United States Department of Labor
Employees' Compensation Appeals Board

J.A., Appellant	)	
and	)	**Docket No. 10-1157**
	)	**Issued: January 6, 2011**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Charlotte, NC, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 24, 2010 appellant filed a timely appeal from a March 8, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

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

FACTUAL HISTORY

On January 29, 2004 appellant, then a 43-year-old transportation security screener, filed a traumatic injury claim alleging that she pulled a muscle in her left lower back on that day while lifting a bag off a conveyor. A witness who was working alongside her did not see her lifting a bag, but was advised that she was hurt. Appellant stopped working on February 2, 2004 and returned on February 4, 2004.

A March 5, 2004 work release signed by Dr. David Peltzer, a Board-certified family practitioner, noted treating appellant beginning March 2, 2004 and released her to return to work on March 9, 2004. He diagnosed neck and back pain and fibromyalgia in an August 17, 2004 treatment note.

In a March 10, 2004 work status form, Dr. Craig D. Brigham, a Board-certified orthopedic surgeon, diagnosed a shoulder sprain and checked the "yes" box in response to a question asking whether appellant's injury was work related. He released her to modified duty for two weeks. Dr. Brigham's August 9, 2004 notes diagnosed cervical sprain and fibromyalgia and released appellant to return to work on August 16, 2004 while a form report of the same date checked a box "yes" indicating that her condition was work related.

In a September 14, 2004 note, Dr. Patrick Box, a Board-certified rheumatologist, prescribed light duty for two months due to appellant's myofascial pain. He specified in September 22 and October 13 2004 evaluations that she was not to lift or carry baggage, push or pull, bend or stoop or conduct bag searches. Dr. Box also recommended in a December 2, 2004 note that appellant stay on light duty until December 30, 2004.

Notes dated December 7, 2004 and signed by a family nurse practitioner advised that appellant was unable to perform her work duties between December 3 and 7, 2004 due to a head cold. The nurse practitioner released her to return to work on December 8, 2004.

On October 30, 2008 appellant's representative inquired as to the status of the claim.[1] Appellant subsequently submitted physical therapy records for the period July 13, 2005 to February 27, 2008 and progress notes from Dr. Neal M. Goldberger, a Board-certified anesthesiologist, beginning August 25, 2005. In Dr. Goldberger's notes for the period August 25 to November 18, 2005, he stated that she complained of lower back discomfort radiating down the posterolateral aspect of her thighs and legs. He reported that magnetic resonance imaging (MRI) scan of her lumbar spine demonstrated a slightly leftward L5-S1 disc protrusion. Dr. Goldberger examined appellant and observed tenderness of the bilateral sacroiliac (SI) joint and myofascial tenderness of the bilateral lumbar paravertebral and gluteus medius muscles. He diagnosed lumbar root irritation, significant bilateral SI joint bursitis and myofascial pain. On January 12, 2006 Dr. Goldberger reported that he would address appellant's condition once her workers' compensation case reopened. A February 1, 2006 note detailed that lumbar facet injections were approved. On May 24, 2006 Dr. Goldberger commented that appellant complained of significant left shoulder pain and was "out of work secondary to cervical disc injury that was work related." A physical examination showed myofascial tenderness of the pectoralis major, gluteus medius and thoracic, cervical and lumbar paravertebral muscles. Dr. Goldberger diagnosed myofascial pain syndrome and lumbar discogenic pain.

In a December 3, 2008 letter, the Office informed appellant that her initial traumatic injury claim had not been fully processed and no condition had been accepted as employment related. The claim had been received as a simple, uncontroverted case resulting in minimal or no

[1] The record reflects that appellant filed a notice of recurrence on September 2, 2005, alleging that she sustained a spinal injury on April 7, 2004 while on limited duty for the employing establishment. The record does not reflect that the Office issued a decision on that claim.

time lost from work and payment was approved for limited medical expenses without formal adjudication.

Appellant submitted a December 7, 2008 physical therapy referral form in which Dr. Chason S. Hayes, a Board-certified orthopedic surgeon, diagnosed left shoulder pain and approved physical therapy services.

In a July 1, 2009 letter, the Office informed appellant that the evidence submitted was insufficient to establish her claim for a traumatic injury on January 29, 2004 and advised her of the evidence needed to establish her claim. No subsequent evidence was received.

By decision dated August 4, 2009, the Office denied appellant's traumatic injury claim, finding that the factual and medical evidence was insufficient to establish her claim.

Appellant requested a telephonic hearing which was held on December 14, 2009. At the hearing, she testified that she felt a stabbing pain in her lumbar region after picking up a heavy bag from a conveyor and turning slightly on January 29, 2004. Appellant saw Drs. Hayes and Goldberger within two days of the incident, adding that Dr. Hayes reviewed an MRI scan on February 19, 2004 and observed protrusions in the C-5, C-6 and C-7 vertebra. She underwent disc decompression surgery on November 1, 2007 to treat her lumbar condition. Appellant was no longer working at the time of the hearing.

On March 8, 2010 the Office hearing representative modified the August 4, 2009 decision to find that the January 29, 2004 lifting incident occurred, but denied appellant's claim on the grounds that the medical evidence was insufficient to establish that she sustained an injury causally related to that incident.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of her claim by the weight of reliable, probative and substantial evidence,[3] including that she is an "employee" within the meaning of the Act 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 fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at

[2] 5 U.S.C. §§ 8101-8193.

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[4] *R.C.*, 59 ECAB 427 (2008).

[5] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

the time, place and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[6]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's 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, 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]

ANALYSIS

The evidence supports that appellant lifted a bag off a conveyor and turned slightly on January 29, 2004. However, she does not provide sufficient medical evidence establishing that this work incident caused or aggravated her lower back injury.

Appellant submitted several progress notes from Dr. Goldberger for the period August 25, 2005 to February 20, 2007, in which he diagnosed lumbar root irritation, lumbar discogenic pain, bilateral SI joint bursitis and myofascial pain syndrome in light of physical examination findings and prior diagnostic test results. Dr. Goldberger specifically mentioned in his May 24, 2006 note that appellant sustained a work-related injury. However, he referred to appellant's cervical disc condition rather than her claimed lower back condition. None of Dr. Goldberger's notes, in fact, contained a history of appellant pulling a muscle in her left lower back when she lifted a bag off a conveyor on January 29, 2004.[8] Because he did not account for this event, his notes were based on an incomplete history of her injury and therefore of diminished probative value.[9] Furthermore, Dr. Goldberger did not otherwise provide medical rationale to explain the reasons why any particular work activity occurring on or about January 29, 2004 caused or aggravated any of appellant's diagnosed conditions.[10] Thus, his progress notes are insufficient to establish appellant's claim.

Dr. Brigham indicated on March 10, 2004 that appellant sustained a work-related shoulder sprain by checking a "yes" box. Likewise, in an August 9, 2004 form report, he checked a box "yes" to indicate that her diagnosed cervical sprain and fibromyalgia were work related. However, the Board has held that an opinion on causal relationship consisting only of a physician checking "yes" on a medical form report without further explanation or rationale is of

[6] *T.H.*, 59 ECAB 388 (2008).

[7] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[8] *See John W. Montoya*, 54 ECAB 306, 309 (2003) (a physician's opinion must discuss whether the employment incident described by the claimant caused or contributed to diagnosed medical condition).

[9] *See M.W.*, 57 ECAB 710 (2006); *James A. Wyrick*, 31 ECAB 1805 (1980).

[10] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

little probative value.[11] Dr. Brigham did not mention the January 29, 2004 lifting incident nor did he explain the reason why particular employment activities caused or aggravated any of appellant's diagnosed conditions. Consequently, his support for causal relationship is insufficient to establish the claim as he did not provide medical reasoning to explain how the January 29, 2004 work incident caused or aggravated a diagnosed condition.

In his September 14, 2009 note and September 22 and October 13, 2004 evaluations, Dr. Box diagnosed myofascial pain and recommended that appellant be placed on limited work duty. Although he detailed specific employment activities to avoid, namely lifting and carrying baggage, he did not note the occurrence of the January 29, 2004 lifting incident and did not specifically support that her diagnosed condition was caused or aggravated by her employment.[12] Likewise, Dr. Peltzer's August 17, 2004 treatment note and Dr. Hayes' December 7, 2008 referral did not specifically address the cause of appellant's condition.

Appellant also submitted evidence from a nurse practitioner and physical therapists. This is not constitute competent medical evidence as neither physical therapists nor nurse practitioners are considered physicians under the Act.[13] For these reasons, the medical evidence is insufficient to establish appellant's claim.

Appellant argues on appeal that the Office hearing representative's decision was contrary to fact and law. As stated above, the medical evidence did not sufficiently explain how lifting baggage and turning slightly on January 29, 2004 caused or contributed to appellant's injury.

CONCLUSION

The Board finds that appellant did not establish that she sustained a traumatic injury in the performance of duty on January 29, 2004.

[11] *See Alberta S. Williamson*, 47 ECAB 569 (1996).

[12] *J.F.*, 61 ECAB ___ (Docket No. 09-1061, issued November 17, 2009) (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).

[13] 5 U.S.C. § 8101(2). *See also David P. Sawchuk*, 57 ECAB 316 (2006); *Paul Foster*, 56 ECAB 208 (2004).

ORDER

IT IS HEREBY ORDERED THAT the March 8, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 6, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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