United States Department of Labor
Employees' Compensation Appeals Board

D.G., Appellant	)	
and	)	**Docket No. 12-374**
	)	**Issued: August 24, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Livonia, 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
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 13, 2011 appellant filed a timely appeal from an October 26, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her traumatic injury claim. 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 the merits of this claim.

ISSUE

The issue is whether appellant established that she sustained a back condition in the performance of duty on February 8, 2011 as alleged.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 28, 2011 appellant, then a 27-year-old city carrier, filed a traumatic injury claim alleging that on February 8, 2011 she injured her back when she stepped off a snow mound and landed hard on her left foot during the performance of her duties. She stopped work on February 28, 2011.

In a February 28, 2011 statement, appellant described her injury. She submitted a February 8, 2011 e-mail from James H. Cappelii, a supervisor, who noted that appellant had called at 2:15 p.m. and stated that she was having back spasms which probably happened while she was crossing the median over a large mound of snow. Appellant indicated that she was going to complete her route.

On February 28, 2011 the employing establishment completed an authorization for treatment, Form CA-16, and appellant was treated for the claimed February 8, 2011 injury by Dr. Gregory Gingell, a chiropractor. In the February 28, 2011 CA-16, Dr. Gingell provided a history of appellant slipping down over snow. He diagnosed a lumbar strain with subluxation and opined with a check mark "yes" that the condition was caused or aggravated by the work incident. In a February 28, 2011 duty status report, Dr. Gingell provided an accurate history of injury, diagnosed a lumbar strain with subluxation and opined that appellant was totally disabled. An undated disability note from Dr. Gingell excused appellant from work on February 17, 18 and 19, 2011 to care for her spouse.

OWCP requested additional factual and medical evidence from appellant. This included: a report from her attending physician which included the dates of examination and treatment; history and date of injury given to the physician; a detailed description of findings; results of all x-ray and laboratory tests; diagnosis and clinical course of treatment followed; and the physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated a medical condition.

In a March 2, 2011 letter, the employing establishment controverted the claim, noting that appellant did not report the claimed injury until 20 days after the alleged incident. The employer stated that appellant completed her route on February 8, 2011 and continued to work through February 15, 2011 with no complaints. On February 17 through 19, 2011 appellant called off work to request annual leave/family medical leave to care for her husband who had an on-the-job injury. From February 21 through 28, 2011 she was on scheduled annual leave.

In a March 14, 2011 statement, appellant described the work injury and her activities while she was off duty in February. She stated that her back pain seemed to dissipate on February 8, 2011 and that she had no significant injury or illness between February 8 and 28, 2011. Appellant noted the type of care that she provided to her husband, basically assisting him with activities of daily living. She tried to relax and rest her back, but she experienced progressively worsening back pain, with numbness and weakness in her left leg and left foot. A February 8, 2011 offer of medical care indicated that, at that time, appellant chose not to receive medical care or file a traumatic injury claim.

Evidence from Dr. Gingell included: a list of examination and treatment dates from February 28 to March 18, 2011; March 11 and 25, 2011 disability notes for an acute lumbar sprain/strain with L4, L5 and S1 subluxation; and a March 17, 2011 report. He noted that appellant presented to his office on February 28, 2011 and related a history of stepping off a median while delivering mail and jamming her left foot and leg down, as one would do when not anticipating a drop off while walking. Dr. Gingell listed examination findings and noted February 28, 2011 x-ray findings included an L4 subluxation complex and further subluxation complex involvement at L3 and L5. He diagnosed acute lumbar subluxation complex with resulting lesion which he opined was consistent with the mechanism of injury (spinal compression).

By decision dated April 11, 2011, OWCP denied appellant's claim on the grounds that fact of injury was not established. It found that the medical evidence failed to provide a medical diagnosis in connection with the accepted event of February 8, 2011. OWCP noted that, although Dr. Gingell diagnosed acute lumbar strain with subluxation of L4, L5 and S1, he failed to provide his x-ray report to support his diagnosis.

On April 21, 2011 appellant disagreed with the April 11, 2011 decision and requested a telephonic hearing, which was held on August 9, 2011. She testified that she had a prior work injury which was accepted for a subluxation under claim number xxxxxx716 and that she treated with her chiropractor on an "as-needed" basis. Regarding the present injury, appellant indicated that she delayed in seeking treatment as she thought her back would get better without treatment and had rested her back while on vacation. She stated that she was released to light duty on July 11, 2011 but she was not able to return to work as the employer could not accommodate her restrictions.

In several Family Medical Leave Act reports, Dr. Gingell reported appellant's spouse was disabled from February 16 to 19 and February 28 through March 12, 2011.

In a July 21, 2011 report, Dr. Gingell noted that appellant was initially seen on February 28, 2011 for low back and left leg pain that she reported occurred as a result of a February 8, 2011 work injury. He noted an accurate history of the claimed injury and appellant stated that she had hoped that, during her vacation, resting and taking it easy would resolve her issue, but it did not. Dr. Gingell advised that the February 28, 2011 x-rays revealed that the L4 had lost its normal anatomic position as it was tipped sideways causing the L4-5 disc to be compressed on the left side. He noted examination findings and stated that the misstep off of the median on February 8, 2011 which caused spinal compression is consistent with the type of spinal lesions present. Dr. Gingell noted that severe symptoms could take days or weeks to develop and render a person disabled. He diagnosed acute lumbar subluxation complex with resulting disc lesion with foraminal encroachment. In a July 29, 2011 report, Dr. Gingell noted seeing appellant on February 28, 2011. He stated that he evaluated appellant and obtained several lumbar x-rays, which he reviewed and determined was an L4 subluxation. Dr. Gingell concluded that the L4 subluxation he viewed on x-ray and confirmed with physical examination was directly and proximately caused by the work-related injury of February 8, 2011. Copies of a May 6, 2011 magnetic resonance imaging scan report and an April 19, 2011 x-ray report were enclosed.

By decision dated October 26, 2011, an OWCP hearing representative affirmed the denial of appellant's claim but modified to reflect that the claim was denied on the grounds there was no well-rationalized medical opinion that her L4 subluxation was causally related to the February 8, 2011 work incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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.[2] 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.[3]

To determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[4] The second component of fact of injury is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[5]

Section 8101(2) provides that 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 and subject to regulations by the Secretary.[6] To be given any weight, the chiropractic report must state that x-rays support the finding of a spinal subluxation.[7]

ANALYSIS

OWCP accepted that the February 8, 2011 employment incident occurred as alleged. It denied appellant's claim on the grounds that Dr. Gingell's reports were insufficient to establish a

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

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

[4] *Michael E. Smith*, 50 ECAB 313 (1999).

[5] *Id.*

[6] 5 U.S.C. § 8101(2); *Paul Foster*, 56 ECAB 208 (2004). *Isabelle Mitchell*, 55 ECAB 623 (2004); *John E. Cannon*, 55 ECAB 585 (2004).

[7] 20 C.F.R. § 10.311(c). *See also George E. Williams*, 44 ECAB 530 (1993).

causal relationship between appellant's back condition and the February 8, 2011 employment incident.

Appellant was treated for the claimed February 8, 2011 injury by Dr. Gingell, a chiropractor on February 28, 2011. The employer completed a CA-16 authorization for treatment on February 28, 2011 and appellant was seen on that date. The record reflects that Dr. Gingell obtained x-rays that day of her lumbar spine and diagnosed an L3-4 subluxation complex that he opined was directly caused by the February 8, 2011 incident. As Dr. Gingell diagnosed subluxation of the lumbar spine from a February 28, 2011 x-ray, he is considered a physician as defined under FECA.[8] OWCP regulations provide that a chiropractor may interpret his own x-rays to the same extent as any other physician. They do not require that an x-ray film or x-ray report be submitted, as OWCP's April 11, 2011 decision found. Rather, the implementing regulations provide that the x-ray or a report of the x-ray be made available for submittal upon request.[9] A review of the record indicates that no request for Dr. Gingell's x-rays was ever made. The Board notes an OWCP medical adviser never requested to review the medical evidence from Dr. Gingell prior to OWCP's denial of the claim. The case will be remanded for referral to an OWCP medical adviser to review the evidence from Dr. Gingell.[10] On remand, OWCP should also consider if appellant is entitled to reimbursement of medical expenses, regardless of whether the claim is accepted, pursuant to the CA-16 form that was issued to her on February 28, 2011.[11] After such further development as OWCP deems necessary, it should issue an appropriate merit decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

[8] *See supra* note 6.

[9] A chiropractor may interpret his x-rays to the same extent as any other physician. 20 C.F.R. § 10.311(c). *See Mary A. Ceglia*, 55 ECAB 626 (2004).

[10] *See Anthony P. Silva*, 55 ECAB 179 (2003) (proceedings under FECA are not adversary in nature nor is OWCP a disinterested arbiter; while the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done).

[11] A properly executed CA-16 form creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim. *See P.A.*, Docket No. 12-198 (issued May 25, 2012); *Elaine M. Kreymborg*, 41 ECAB 256, 259 (1989).

ORDER

IT IS HEREBY ORDERED THAT the October 26, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further action consistent with this decision of the Board.

Issued: August 24, 2012
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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