

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

B.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bennettsville, SC, Employer**

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**Docket No. 12-1292
Issued: January 9, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 29, 2012 appellant filed a timely appeal of the April 27, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied her claim. 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 the case.²

ISSUE

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

¹ 5 U.S.C. §§ 8101-8193.

² Following issuance of the December 13, 2011 decision, appellant submitted new evidence to OWCP. The Board may not consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

FACTUAL HISTORY

On June 29, 2011 appellant, then a 65-year-old rural carrier, filed a traumatic injury claim, alleging that on June 7, 2011 her mail truck was struck by a gravel truck and she sustained back, neck and hip injuries. She stopped work on June 7, 2011. An employing establishment accident report noted that, on June 7, 2011, appellant was driving her mail truck. It was struck by a gravel truck which damaged the front bumper, fender and driver's side door of her automobile.

Appellant came under the treatment of Dr. Raymond Stroup, a chiropractor, from June 8 to 27, 2011. Dr. Stroup treated her for cervical, thoracic and lumbar pain. In return to work slips dated June 8 to 27, 2011, he noted that appellant was totally disabled from June 7 to July 5, 2011. In duty status reports dated June 23 and 27, 2011, Dr. Stroup diagnosed cervical, thoracic, lumbar sprain/strain, sciatica, cervicobrachial syndrome and headaches and advised appellant was disabled. He did not address the June 7, 2011 incident.

On July 1, 2011 OWCP advised appellant of the evidence needed to establish her claim. It noted that she had been treated by a chiropractor but advised that a chiropractor was not recognized as a physician under FECA unless a spinal subluxation was diagnosed by x-ray.

On August 8, 2011 OWCP denied appellant's claim on the grounds that the evidence was insufficient to establish that she sustained an injury as alleged.

On September 2, 2011 appellant requested reconsideration. She explained that on June 7, 2011 she was delivering mail when a gravel truck struck her truck. The next morning, appellant had back and right hip pain and sought chiropractic treatment. She noted being treated for hip arthritis before the work accident.

In return to work slips dated June 8 to July 12, 2011, Dr. Stroup noted that appellant was totally disabled from June 7 to July 5, 2011. On June 8, 2011 he treated her for neck and back pain after the June 7, 2011 accident. Appellant reported being struck by a gravel truck on the driver's side and having headaches and neck, mid back, low back and right leg pain. Dr. Stroup noted reduced range of motion of the cervical, thoracic and lumbosacral spine with pain. He stated that two x-rays of the cervical and lumbar spine were performed which revealed osteoarthritis, age consistent findings of the cervical and lumbar spine with vertebral subluxations at C1, C6, C7, T1, T2, T11, T12, L4, L5 and S1. Dr. Stroup noted decreased range of motion for the cervical, thoracic and lumbar spines. He noted objective findings of vertebral subluxations at C1, C6, C7, T1, T2, T11, T12, L4, L5 and S1. Dr. Stroup diagnosed cervical, thoracic, lumbar sprain/strain, sciatica, cervicobrachial syndrome and headaches and advised that appellant was undergoing treatment and was disabled from work.

Appellant was also treated by Dr. Robin C. Shealy, a family practitioner, on August 19, 2011, for severe pain in the right leg and hip. Dr. Shealy noted x-rays revealed severe degenerative changes of the right hip, subchondral sclerosis and cyst formation of the femoral head. She treated appellant on July 29, 2011 after a June 7, 2011 motor vehicle accident for worsening pain in the right hip. Appellant reported that the impact of the truck caused injury to

her hip. Dr. Shealy opined that the motor vehicle accident aggravated appellant's chronic condition.

In an October 25, 2011 decision, OWCP found that the June 7, 2011 incident occurred as alleged. The claim was denied because of insufficient medical evidence to establish that the incident caused an injury.

On November 25, 2011 appellant requested reconsideration. She submitted a discharge summary from Dr. Neil A. Conti, a Board-certified orthopedic surgeon, who treated her for advanced right hip osteoarthritis. In a September 27, 2011 surgical report, he performed a right total hip replacement and diagnosed right hip osteoarthritis. On October 13, 2011 Dr. Conti noted that appellant was progressing well and she was able to fully bear weight. He diagnosed anatomic alignment of right hip status post total hip arthroplasty.

In a decision dated January 11, 2012, OWCP denied the claim finding that causal relationship was not established.

On January 24, 2012 appellant requested reconsideration. She submitted a January 24, 2012 report from Dr. Shealy who noted x-rays revealed severe right hip degenerative changes, subchondral sclerosis and cyst formation of the femoral head. Dr. Shealy treated appellant on July 29, 2011 after a June 2011 motor vehicle accident with complaints of worsening pain in the right hip. She opined that the motor vehicle accident aggravated appellant's chronic condition. Dr. Shealy advised that appellant took early retirement and underwent right hip replacement surgery.

In a decision dated February 24, 2012, OWCP denied modification of the January 11, 2012 decision.

On March 30, 2012 appellant requested reconsideration. She submitted a March 13, 2012 report from Dr. Shealy who noted x-rays revealed severe degenerative changes of the right hip, subchondral sclerosis and cyst formation of the femoral head. Dr. Shealy noted appellant's complaints of worsening right hip and leg pain after a June 7, 2011 motor vehicle accident. She opined to a degree of medical certainty that the hip condition was permanently aggravated by the accident. Dr. Shealy noted that the natural progression of the hip condition would not have progressed to this level.

In a decision dated April 27, 2012, OWCP denied modification of the prior decision.

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 filed within the applicable time limitation 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 is 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.³

To determine whether an employee 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.⁴ 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.⁵

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 The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁷

ANALYSIS

OWCP accepted that appellant worked as a rural carrier and on June 7, 2011 her mail truck was struck by a gravel truck while in the performance of duty. Appellant was diagnosed with degenerative changes of the right hip, subchondral sclerosis and cyst formation of the femoral head. The Board finds that appellant has not submitted sufficient medical evidence to establish that her right hip condition was caused or aggravated by the June 7, 2011 incident. She did not submit a rationalized medical report from a physician sufficiently explaining how the June 7, 2011 fall caused or aggravated a diagnosed medical condition.

Appellant submitted several reports from Dr. Stroup, a chiropractor, who noted that x-rays of the cervical and lumbar spine were performed on June 8, 2011 using routine weight bearing spinal projections. They revealed osteoarthritis and age consistent findings of the

³ *Gary J. Watling*, 52 ECAB 357 (2001).

⁴ *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *Id.*

⁶ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁷ *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).

cervical and lumbar spine. Dr. Stroup diagnosed vertebral subluxations at C1, C6, C7, T1, T2, T11, T12, L4, L5 and S1.⁸ In a June 8, 2011 report, he noted treating appellant for neck and back pain after a work accident on June 7, 2011 when her mail truck was struck by a gravel truck. In reports dated June 9 to July 12, 2011, Dr. Stroup noted findings that included vertebral subluxations at C1, C6, C7, T1, T2, T11, T12, L4, L5 and S1. While he provided some general support for causal relationship, he did not provide medical rationale explaining the basis of his conclusion.⁹ Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship. The reports are insufficient to meet appellant's burden of proof. Other reports from Dr. Stroup are also insufficient to establish the claim as he did not address how the June 7, 2011 work incident caused or aggravated any spinal subluxation.¹⁰

Appellant submitted reports from Dr. Shealy dated August 19, 2011 and January 24, 2012. She noted initially treating appellant on March 29, 2011 for severe pain in the right leg and hip. Dr. Shealy noted x-rays revealed severe degenerative changes of the right hip, subchondral sclerosis and cyst formation of the femoral head. She treated appellant on July 29, 2011 after the accepted motor vehicle accident for complaint of worsening right hip pain. Dr. Shealy opined that the motor vehicle accident aggravated the chronic hip condition. In a March 13, 2012 report, she noted treating appellant on July 29, 2011 after her work-related motor vehicle accident and opined to a degree of medical certainty that the hip condition was permanently aggravated by the accident. Dr. Shealy stated that the natural progression of appellant's hip condition would not have progressed to this level. The Board finds that, although she supported causal relationship, she did not provide adequate medical rationale explaining the basis of her opinion regarding causal relationship.¹¹ Dr. Shealy did not provide a full history of appellant's treatment for degenerative right hip disease or adequately explain the process by which the accepted incident contributed to appellant's preexisting osteoarthritis of the right hip.

Reports from Dr. Conti are insufficient to establish the claim as they did not provide a history of injury¹² or specifically address whether appellant had a diagnosed medical condition that was causally related to her accepted employment incident.¹³ OWCP properly found that appellant did not meet her burden of proof to establish her claim.

⁸ Section 8101(2) of FECA provides that chiropractors are considered physicians "only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary." As the record shows that Dr. Stroup reviewed x-rays in diagnosing a spinal subluxation, he is considered a physician under FECA

⁹ *Supra* note 6.

¹⁰ *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹¹ *Jimmie H. Duckett*, *supra* note 6.

¹² *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

¹³ *Supra* note 9.

On appeal, appellant asserts that she submitted sufficient medical evidence to support that she sustained a work-related injury on June 7, 2011. As noted, the medical evidence does not provide a rationalized opinion explaining the causal relationship between her right hip condition and the June 7, 2011 work incident.

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 meet her burden of proof to establish that her claimed conditions were causally related to her employment.

ORDER

IT IS HEREBY ORDERED THAT the April 27, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 9, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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