United States Department of Labor
Employees' Compensation Appeals Board

C.G., Appellant	)	
and	)	
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, WASHINGTON-DULLES INTERNATIONAL AIRPORT, Dulles, VA, Employer	)	**Docket No. 09-289** **Issued: September 10, 2009**

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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On November 10, 2008 appellant filed a timely appeal from an August 25, 2008 merit decision of the Office of Workers' Compensation Programs denying her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof in establishing that her alleged condition was causally related to the accepted work incident of May 29, 2007.

FACTUAL HISTORY

On June 6, 2007 appellant, a 39-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) for lower back, hip and leg pain. She attributed her condition to picking up bins at work on May 29, 2007.

In support of her claim, appellant submitted a June 11, 2007 note from Dr. Edward R. McDevitt, a Board-certified orthopedic surgeon, who reported tenderness over the lower lumbar region and that the pain was exacerbated with forward flexion. Range of motion was normal and static leg lift (SLL) testing was positive for lower back pain only. Dr. McDevitt diagnosed lumbar spondylosis and recommended physical therapy, changes in appellant's diet and daily activities, as well as light-duty restrictions consisting of no lifting greater than 10 pounds.

In a June 11, 2007 work capacity evaluation (Form OWCP-5), Dr. McDevitt asserted that appellant was not capable of performing her normal job without restrictions. He opined that appellant's work restrictions include no lifting over 10 pounds, no prolonged standing, defined as that exceeding 60 minutes and no excessive bending.

On July 2, 2007 Dr. McDevitt reported that the previously diagnosed lumbar spondylosis had improved, but he still recommended that appellant swim and pursue formal physical therapy with Dr. Holtzman, a chiropractor, in addition to changes in appellant's diet, daily activities as well as light-duty restrictions consisting of no lifting greater than 10 pounds.

Appellant submitted a June 24, 2008 note signed by Dr. Jon Holtzman, a chiropractor, who reported that he had been treating appellant since June 13, 2007 for injuries suffered while working on May 29, 2007. Dr. Holtzman released appellant for all activities at work except those involving lifting objects weighing more than 30 pounds.

Appellant submitted chiropractic treatment reports concerning appointments occurring between June 13, 2007 and February 29, 2008. These appointments involved treatments for lumbar lateral canal stenosis, lumbar nerve root injury, lumbar hyperflexion/hyperextension and muscle spasm. Appellant also submitted chiropractic treatment reports concerning appointments that occurred between March 11 and July 21, 2008. These reports concerned treatments for lumbosacral sprain/strain, lumbar segment dysfunction, cervical segment dysfunction and cervical myositis.

Appellant accepted an 8-hour-per-day position in which he would not have to lift, push or pull more than 25 pounds.

By decision dated August 25, 2008, the Office denied the claim because the evidence of record was insufficient to establish the claimed medical condition was related to an established work-related event.[1]

[1] The Board notes that appellant submitted additional evidence after the August 25, 2008 decision. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). *See J.T.*, 59 ECAB ___ (Docket No. 07-1898, issued January 7, 2008) (holding the Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision.) As these reports were not part of the record considered by the Office, the Board may not consider them for the first time on appeal.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of proof to establish the essential elements of his claim by the weight of the evidence,[3] including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.[4] As part of her burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.[5] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[6]

ANALYSIS

Appellant filed a traumatic injury claim (Form CA-1) for lower back, hip and leg pain arising from lifting bins at work on May 29, 2007. The Office accepted that the incident occurred as alleged. As noted above, it is appellant's burden to produce substantive, probative evidence demonstrating that the employment incident caused the claimed medical condition. The Board finds that the evidence of record is insufficient to establish that appellant's current medical condition was caused by lifting bins at work on May 29, 2007.

The relevant evidence of record consists of reports from Drs. McDevitt and Holtzman. Dr. McDevitt's reports are insufficient to satisfy appellant's burden because none of his reports proffered an opinion on the causal relationship between the diagnosed condition, lumbar spondylosis, and an employment-related incident or factors of appellant's employment. The Board has held that medical reports lacking an opinion on causal relationship are of limited probative value.[7] Dr. McDevitt's reports repeated appellant's history of injury, but offered no medical rationale explaining how lifting bins at work caused the condition he diagnosed, lumbar spondylosis. Because he proffered no opinion concerning the causal relationship between appellant's condition and her federal employment, his medical reports are of little probative value and are insufficient to satisfy appellant's burden of proof.

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[2] 5 U.S.C. §§ 8101-8193.

[3] *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

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

[5] *G.T.*, *supra* note 4; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

[6] *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

[7] *See Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value). *See also Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001).

Dr. Holtzman's reports are of no probative medical value as he is a chiropractor and not considered a physician for purposes of the Act. The term "physician" includes chiropractors 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.[8] A chiropractor is not considered a physician under the Act unless it is established that there is a spinal subluxation as demonstrated by x-ray to exist.[9] Dr. Holtzman did not diagnose a subluxation as demonstrated by x-rays to exist. Therefore, his reports were of no probative medical value and are insufficient to satisfy appellant's burden of proof.[10]

As there is no probative medical evidence of record to establish that the accepted work incident caused appellant's medical condition, she has not met her burden of proof in this case.

CONCLUSION

The Board finds appellant did not meet her burden of proof in establishing that her alleged medical condition was caused by the work incident of May 29, 2007.

ORDER

IT IS HEREBY ORDERED THAT the August 25, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 10, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

[8] 5 U.S.C. § 8101(2); *see also Jack B. Wood*, 40 ECAB 95 (1988).

[9] *Mary A. Ceglia*, 55 ECAB 626 (2004).

[10] *See Michelle Salazar*, 54 ECAB 523 (2003).