United States Department of Labor
Employees' Compensation Appeals Board

T.R., Appellant	)	
and	)	**Docket No. 07-2082**
	)	**Issued: February 12, 2008**
DEPARTMENT OF VETERANS AFFAIRS, TENNESSEE VALLEY HEALTH CARE SYSTEM, Nashville, TN, Employer	)	

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

Case submitted on the record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 8, 2007 appellant filed a timely appeal of the January 29 and June 28, 2007 merit decisions of the Office of Workers' Compensation Programs, finding that she did not sustain an injury in the performance of duty on December 11, 2006. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction of the merits of this case.

ISSUE

The issue is whether appellant has established that she sustained a back injury in the performance of duty on December 11, 2006.

FACTUAL HISTORY

On December 12, 2006 appellant, then a 37-year-old practical nurse, filed a traumatic injury claim. She alleged that on December 11, 2006 she felt a pull and experienced pain in her lower back while transferring a patient from a recliner to a merry-walker. Appellant reported the injury to the employing establishment on December 12, 2006. An employing establishment

supervisor controverted the claim contending that there were different stories about what happened. The supervisor stated that a charge nurse asked appellant for assistance and that she did not put her hands on the patient. The supervisor further stated that appellant just stood there.

By letter dated December 22, 2006, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It requested that she submit a medical report from an attending physician which included dates of examination and treatment, a history of injury, a detailed description of findings, x-ray and laboratory test results, a diagnosis and clinical course of treatment followed and an opinion supported by medical explanation of how the reported work incident caused or aggravated the claimed injury. The Office advised appellant that the medical explanation was crucial to her claim.

The Office received a December 27, 2006 medical report of Dr. T. Allen Polk, a Board-certified family practitioner, who stated that on December 11, 2006 appellant sustained thoracic and lumbar strains.

Appellant submitted a December 12, 2006 treatment note of Linda Langhern, an employing establishment medical unit practical nurse. Ms. Langhern provided a history that on December 11, 2006 appellant sustained a thoracic spine injury while assisting in the transfer of a patient. In reports dated December 13 and 19, 2006, Ms. Langhern stated that appellant could perform limited-duty work with restrictions related to lifting, carrying, pushing and pulling.

Records from the employing establishment's medical unit, which contained illegible signatures, include a December 11, 2006 treatment note providing a history that appellant sustained a low back injury while transferring a patient from a wheelchair to a recliner to a merry-walker. An undated report stated that appellant could perform limited-duty work with restrictions. She could sit, stand, climb stairs and walk. Appellant could also perform simple grasping and fine manipulation and reach above the shoulder. She was restricted from lifting, carrying, stooping, twisting, pulling and pushing.

The December 12 and 19, 2006 and undated form reports and treatment notes of Dr. T. Michael Helton, a Board-certified family practitioner, provided a history that on December 11, 2006 appellant hurt her lower back while lifting a patient into a merry-walker. He opined that she sustained lumbar and thoracic strains. In the form reports, Dr. Helton indicated with an affirmative mark that the diagnosed conditions were work related. He found that appellant could perform limited-duty work with restrictions. In a January 3, 2007 treatment note, Dr. Helton indicated that appellant returned for examination regarding a back injury she sustained at the employing establishment on December 11, 2006. He opined that her lumbar and thoracic strains had resolved. Dr. Helton concluded that appellant could return to full-duty work.[1]

In a January 3, 2007 form report, Dr. Helton reiterated his prior history of injury and opinion that appellant's lumbar and thoracic strains were work related by an affirmative mark. In a report of the same date, Ms. Langhern released appellant to full-duty work.

[1] On January 4, 2007 appellant accepted the employing establishment's December 22, 2006 offer of limited-duty work.

By letters dated January 11 and 18, 2007, the employing establishment contended that appellant failed to submit rationalized medical evidence establishing that she sustained an injury in the performance of duty. It further contended that the supervisor's statement indicated that different stories were received from the charge nurse on duty and appellant regarding what actually took place at the time of the December 11, 2006 incident which established that the alleged injury was not related to her employment factors or conditions.

In a January 17, 2007 letter, Davona G. Skaar, a charge nurse, described the December 11, 2006 incident. She stated that she was not sure about the date of the alleged incident. Ms. Skaar asked appellant to help her with a resident who was sitting in a geri-chair and trying to stand up. She told appellant that they needed to get a merry-walker to help the resident walk around without the risk of falling and injuring himself. Ms. Skaar held onto the resident's right hand while he stood and held onto a table in the center of the room. She told him to keep standing while she moved the geri-chair out of the way and grabbed the merry-walker which she placed directly under his buttocks. The resident sat down in the merry-walker and Ms. Skaar secured the safety bar and center clip in place. She stated that it was not necessary to try to lift the resident because he was cooperative with our requests. Ms. Skaar stated that she lifted and pulled more than appellant. She related that she did not see appellant try to lift the resident which was unnecessary since he was cooperative. Ms. Skaar noted that appellant had her hand on his left arm and asked him to keep standing. She concluded that she did not know that appellant was hurt until a nurse on duty called her and asked what happened.

In a January 10, 2007 report, Dr. Polk reiterated the diagnoses of thoracic and lumbar strains. Reports dated January 15 and 22, 2007 from Karen Frost, appellant's physical therapists, addressed appellant's lumbar and thoracic conditions. A report signed by Ms. Frost on January 11, 2007 and by Dr. Helton on January 12, 2007 provided a history of injury that on December 11, 2006 appellant sustained thoracic and lumbar spines after transferring a patient at work.

By decision dated January 29, 2007, the Office found that appellant did not sustain an injury in the performance of duty. The factual evidence of record failed to establish that the December 11, 2006 incident occurred at the time, place and in the manner alleged.

The Office received Ms. Frost's January 25, February 13 and 19, 2007 reports, which addressed appellant's progress.

In an April 4, 2007 letter, appellant requested reconsideration of the Office's January 29, 2007 decision. She stated that Ms. Skaar was unpleasant towards her since she asked Ms. Skaar about being assigned to administer medications. Appellant further described the December 11, 2006 incident. On that date, Ms. Skaar asked appellant to assist her with a patient who was attempting to get out of a recliner. She wanted to place him in a merry-walker. Appellant stated that she and Ms. Skaar lifted the patient into the merry-walker and Ms. Skaar placed the seat belt around him. After the patient was secured, appellant experienced pain and difficulty with walking while going to a shower room to assist showering patients. She tried to remove a patient's shoes in the shower room but could hardly bend down. Appellant immediately advised Ms. Skaar that her back was hurting due to lifting the patient she had transferred to a merry-walker and requested that she complete an incident report. Ms. Skaar responded that appellant

should complete the report. Appellant then informed Brenda Anderson, a nurse on duty, about her injury. Ms. Anderson advised her to go to triage for an evaluation. Appellant stated that a coworker overheard Ms. Skaar tell Ms. Anderson that she did know how appellant's injury occurred because she just stood there and watched. She contended that Ms. Skaar later accused her of making untrue statements about her. She told appellant about the unfavorable comments that were made about her job performance on the weekends. Appellant further contended that Ms. Skaar changed her version of the December 11, 2006 incident by denying any knowledge of her back injury prior to being advised about it by Ms. Anderson.

Appellant submitted duplicate copies of the employing establishment's records, Dr. Helton's December 12 and 19, 2006 treatment notes and December 12 and 19, 2006 and January 3, 2007 undated reports and Ms. Langhern's December 13 and 19, 2006 reports. In a January 30, 2007 treatment note, Ms. Langhern listed appellant's complaints of left earache and stress incontinence. She diagnosed left otitis media and stress incontinence.

By letter dated May 24, 2007, the employing establishment reiterated its prior contention that the evidence submitted by appellant was insufficient to establish that she sustained an injury in the performance of duty on December 11, 2006.

In a June 28, 2007 decision, the Office denied modification of the January 29, 2007 decision. The evidence submitted by appellant was insufficient to establish that she sustained an injury in the performance of duty on December 11, 2006.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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 the Act; that the claim was filed within applicable time limitation; that an injury was sustained while 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 on a traumatic injury of an occupational disease.[4]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office 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.[5]

[2] 5 U.S.C. §§ 8101-8193.

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

[4] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 3.

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

In order to meet her burden of proof to establish the fact that she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that she actually experienced the employment injury or exposure at the time, place and in the manner alleged.[6]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[7] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[8] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[9]

ANALYSIS

Appellant alleged that she sustained a back injury in the performance of duty on December 11, 2006. The Board finds that she established that the employment incident occurred on December 11, 2006, as alleged.

The Board finds that there are no such inconsistencies in the evidence as to cast serious doubt upon the validity of appellant's claim that she experienced an employment incident on December 11, 2006. Appellant consistently claimed that she sustained a back injury on December 11, 2006 when transferring a patient from a recliner to a merry-walker. She received medical treatment contemporaneous to the December 11, 2006 incident and related a history of injury. On December 11 and 12, 2006 the employing establishment's medical unit and Ms. Langhern, an employing establishment practical nurse, recorded that appellant sustained low back and thoracic injuries while transferring a patient from a wheelchair to a recliner to a merry-walker. In addition, Dr. Helton's medical reports stated that appellant hurt her lower back while lifting a patient into a merry-walker on December 11, 2006. Appellant also provided notice to the employing establishment on December 12, 2006, which was contemporaneous to the injury.

Ms. Skaar acknowledges that she asked appellant to help her transfer a resident from a geri-chair to a merry-walker. However, she contends that neither she nor appellant had to lift the resident because he was cooperative with their requests. Ms. Skaar stated that she placed and secured him in the merry-walker. She also stated that she lifted and pulled more than appellant. Ms. Skaar related that she did not see appellant try to lift the resident. She stated that appellant had her hand on his left arm and asked him to keep standing. Ms. Skaar did not know that appellant had sustained an injury until the nurse on duty called her and asked what happened.

The Board finds that appellant's statements are consistent with the contemporaneous medical records. The evidence reflects a consistent statement of injury, *i.e.*, an employment

[6] *Linda S. Jackson*, 49 ECAB 486 (1998).

[7] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined).

[8] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[9] *Charles E. Evans*, 48 ECAB 692 (1997).

incident of transferring a patient from a recliner to a merry-walker on December 11, 2006. The statement of Ms. Skaar is not sufficient to rule out appellant's description of assisting in the transfer of the patient on that day.

The Board, however, finds that appellant did not submit sufficient medical evidence to establish that she sustained a back injury due to the accepted December 11, 2006 employment incident. On December 27, 2006 and January 10, 2007 Dr. Polk stated that appellant sustained thoracic and lumbar strains on December 11, 2006. However, he failed to address how the thoracic and lumbar strains were caused or contributed to by the accepted employment incident. Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof.[10]

As noted, the employing establishment's medical records of December 11, 2006 provided a history of the December 11, 2006 employment incident and stated that appellant sustained a back injury. Similarly, Dr. Helton opined in a January 12, 2007 report that appellant sustained thoracic and lumbar spine injuries after transferring a patient at work. His January 3, 2007 treatment note found that the lumbar and thoracic strains appellant sustained on December 11, 2006 had resolved and that she could return to full-duty work. The medical unit treatment note failed to provide a diagnosis for appellant's back condition. None of these reports provide medical rationale explaining how and why the December 11, 2006 employment incident caused or contributed to a back injury.[11] The Board finds that the employing establishment's medical unit treatment note and Dr. Helton's report and treatment note are insufficient to establish appellant's claim.

Dr. Helton's reports provided a history of the December 11, 2006 employment incident. He indicated with an affirmative mark that appellant's lumbar and thoracic strains were caused by the December 11, 2006 employment incident. The Board finds that Dr. Helton's reports are insufficient. A report which only addresses causal relationship with a checkmark without more by way of medical rationale explaining how the incident caused the injury, is insufficient to establish causal relationship and is of diminished probative value.[12]

The undated report from the employing establishment's medical unit stated that appellant could perform limited-duty work with restrictions. Moreover, as the signatures are illegible, it is unclear whether they were signed by a physician. Therefore, they do not constitute competent medical evidence. The Board finds that the medical unit report is insufficient to establish appellant's claim.

[10] *Elizabeth H, Kramm (Leonard O. Kramm)*, 57 ECAB ___ (Docket No. 05-715, issued October 6, 2005).

[11] *Id.*

[12] *See Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Lillian M. Jones*, 34 ECAB 379 (1982).

The treatment note and reports of Ms. Langhern, a nurse practitioner, and the reports of Ms. Frost, a physical therapist, are of no probative medical value because a nurse practitioner[13] and a physical therapist[14] are not considered a physician under the Act.

Appellant did not submit sufficient medical evidence to establish a causal relationship between her back condition and the accepted December 11, 2006 employment incident. The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained an injury in the performance of duty on December 11, 2006. Therefore, she has failed to meet her burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a back injury in the performance of duty on December 11, 2006.

ORDER

IT IS HEREBY ORDERED THAT the June 28 and January 29, 2007 decisions of the Office of Workers' Compensation Programs are affirmed as modified.

Issued: February 12, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

[13] 5 U.S.C. § 8101(2) which defines physician as including surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. *See also Joseph N. Fassi*, 42 ECAB 231 (1991) (medical evidence signed only by a registered nurse or nurse practitioner is generally not probative evidence).

[14] *Vickey C. Randall*, 51 ECAB 357, 360 (2000) (a physical therapist is not a physician under the Act).