United States Department of Labor
Employees' Compensation Appeals Board

D.H., Appellant	)	
and	)	**Docket No. 08-1550**
	)	**Issued: December 17, 2008**
DEPARTMENT OF THE NAVY,	)	
North Charleston, SC, Employer	)	
	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 6, 2008 appellant filed a timely appeal from a February 14, 2008 decision of the Office of Workers' Compensation Programs' hearing representative and an October 16, 2007 decision of the Office denying her claim for fact of injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant established that she sustained an injury in the performance of duty on June 7, 2007, as alleged.

FACTUAL HISTORY

On June 26, 2007 appellant, then a 47-year-old supply tech, filed a traumatic injury claim (Form CA-1) alleging that on June 7, 2007 she "was lifting boxes of computers and hurt the left side of my back, arm and leg." Supporting her claim, she submitted a June 18, 2007 x-ray request and report from Roper Hospital Imaging Services indicating an unremarkable cervical, thoracic, and lumbar spine, finding minor spondylosis. Appellant also submitted physical

therapy notes dated August 7 through 15, 2007. On September 6, 2007 she filed two requests for compensation covering the period August 7 through 31, 2007.

In a September 10, 2007 letter, the Office notified appellant that the evidence submitted in support of her traumatic injury claim was insufficient and that she should provide a narrative report from her treating physician discussing her history, treatment, diagnosis, periods of disability, and causal relationship between the injury and the employment activity.

Appellant subsequently submitted several medical reports. In a June 18, 2007 report, Dr. Patricia Campbell, MD, stated that appellant had an "at work injury." She noted appellant's claims that she was lifting a computer estimated at 20 pounds, resulting in low back, leg and arm pain that "comes [and] goes." Dr. Campbell placed appellant on work restrictions, prohibiting lifting for one week and ordered a back x-ray. On June 23, 2007 she found mild tenderness around appellant's thoracic spine, indicating that appellant suffered lower back pain and placing her on light duty for two to three weeks. Appellant also provided two medical reports signed by a certified-physician's assistant dated July 21 and September 20, 2007 and physical therapy notes for the period August 17 through September 7, 2007.

By decision dated October 16, 2007, the Office denied appellant's claim on the grounds that she did not submit medical evidence providing a diagnosis of her injury and thus failed to establish that she sustained an injury in the performance of duty.

Appellant filed a request for a review of the written record on November 16, 2007. She also submitted additional evidence, including physical therapy notes from September 5 through October 3, 2007, a September 28, 2007 x-ray report of appellant's left hip with normal findings, and a medical report dated October 3, 2007 and an x-ray request dated September 20, 2007 both signed by a certified-physician's assistant. Appellant also provided a narrative letter, signed by a certified physician's assistant, detailing appellant's examination and treatment history. The letter reflected appellant's claims that she was injured on the job while lifting a large box containing a computer and that she felt a sharp pain along the left side of her body, from her neck to her left foot.

On February 14, 2008 the Office hearing representative affirmed the Office's October 16, 2007 decision, finding appellant did not provide medical evidence from a qualified physician establishing that the June 7, 2006 employment incident caused her injury.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,[2] including that she is an "employee" within the meaning of

[1] 5 U.S.C. §§ 8101-8193.

[2] *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

the Act[3] 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 the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[6] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[7]

ANALYSIS

The Office accepted that on June 7, 2006 appellant lifted a box containing a computer, as alleged. The only issue is whether appellant established that she sustained an injury causally related to the accepted employment incident. The Board finds that appellant has not met her burden of proof in establishing that her injury was caused by the June 7, 2006 employment incident. In order to establish causation, appellant is required to submit rationalized medical evidence from a qualified physician, explaining the connection between her injury and the accepted June 7, 2006 incident.

Appellant submitted several medical reports and a narrative statement signed by a certified physician's assistant, as well as a series of physical therapy notes. Neither a certified-physician's assistant nor a physical therapist qualifies as a "physician" under 5 U.S.C. § 8101(2).[8] Therefore, this evidence can not establish appellant's burden of proof.[9]

Appellant also submitted two medical reports dated June 18 and 23, 2007 signed by Dr. Campbell, who recorded appellant's claims that she was injured while lifting a heavy computer box, after which she experienced pain, and noted that she had an "at work injury." These reports, however, do not contain medical rationale as Dr. Campbell simply stated that appellant suffered a work injury without explaining how the injury and the June 7, 2006

[3] *See M.H.*, 59 ECAB ___ (Docket No. 08-120, issued April 17, 2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); *see* 5 U.S.C. § 8101(1).

[4] *R.C.*, 59 ECAB ___ (Docket No. 07-1731, issued April 7, 2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

[5] *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

[7] *T.H.*, 59 ECAB ___ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

[8] Under 5 U.S.C. § 8101(2) a "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.

[9] *See also Merton J. Sills*, 39 ECAB 572 (1988); *Bradford L. Sutherland*, 33 ECAB 1568 (1982).

employment incident are related. A physician's opinion on causal relationship is not dispositive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached.[10] Because Dr. Campbell's reports lack medical rationale, they are of diminished probative value.[11]

Therefore, because appellant did not submit any evidence from a qualified physician containing medical rationale, the Board finds that she has not met her burden of proof in establishing that her injury was causally related to the accepted June 7, 2006 employment incident.[12]

CONCLUSION

The Board finds that appellant has not established that she sustained an injury in the performance of duty.

[10] *Jean Culliton*, 47 ECAB 728 (1996); *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

[11] *See Robert Broome*, 55 ECAB 339 (2004); *Linda I. Sprague*, 48 ECAB 386 (1997).

[12] The Board notes that following the issuance of the Office's February 14, 2008 decision appellant submitted additional evidence. Pursuant to 20 C.F.R. § 501.2(c), the Board is precluded from reviewing evidence for the first time on appeal. However, appellant may resubmit evidence to the Office with a written request for reconsideration under 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606.

ORDER

IT IS HEREBY ORDERED THAT the February 14, 2008 and October 16, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 17, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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