United States Department of Labor
Employees' Compensation Appeals Board

V.M., Appellant	)	
and	)	**Docket No. 11-1278**
	)	**Issued: April 20, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Detroit, MI, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 27, 2011 appellant filed a timely appeal from the March 30, 2011 decision of the Office of Workers' Compensation Programs' (OWCP) which denied her request for reconsideration and a January 14, 2011 decision which denied her claim for an employment-related injury. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over these issues.

ISSUES

The issues are: (1) whether appellant met her burden of proof in establishing that she sustained a traumatic injury in the performance of duty on March 8, 2010; and (2) whether OWCP properly refused to reopen appellant's case for further reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On March 8, 2010 appellant, then a 53-year-old clerk, filed a traumatic injury claim alleging that on that date she sustained left hip pain while twisting at a window and putting

[1] 5 U.S.C. § 8101 *et seq.*

money in the till. She stopped work on March 8, 2010. The employer controverted the claim and noted that appellant already had a hip injury which was not "job related." A separate statement from appellant accompanied her claim, and she noted that she was putting her cash till in the window station and twisting when she felt pain in her left hip.

In a March 8, 2010 attending physician's report, Dr. Deloris Berrien-Jones, a Board-certified internist, noted an onset of left hip pain that day and diagnosed hip strain. She checked a box "yes" on the form report indicating that appellant's condition was caused or aggravated by employment activity and noted that the injury was due to twisting at work. In a March 8, 2010 duty status report, Dr. Berrien-Jones diagnosed pain in the left hip, pain when walking and depression. She checked the box "yes" in response to whether the history given by appellant corresponded to the history provided on the employer's portion of the form which noted "twisting/left hip." Dr. Berrien-Jones placed appellant off work from March 8 to 22, 2010.

By letter dated March 26, 2010, OWCP advised appellant that additional factual and medical evidence was needed. Appellant was requested to provide a physician's opinion supported by a medical explanation as to how the reported work incident caused the claimed injury. OWCP explained that the physician's opinion was crucial to her claim.

OWCP received a February 26, 2010 certificate from Dr. Michael Laker, a Board-certified orthopedic surgeon, who noted that appellant was seen on February 23 and 26, 2010; an April 13, 2010 appointment schedule from a physical therapist; and an April 6, 2010 return to work note from Dr. N. Tawanny, a physician of unknown specialty, who placed appellant off work from March 27 to April 11, 2010 and prescribed restrictions to include no lifting over 10 pounds for appellant's return to work.

By decision dated April 28, 2010, OWCP denied appellant's claim on the grounds that she did not establish an injury as alleged. It found that the medical evidence did not establish that the claimed medical condition was related to the established work-related events.

On June 16, 2010 appellant requested reconsideration.

In an April 9, 2010 report, Dr. Michael Conklin, a Board-certified internist, noted that appellant was complaining of back pain which she indicated began after she "bent to lift a heavy box at work." He noted that it occurred on March 8, 2010 and she continued to have pain. Dr. Conklin diagnosed low back pain, "most likely muscle strain."

In an April 19, 2010 report, Dr. Wendy Bertges-Yost, a clinical psychologist, conducted a mental status examination.

An April 21, 2010 computerized axial tomography (CT) scan read by Dr. Rachel Hulen, a Board-certified diagnostic radiologist, revealed mild lower lumbar spine degenerative changes and bilateral osteitis with mild degenerative changes of the bilateral sacroiliac joints.

In a June 2, 2010 report. Dr. Shlomo Mandel, a Board certified internist noted that appellant was having left flank pain. He indicated that appellant was scheduled to be seen by a urologist. Dr. Mandel advised that appellant returned to work with no restrictions. He advised that appellant had an episode of muscle spasm.

By decision dated August 25, 2010, OWCP denied modification of its prior decision.

On September 15, 2010 appellant requested reconsideration. She described her daily work activities and she repeated the description of her work injury and noted that she informed her direct supervisor immediately.

On October 12, 2010 OWCP received a copy of the March 8, 2010 duty status report from Dr. Berrien-Jones. On that same date, it received an April 8, 2010 report from Dr. Joanna Miragaya, an internist, who noted that appellant was referred by her treating physician for chief complaints of low back pain, which started after she lifted a heavy box at work on March 8, 2010.[2]

In a September 28, 2010 report, Dr. Mandel noted that appellant was referred to him by appellant's primary care physician. He advised that she presented with complaints of low back pain, left paralumbar pain with radiation to the left lower quadrant in the abdomen. Dr. Mandel noted that the CT scan revealed mild disc bulging and early facet arthropathy with inflammation in the sacroiliac joints bilaterally. He noted that appellant attributed her symptoms to "lifting a heavy box at work on March 8, 2010." The report had handwritten information which crossed out the "heavy box as written by the physician" and filled in "daily work activities." Dr. Mandel also advised that "patient feels symptoms are job related."

By decision dated January 14, 2011, OWCP denied modification of OWCP's decisions dated April 28 and August 25, 2010. It found that Dr. Mandel did not provide medical rationale addressing how his findings were related to the injury reported by appellant.

On March 16, 2011 appellant requested reconsideration. In a February 24, 2011 report, Dr. Mandel noted that appellant was seen for complaints of persistent pain across her lower back. He advised that appellant was involved in a motor vehicle accident the previous summer and was currently off work. Dr. Mandel indicated that prior to that on March 8, 2010 she was performing her daily duties at the employing establishment "which consisted of lifting, standing for long periods of time, kneeling, bending, stepping, lifting, pulling, she had progressed in computer work and reaching all with confined spaces" while performing her duties as a window clerk. He advised that she indicated she was doing her "assigned duty installing a cash till into [her] machine at the window" and related that she "felt a sharp pain while twisting in that confined space on my left side from the hip to the left side is my abdominal area. It was unbearable to stand and concentrate on my duties at that time." In a March 14, 2011 treatment note, Dr. Mandel noted appellant's complaints of persistent low back pain and advised that appellant was injured at work on March 8, 2010.

In a March 30, 2011 decision, OWCP denied appellant's request for reconsideration without a merit review finding that her request was insufficient to warrant review of its prior decision. It noted that Dr. Mandel's February 24, 2011 report was similar to his previously considered September 28, 2010 report.

[2] The second page of the report is missing.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA[3] 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 FECA, that the claim was timely filed within the applicable time limitation period of FECA[4] and that an injury was sustained in the performance of duty.[5] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[6]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. 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.[7] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[8]

ANALYSIS -- ISSUE 1

Appellant alleged that she sustained pain in her left hip while twisting at the window and putting money in the till while performing her duties at work. The employing establishment controverted the claim and noted that appellant already had a hip injury which was not job related. However, there is no dispute that appellant was performing her duties as described above. The Board finds that the first component of fact of injury, the claimed incident -- appellant was twisting at the window and putting money in the till, occurred as alleged on March 8, 2010. However, the medical evidence is insufficient to establish the second component of fact of injury, that the employment incident caused an injury. The medical reports of record do not establish that twisting at the window and putting money in the till at work caused a personal injury on March 8, 2010. The medical evidence contains no reasoned explanation of how the specific employment incident on March 8, 2010 caused or aggravated an injury.[9]

In support of her claim, appellant provided a March 8, 2010 duty status report, from Dr. Berrien-Jones who diagnosed strain in the hip. She checked the box "yes" in response to whether she believed the condition was caused by an activity at work. She filled in "twisted activity at work." Dr. Berrien-Jones' report, however, is of little probative value as the Board

[3] 5 U.S.C. §§ 8101-8193.

[4] *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *John J. Carlone*, 41 ECAB 354 (1989).

[8] *Id*.

[9] *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).

has held that the checking of a box "yes" on a form report, without additional explanation or rationale, is insufficient to establish causal relationship.[10] Here, Dr. Berrien-Jones provided no rationale explaining why twisting at work caused a hip strain. Other reports by Dr. Berrien-Jones do not specifically address the cause of appellant's condition.

Appellant submitted an April 9, 2010 report from Dr. Conklin who noted that appellant was complaining of back pain which she indicated began after she "bent to lift a heavy box at work" and opined that she most likely sustained "muscle strain." However, he did not provide his own opinion regarding the cause of appellant's hip pain or explanation of how her condition was causally related to her federal employment. As medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship, these reports are insufficient to establish appellant's claim.[11] The Board notes that the physician did not mention any of appellant's employment duties or discuss how any specific activities, such as twisting caused or contributed to her hip condition. This is especially important in light of the allegation by the employing establishment of a prior hip condition. The Board has found that rationalized medical evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician.[12]

The record also contains an April 8, 2010 report from Dr. Miragaya who noted that appellant was referred by her treating physician for chief complaints of low back pain, which started after she lifted a heavy box at work on March 8, 2010. In a September 28, 2010 report, Dr. Mandel noted that appellant attributed her symptoms to "lifting a heavy box at work on March 8, 2010." He also advised that "patient feels symptoms are job related. These reports are of limited probative value as the physicians did not offer a rationalized opinion with regard to the cause of appellant's condition. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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 of the claimant, 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.[13]

Other reports from physicians, submitted prior to OWCP's January 14, 2011 decision, are insufficient to establish the claim as they did not specifically address the cause of appellant's condition.[14]

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[10] *Calvin E. King*, 51 ECAB 394 (2000).

[11] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

[12] *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Solomon Polen*, 51 ECAB 341 (2000).

[13] *J.M.*, 58 ECAB 303 (2007); *A.D.*, *supra* note 11.

[14] *Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

Appellant provided an April 13, 2010 appointment schedule from a physical therapist. Health care providers such as physical therapists are not physicians under FECA. Thus, their opinions on causal relationship cannot constitute rationalized medical opinions and have no weight or probative value.[15]

Appellant has failed to provide such rationalized medical evidence in this case which explains how her twisting activity on March 8, 2010 caused or aggravated a left hip condition. Consequently, she did not meet her burden of proof to establish her claim.

On appeal, appellant asserts that the information required by OWCP is confusing for her physician. However, as noted above, the medical evidence is insufficient to establish her claim.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of FECA,[16] OWCP may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

> "(1) Shows that OWCP erroneously applied or interpreted a specific point of law; or
>
> "(2) Advances a relevant legal argument not previously considered by OWCP; or
>
> "(3) Constitutes relevant and pertinent new evidence not previously considered by OWCP."[17]

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.[18]

ANALYSIS -- ISSUE 2

On March 30, 2011 OWCP denied merit review finding that Dr. Mandel's February 24, 2011 report did not address causal relationship and was similar to his earlier report from September 28, 2010 which was previously considered. The underlying issue in this case, causal relationship, is medical in nature. The Board finds that the appellant has not submitted relevant and pertinent new evidence in support of her request for reconsideration.

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[15] *See Jane A. White*, 34 ECAB 515, 518 (1983).

[16] 5 U.S.C. § 8128(a).

[17] 20 C.F.R. § 10.606(b).

[18] *Id*. at § 10.608(b).

Appellant provided a new February 24, 2011 report from Dr. Mandel. This report noted the employment incident of March 8, 2010 and addressed causal relationship in a manner similar to his previously considered September 28, 2010 report. The Board finds that this evidence is cumulative and does not offer any relevant or pertinent new evidence on the relevant issue in this claim, causal relationship. OWCP already accepted the employment incident and previously found that Dr. Mandel prior opinion did not provide medical rationale addressing how his findings were related to the injury as reported by appellant. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[19] As Dr. Mandel's February 24, 2011 report essentially offered no new opinion or reasoning on the matter, it is repetitive of his prior report and insufficient to warrant a merit review of the claim. Furthermore, his March 14, 2011 treatment note, Dr. Mandel merely noted that appellant had complaints of back pain and provided an opinion that she was injured at work on March 8, 2010 without any discussion as to how he arrived as this conclusion. As such, this note is also repetitive of the Dr. Mandel's previously submitted reports regarding causal relationship.

Appellant did not provide any relevant and pertinent new medical evidence supporting how the specific employment incident on March 8, 2010 caused or aggravated an injury. She also did not otherwise show that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by OWCP.

As appellant did not meet one of the three regulatory criteria for reopening the claim for a merit review, OWCP properly denied her request for reconsideration.

CONCLUSION

The Board finds that appellant did not meet her burden of proof in establishing that she sustained a traumatic injury in the performance of duty on March 8, 2010. It also finds that OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

[19] *L.T.*, Docket No. 09-1798 (issued August 5, 2010).

ORDER

IT IS HEREBY ORDERED THAT the March 30 and January 14, 2011 Office of Workers' Compensation Programs' decisions are affirmed.

Issued: April 20, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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