United States Department of Labor
Employees' Compensation Appeals Board

E.S., Appellant	)	
and	)	**Docket No. 12-679**
	)	**Issued: August 22, 2012**
SOCIAL SECURITY ADMINISTRATION, FIELD OFFICE, Fort Worth, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 6, 2012 appellant filed a timely appeal from a September 16, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 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 June 3, 2010.

FACTUAL HISTORY

On June 4, 2010 appellant, then a 59-year-old case technician, filed a traumatic injury claim alleging that she twisted her body and feet to hold up a falling file cabinet on June 3, 2010.

[1] 5 U.S.C. § 8101 *et seq.*

She stopped work on June 7, 2010.[2] Status reports for the period June 17 to August 16, 2010 from Dr. Charles T. Miller, Jr., a chiropractor, excused appellant from performing her job functions from June 18 to August 27, 2010.

In a June 29, 2010 attending physician's report, Dr. Miller advised that a file cabinet fell toward appellant on June 3, 2010, causing her to back into a file cart, twist her body and injure her spine and feet. He noted that she previously underwent bilateral foot surgery. Dr. Miller's findings included bilateral ankle edema and cervical, thoracic and lumbar spasms and traumatic subluxations. He diagnosed closed dislocations of the cervical, thoracic and lumbar vertebrae and checked the "yes" box in response to a form question asking whether appellant's injuries were caused or aggravated by her federal employment.

In a July 8, 2010 report, Dr. Venkat Sethuraman, a Board-certified orthopedic surgeon, related appellant's account that she was opening a file cabinet on June 3, 2010 when the cabinet fell forward and pushed her against a cart. He pointed out that appellant had undergone ankle surgeries in May and June 2008. Physical examination results were unremarkable while x-rays exhibited lumbar spondylosis and degenerative disc disease.

A July 30, 2010 magnetic resonance imaging (MRI) scan obtained by Dr. Richard J. Suhler, a Board-certified diagnostic radiologist, showed degenerative lumbar changes, including L2-3 and L3-4 desiccation and bulges as well as L2-3 posterior annular tear. On the basis of these findings, Dr. Sethuraman diagnosed lumbar degenerative disc disease in an August 5, 2010 follow-up report.

Dr. Yong T. Pak, a Board-certified physiatrist, advised in an August 12, 2010 report that a file cabinet fell toward appellant on June 3, 2010. On examination, she observed lumbar paraspinal tenderness and elicited lower back pain during forward flexion and extension maneuvers. After reviewing the July 30, 2010 MRI scan results, Dr. Pak diagnosed L2-3 annular tear, lumbar degenerative disc disease and lower back pain. In an August 26, 2010 progress note, she reevaluated appellant and found thoracolumbar spinal tenderness and mild antalgic gait. Dr. Pak checked the "no" box to indicate that appellant was incapable of performing her normal job duties and recommended modified assignment in an August 26, 2010 work capacity evaluation form.

An August 31, 2010 note from Dr. Maria N. Biard, a Board-certified family practitioner, discharged appellant to full-time work effective September 9, 2010.

In an August 31, 2010 report, Dr. Richard Mills Roberts, a Board-certified orthopedic surgeon, stated that appellant was pinned between two file cabinets at work "almost three months ago." Appellant previously underwent a total of four surgeries sometime between March and October 2008 to correct chronic bilateral midfoot collapse. On examination, Dr. Roberts observed mild discomfort during foot flexion, extension and rotation maneuvers. X-rays exhibited bilateral talar screws and midfoot degenerative joint disease. Dr. Roberts diagnosed lower back strain and contusion and chronic bilateral midfoot collapse aggravated by the employment incident. In an August 31, 2010 work capacity evaluation form, he recommended

[2] Appellant subsequently filed multiple claims for compensation.

six weeks of sedentary duty. Appellant also provided June 17, 2010 medical notes signed by a nurse.

OWCP informed appellant in a September 20, 2010 letter that additional information was needed to establish her claim. It gave her 30 days to submit a factual statement detailing the June 3, 2010 employment incident and a medical report from a physician explaining how a diagnosed condition resulted from the purported event.

In an October 15, 2010 statement, appellant stated that she had opened the first drawer of the file cabinet and was returning several folders when the entire cabinet "began falling forward" on June 3, 2010. When the rest of the drawers started to slide out, she contorted her body awkwardly and used her right arm to protect her face. While appellant pushed the cabinet to its upright position, she stumbled backward into a large cart. She also recalled that she used her right foot to "push and keep the drawers in place."

By decision dated October 21, 2010, OWCP denied appellant's claim, finding the evidence insufficient to establish that an employment incident occurred on June 3, 2010 as alleged.

Appellant requested reconsideration on June 3, 2011 and submitted new evidence. In an October 27, 2010 letter to the employing establishment, she contested the assertion that she returned to work after the alleged June 3, 2010 work event "with no apparent difficulty." Appellant complained of debilitating left head, arm, shoulder, waist and back symptoms for the period October 22 to 25, 2010 in a November 8, 2010 follow-up letter.

An October 27, 2010 note from Dr. Biard discharged appellant to full-time work effective November 1, 2010. Appellant also submitted an unsigned October 27, 2010 report and various physical therapy records.

On September 16, 2011 OWCP denied modification of the October 21, 2010 decision.

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,[3] including that she is an "employee" within the meaning of FECA 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.

[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).

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.[6]

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[7] Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and her subsequent course of action. An employee has not met her burden in 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. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.[8]

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.[9]

ANALYSIS

The Board finds that appellant established that she was placing case folders in to a file cabinet on June 3, 2010 when the cabinet fell toward her. She twisted her body and used her right arm to avoid being hit by sliding drawers, pushed the cabinet to its upright position and stumbled backward into a cart. As noted, an employee's statement alleging that an incident occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence. Appellant's account of the June 3, 2010 incident was consistent throughout the case record. Her narrative paralleled the medical histories obtained by Drs. Miller, Pak and Sethuraman.[10] Furthermore, appellant filed her traumatic injury claim promptly on June 4, 2010 and received subsequent medical attention. While the employing establishment argued that she returned to work after June 3, 2010 without apparent difficulty,

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

[7] *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

[8] *Betty J. Smith*, 54 ECAB 174 (2002).

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

[10] *See Caroline Thomas*, 51 ECAB 451 (2000) (a consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can be evidence of the occurrence of the incident).

this contention was not substantiated by the case record. In view of the totality of the evidence, the Board finds that an employment incident occurred on June 3, 2010 as alleged.

The Board finds that the medical evidence does not establish that a back or lower extremity condition resulted from the accepted employment incident. In an August 31, 2010 report, Dr. Roberts related that appellant was pinned between two file cabinets at work "almost three months ago."[11] Following a physical examination and review of x-rays, he diagnosed lower back strain and contusion and aggravated chronic bilateral midfoot collapse secondary to federal employment and recommended six weeks of sedentary duty. Dr. Roberts, however, failed to explain how pushing a falling file cabinet to its upright position, twisting to avoid contact with sliding drawers and stumbling backward into a cart on June 3, 2010 pathophysiologically caused or contributed to the diagnosed condition.[12] Medical reports consisting solely of conclusory statements without supporting rationale are of diminished probative value.[13]

In a June 29, 2010 attending physician's report, Dr. Miller, a chiropractor, found traumatic subluxations of the cervical, thoracic and lumbar vertebrae and checked the "yes" box signifying that these injuries were causally related to the June 3, 2010 employment incident. As defined under FECA, a "physician" includes a chiropractor only to the extent that his or her reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.[14] Subluxation means an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays.[15] Although Dr. Miller diagnosed spinal subluxations, he did not show that his conclusion was supported by x-ray findings. Thus, he is not a "physician" with respect to these particular injuries and his opinion regarding their cause lacked evidentiary weight.[16]

Although both Drs. Sethuraman and Pak indicated in June and August 2010 reports that appellant sustained a lower back condition pain due to the June 3, 2010 event, their opinions did not provide fortifying medical rationale.[17] In addition, Dr. Biard's August 31 and October 27,

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

[12] *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994).

[13] *William C. Thomas*, 45 ECAB 591 (1994).

[14] 5 U.S.C. § 8101(2); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[15] 20 C.F.R. § 10.5(bb).

[16] The Board also points out that Dr. Miller's checkmark response, without further explanation or fortifying rationale, offered little probative value on the issue of causal relationship. *See also Theresa M. Fitzgerald*, 47 ECAB 689 (1996) (rationalized medical opinion evidence must relate diagnosed subluxation to employment incident). *Alberta S. Williamson*, 47 ECAB 569 (1996).

[17] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954).

2010 work status notes were of diminished probative value on the issue of causal relationship because she failed to address the matter.[18]

A medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician.[19] The unsigned October 27, 2010 report cannot constitute competent medical evidence because one cannot determine whether the individual who completed it is a qualified physician.[20] Finally, since neither a nurse nor a physical therapist is a "physician" as defined under FECA, the nurse's June 17, 2010 notes and various physical therapy records lacked probative value.[21] In the absence of rationalized medical opinion evidence, appellant failed to meet her burden of proof.

Appellant contends on appeal that the medical evidence established that she sustained injuries to her back and feet.[22] As noted, this evidence did not adequately attribute such injuries to the accepted June 3, 2010 employment incident. Appellant also submits new evidence on appeal. The Board, however, lacks jurisdiction to review evidence for the first time on appeal.[23] 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 June 3, 2010.

[18] *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[19] *Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949).

[20] *R.M.*, 59 ECAB 690, 693 (2008).

[21] 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238, 242 (2005) (nurse); *Jennifer L. Sharp*, 48 ECAB 209 (1996) (physical therapist).

[22] Appellant also presents arguments related to the occurrence of the June 3, 2010 work event. The Board has already accepted that this incident transpired.

[23] 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the September 16, 2011 decision of the Office Workers' Compensation Programs is affirmed as modified.

Issued: August 22, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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