Garcia diagnosed low back sprain on August 9, 2011 but failed to provide an opinion on the causal relationship of her condition. Dr. Seefeldt's April 26, 2011 note is insufficient as it predates the June 20, 2011 incident and does not otherwise address causal relationship. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁹ Thus, the reports from Dr. Ssengoba-Ubogu, Dr. Nguyen and Dr. Garcia are insufficient to establish appellant's claim.

Likewise, other medical reports submitted by appellant, such as reports of diagnostic testing, are insufficient as they do not specifically address whether the June 20, 2011 work incident caused or aggravated a diagnosed medical condition.

Consequently, the medical evidence is insufficient to establish a causal relationship between specific factors or conditions of employment and the diagnosed medical conditions.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her conditions were caused, precipitated or aggravated by her employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.¹⁰

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.

⁸ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

⁹ *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

¹⁰ *D.U.*, Docket No. 10-144 (issued July 27, 2010).

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a medical condition causally related to her June 20, 2011 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the May 8, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 25, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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