United States Department of Labor
Employees' Compensation Appeals Board

R.H., Appellant	)	
and	)	**Docket No. 11-184**
	)	**Issued: September 7, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Danville, KY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 29, 2010 appellant filed a timely appeal from an October 4, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 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 on November 5, 2009.

FACTUAL HISTORY

On February 16, 2010 appellant, then a 44-year-old clerk, filed a traumatic injury claim alleging that she was pushing a mail cart on November 5, 2009 when she sustained a right hip joint spasm. She stopped work on November 18, 2009 and did not return. Appellant later detailed in a March 3, 2010 statement that she was collecting mail on the morning of

[1] 5 U.S.C. § 8101 *et seq.*

November 5, 2009 when she experienced a spasm in her right hip. The following day, she visited an orthopedic physician, who advised her to stay off her leg as much as possible.[2] The employing establishment controverted the claim on the basis that appellant previously stated that she hurt her hip and leg while she was gardening at home.[3]

OWCP informed appellant in a March 17, 2010 letter that additional evidence was needed to establish her claim. It gave her 30 days to submit a statement describing the employment incident that contributed to her injury and a physician's report offering a reasoned opinion explaining how the incident caused or aggravated the injury.

Appellant reiterated in March 22 and 24, 2010 statements that she had a right hip spasm on November 5, 2009 while collecting mail and was thereafter unable to walk or bear weight on her right side. Concerning the prior gardening incident, she commented that she "did get stuck in the mud" sometime in June 2009, but the incident "could not cause the damage that would be found in a hip arthroscopy in January 2010." Appellant also indicated that medical reports were forthcoming. OWCP did not receive any further documentation.

By decision dated April 20, 2010, OWCP denied appellant's claim, finding the evidence insufficient to establish that appellant experienced the alleged November 5, 2009 work incident.

Appellant subsequently provided several medical records. In a December 21, 2009 report, Dr. Jeffrey B. Selby, a Board-certified orthopedic surgeon, related that appellant was gardening when her right foot got caught in the mud and her hip turned, causing right anterior hip pain. The condition worsened when she returned to work. On examination, Dr. Selby observed a slightly antalgic gait on the right, discomfort on internal and external rotation, and groin tenderness on palpation. A previous magnetic resonance arthrogram showed a labral tear and possible avascular necrosis of the femoral head. Dr. Selby diagnosed right hip labral tear with a possible right femoral hernia.[4]

A January 4, 2010 report from Dr. John E. Merryman, a Board-certified orthopedic surgeon, noted that an examination of appellant's right groin was unremarkable.

On January 19, 2010 appellant underwent a right hip diagnostic arthroscopy with labral debridement and femoral acetabular chondroplasty. Dr. Selby, who performed the surgery, diagnosed right hip femoral acetabular chondromalacia with a posterior labral degenerative tear. Postoperative reports for the period January 29 to March 1, 2010 indicated mild improvement in appellant's symptoms.

In an April 11, 2010 attending physician's report, Dr. Selby linked appellant's diagnosed right hip acetabular chondromalacia and labral tear to a June 8, 2009 incident involving

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[2] Appellant also alleged that employment-related injuries occurred on June 8, 2009 and November 17, 2010, respectively. She filed two separate traumatic injury claims related to these incidents, which are not presently before the Board. OWCP File Nos. xxxxxx311 and xxxxxx310.

[3] The record contains several witness statements attesting to appellant's statement.

[4] A portion of the report is not legible. Dr. Selby also offered similar examination findings in a subsequent January 11, 2010 report.

prolonged pivoting and twisting. He checked the "yes" box in response to a form question asking whether appellant's condition was caused or aggravated by employment activity. Dr. Selby released her to sedentary duty effective March 1, 2010.[5]

Appellant requested a telephonic hearing, which was held on August 4, 2010. At the hearing, she testified regarding how she collected mail on November 5, 2009 and experienced pain and other symptoms. Appellant also noted undergoing a second surgery on May 13, 2010. She asserted that Dr. Selby's December 21, 2009 report incorrectly attributed her injury to June 2009 gardening activity.[6]

On October 4, 2010 OWCP's hearing representative affirmed the April 20, 2010 decision with modification, finding the medical evidence insufficient to establish that the accepted November 5, 2009 work incident caused or aggravated her hip condition.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of her claim by the weight of reliable, probative and substantial evidence,[7] including that she is an "employee" within the meaning of FECA and that she filed her claim within the applicable time limitation.[8] 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.[9]

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 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.[10]

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

[5] Appellant also submitted work excuse notes and various records from a physician assistant and physical therapist.

[6] The employing establishment submitted oral hearing responses dated August 23 and 25, 2010.

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

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

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

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

rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[11]

ANALYSIS

The evidence supports that appellant was pushing a cart and collecting mail on November 5, 2009. The Board finds the medical evidence insufficient to establish that the accepted employment incident caused or aggravated a right hip condition.

In an April 11, 2010 attending physician's report, Dr. Selby checked a "yes" box to indicate that appellant's diagnosed right hip acetabular chondromalacia and labral tear was caused by her federal employment. He also specified that a pivoting and twisting incident took place on June 8, 2009. Dr. Selby's opinion, however, is of diminished probative value because he failed to provide medical rationale explaining how pushing a cart or collecting mail on November 5, 2009 pathophysiologically caused or contributed to the injury.[12] A checkmark response, without further explanation or rationale, is insufficient to meet this standard.[13] Dr. Selby presented an inaccurate history of injury as he cited June 8, 2009 instead of November 5, 2009 as the date of the work event.[14] In a December 21, 2009 report, he related that appellant was gardening when her right foot got caught in the mud and her hip turned, causing right hip pain. Dr. Selby advised that the condition worsened when she returned to work. She did not explain how particular work duties caused worsening of the right hip condition. The need for medical reasoning explaining how particular work factors on November 5, 2009 caused or contributed to appellant's condition is particularly important where the record indicates that appellant had a prior hip injury that she sustained while gardening. Without medical reasoning explaining why the November 5, 2009 work incident caused or aggravated a diagnosed medical condition, these reports from Dr. Selby are insufficient to establish the claim.

Dr. Selby's other medical records, as well as Dr. Merryman's January 4, 2010 report, are of limited probative value since none offered an opinion on whether appellant's employment duties as a postal clerk caused or aggravated her right hip condition.[15]

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

[12] *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994). The Board points out that Dr. Selby identified pivoting and twisting -- instead of pushing a cart or collecting mail -- as the employment factors that led to appellant's condition. *See John W. Montoya*, 54 ECAB 306, 309 (2003) (a physician must discuss whether the employment incident described by the claimant caused or contributed to the diagnosed medical condition).

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

[14] *See M.W.*, 57 ECAB 710 (2006); *James A. Wyrick*, 31 ECAB 1805 (1980) (medical opinions based on an incomplete or inaccurate history are of diminished probative value).

[15] *See S.E.*, Docket No. 08-2214 (issued May 6, 2009). The Board also notes that records from a physician assistant and physical therapist lack evidentiary weight as neither is a "physician" as defined under FECA. *See* 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238, 242 (2005); *Jennifer L. Sharp*, 48 ECAB 209 (1996).

Appellant argues on appeal that the October 4, 2010 decision is contrary to fact and law. As noted, the medical evidence did not sufficiently explain how pushing a cart and collecting mail on November 5, 2009 led to appellant's injury. In the absence of well-reasoned medical opinion explaining this relationship, appellant failed to meet her burden.

The Board notes that appellant submitted new evidence after issuance of the October 4, 2010 decision. The Board lacks jurisdiction to review evidence for the first time on appeal.[16] However, appellant may submit new evidence or argument as part of a formal 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 establish that she sustained a traumatic injury in the performance of duty on November 5, 2009.

ORDER

IT IS HEREBY ORDERED THAT the October 4, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 7, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

[16] 20 C.F.R. § 501.2(c).