

**United States Department of Labor
Employees' Compensation Appeals Board**

C.S., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Beltsville, MD, Employer)

**Docket No. 11-1984
Issued: April 5, 2012**

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 September 8, 2011 appellant filed a timely appeal from an August 9, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her traumatic injury claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 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 sustained an injury on April 2, 2011 in the performance of duty.

FACTUAL HISTORY

On April 6, 2011 appellant, then a 39-year-old letter carrier, filed a traumatic injury claim alleging that on April 2, 2011 she injured her lower back when she grabbed a parcel from the back of her truck and the back door flew back up. She did not stop work.

¹ 5 U.S.C. § 8101 *et seq.*

On April 2, 2011 appellant received treatment in the emergency room. She provided a history of experiencing burning in her back after an injury at work earlier that day. Dr. Erika Schroeder, Board-certified in emergency medicine, diagnosed back sprain.

In a duty status report dated April 6, 2011, Dr. Izzat Chalabi, a Board-certified internist, found pain and tenderness of the low back and right shoulder. He checked “yes” that the history provided by appellant corresponded to that on the form of her sustaining an injury lifting the back door of her truck. Dr. Chalabi determined that she was disabled from employment.

On June 20, 2011 appellant filed a claim for compensation from June 4 to 9, 2011. By letter dated July 8, 2011, OWCP informed her that it had initially paid medical expenses as it appeared to be an uncontroverted, minor injury but would now consider the merits of her claim. It advised appellant of the type of evidence required to establish her claim, including a rationalized medical opinion from her physician addressing how the work incident caused or aggravated a diagnosed condition.

Appellant submitted May 11 and 24, 2011 duty status reports from Dr. Chalabi, who provided clinical findings of tenderness and pain in the right shoulder and lower back and advised that she was disabled from work. Dr. Chalabi again checked “yes” that the history of injury she provided corresponded to that on the form of an injury occurring when she lifted the back door of her truck.

Appellant also submitted disability certificates dated April and May 2011 signed by an employee of Dr. Chalabi listing dates of disability and reports from a physical therapist. On April 15, 2011 Dr. Chalabi asserted that she was totally disabled from April 15 to 17, 2011 and could perform no heavy lifting.

By decision dated August 9, 2011, OWCP denied appellant’s claim after finding that she did not establish an injury as alleged. It accepted the occurrence of the alleged April 2, 2011 incident but found that the medical evidence was insufficient to show that she sustained a medical condition causally related to the April 2, 2011 employment

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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 filed within the 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 or an occupational disease.⁴

² 5 U.S.C. § 8101 *et seq.*

³ *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

⁴ *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether “fact of injury” is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.⁶ An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.⁷

ANALYSIS

Appellant filed a claim alleging that on April 2, 2011 she injured her back offloading a parcel from a truck. She sought medical treatment at the emergency room on the date of injury. The employing establishment did not controvert the claim and there are no inconsistencies sufficient to cast doubt that the April 2, 2011 employment incident occurred as alleged.⁸ The issue is thus whether appellant sustained a compensable injury as a result of the accepted work incident.

The Board finds that appellant has not established that the April 2, 2011 employment incident resulted in an injury to her back or right shoulder. In an emergency room report dated April 2, 2011, appellant provided a history of burning in her back after an injury at work. Dr. Schroeder diagnosed back sprain. She did not, however, specifically address the cause of the diagnosed back sprain or provide any rationale for her opinion; thus, her opinion is insufficient to meet appellant’s burden of proof.⁹

In duty status reports dated April 6 and May 11 and 24, 2011, Dr. Chalabi found right shoulder and back pain and tenderness and checked “yes” that the history of injury corresponded to that on the form of appellant sustaining an injury back lifting the back door of her truck. He asserted that she was unable to work. The Board has held, however, that an opinion on causal relationship which consists only of a physician checking “yes” to a medical form question on whether the claimant’s condition was related to the history given is of little probative value.

⁵ *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

⁶ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁷ *Id.*

⁸ *See Betty J. Smith*, 54 ECAB 174 (2002) (an employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim).

⁹ 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 causation. *See A.D.*, 58 ECAB 149 (2006).

Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.¹⁰

In a report dated April 15, 2011, Dr. Chalabi indicated that appellant was totally disabled from April 15 to 17, 2011. He further advised that due to her injuries she was unable to perform heavy lifting. Dr. Chalabi, however, did not reach a diagnosis, provide findings on examination or explain how the work incident resulted in disability. Without a firm diagnosis supported by medical rationale, the report is of little probative value.¹¹

Appellant additionally submitted disability certificates signed by an employee with Dr. Chalabi's office and numerous reports from a physical therapist. Section 8101(2) of FECA provides that the term "physician" includes surgeons, podiatrist, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.¹² Lay individuals such as physical therapist are not "physicians" as defined under FECA and thus their reports do not constitute competent medical evidence.¹³

An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there is a causal relationship between her claimed condition and her employment.¹⁴ She must submit a physician's report in which the physician reviews those factors of employment she identified as causing her condition and, taking these factors into consideration as well as findings upon examination and the medical history, explain how employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.¹⁵ Appellant failed to submit such evidence and therefore failed to discharge her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that she sustained an injury on April 2, 2011 in the performance of duty.

¹⁰ *Deborah L. Beatty*, 54 ECAB 334 (2003) (the checking of a box "yes" in a form report, without additional explanation or rationale, is insufficient to establish causal relationship).

¹¹ *See Samuel Senkow*, 50 ECAB 370 (1999) (finding that, because a physician's opinion of Legionnaire's disease was not definite and was unsupported by medical rationale, it was insufficient to establish causal relationship).

¹² 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238 (2005).

¹³ *See David P. Sawchuk*, 57 ECAB 316 (2006).

¹⁴ *D.E.*, 58 ECAB 448 (2007); *George H. Clark*, 56 ECAB 162 (2004); *Patricia J. Glenn*, 53 ECAB 159 (2001).

¹⁵ *D.D.*, 57 ECAB 734 (2006); *Robert Broome*, 55 ECAB 339 (2004).

ORDER

IT IS HEREBY ORDERED THAT the August 9, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 5, 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