United States Department of Labor
Employees' Compensation Appeals Board

A.C., Appellant	)	
and	)	**Docket No. 11-1574**
	)	**Issued: February 9, 2012**
U.S. POSTAL SERVICE, POST OFFICE, New York, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 23, 2011 appellant, through her attorney, filed a timely appeal from a May 4, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying modification of the denial of 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 has established that she sustained an injury in the performance of duty on October 26, 2007 as alleged.

FACTUAL HISTORY

This case has previously been before the Board. In a January 28, 2009 decision, the Board affirmed OWCP's April 10, 2008 decision which found appellant had not submitted

[1] 5 U.S.C. §§ 8101-8193.

sufficient medical evidence to establish that she sustained an injury in the performance of duty on October 26, 2007.[2] The facts and the law contained in this decision are incorporated herein by reference.

After OWCP's April 10, 2008 decision, appellant submitted additional evidence, some new and some previously of record. On September 16, 2009 appellant, through her attorney, requested reconsideration. She submitted physical therapy notes and pain management surgical notes signed by a physical therapist and a registered physician's assistant, some previously of record.

In a January 14, 2008 pain management surgical note, Dr. Cyrus Vosough, a physiatrist, provided objective findings regarding appellant's back. No diagnosis or opinion regarding causal relationship was provided. In a February 25, 2008 report, Dr. Vosough noted that appellant was involved in a work accident on October 26, 2007 and sustained injuries to her neck and low back. He provided his examination findings and diagnosed myofascial pain syndrome, cervical disc herniation, lumbar disc bulging and lumbar radiculopathy. Dr. Vosough opined that appellant was totally disabled and that the October 26, 2007 injury was the cause of her impairment and disability.

In a March 30, 2009 report, Dr. Ramkumar Panhani, an internist and pulmonologist, noted that appellant was injured on October 26, 2007 while working for the employing establishment. He reported that her magnetic resonance imaging (MRI) scans showed disc herniations at the C3-C4 and C4-C5 levels and a disc bulge at L5-S1. Dr. Panhani also noted that appellant had returned to light-duty work but still had pain in the lower back. He provided examination findings and recommended physical therapy three times a week for the next eight weeks. Disability notes from Dr. Panhani dated April 7, August 18, October 6 and November 3, 2008 were also provided, which noted that appellant was being treated for injuries sustained in a work-related accident of October 26, 2007.

In an October 19, 2009 report, Dr. Beth Massey, a family practitioner, noted being asked to address how appellant's employment caused her condition. She indicated that appellant was a seat-belted driver of a vehicle that was involved in a motor vehicle accident on October 26, 2007 while she was working for the employing establishment. Dr. Massey stated that, since appellant was working when she was injured in the automobile accident, it was work related. She further provided an explanation of trauma physics setting forth a mathematical formula and noting how change in orthopedic function results from mechanical forces into the spinal joints, ligaments, nerves and nerve roots. Dr. Massey stated that these forces are created during the sudden acceleration of body mass during an automobile collision. Also provided were treatment notes from an unidentified chiropractic provider.

On November 18, 2008 OWCP denied appellant's reconsideration request as being untimely filed and further found that, if the request was timely, the medical evidence submitted was of insufficient probative medical value to require a merit review. In a December 17, 2010

[2] Docket No. 08-1953 (issued January 28, 2009). On October 26, 2007 appellant, a letter carrier, filed a traumatic injury claim alleging that on that date she injured her lower back in a motor vehicle accident. She was initially diagnosed with head trauma at a local emergency room. Appellant did not return to work.

order remanding case, the Board set aside the November 18, 2009 decision, finding that the reconsideration request was timely filed, that OWCP acted improperly in denying the request as both timely and untimely and that OWCP provided insufficient findings and reasons under either standard. It remanded the case for OWCP to properly consider appellant's reconsideration request under the standard of review used for timely requests for reconsideration.[3]

By decision dated May 4, 2011, OWCP denied modification of its prior decision of January 28, 2009 denying appellant's claim. It found that she had not submitted a rationalized medical report relating her condition to the employment 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; and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[4]

In order to determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must first determine whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that is alleged to have occurred. The second component of fact of injury is whether the incident caused a personal injury, and, generally, this can be established only by medical evidence.[5]

When determining whether the implicated employment factors caused the claimant's diagnosed condition, OWCP generally relies on the rationalized medical opinion of a physician.[6] To be rationalized, the opinion must be based on a complete factual and medical background of the claimant,[7] and must be one of reasonable medical certainty,[8] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. This medical opinion must include an accurate history of the employee's work-related injury and must explain how the condition is related to the injury. The weight of medical

[3] Docket No. 10-471 (issued December 17, 2010).

[4] *Caroline Thomas*, 51 ECAB 451 (2000); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *Ellen L. Noble*, 55 ECAB 530 (2004).

[6] *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

[7] *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

[8] *John W. Montoya*, 54 ECAB 306 (2003).

evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[9]

The term physician is defined under section 8101(2), as follows: physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.[10] Registered nurses, licensed practical nurses and physicians assistants are not physicians under FECA, therefore, their reports do not constitute competent medical evidence in support of a claim.[11]

ANALYSIS

OWCP accepted that appellant was involved in a work-related motor vehicle accident on October 26, 2007. The Board previously affirmed the denial of her claim on the grounds that the evidence failed to establish a causal relationship between that incident and a diagnosed medical condition. The issue to resolve is whether appellant has established a causal relationship between the employment incident and a diagnosed condition. As discussed above, this issue must be resolved with rationalized medical evidence.

Dr. Vosough's reports are insufficient to establish appellant's claim. His January 14, 2008 report failed to provide confirmation of any diagnosis or an opinion as to the cause of her back condition. 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.[12] In his February 25, 2008 report, Dr. Vosough noted that appellant was involved in a work accident on October 26, 2007. However, there is no indication that he had an accurate factual history of injury as he did not indicate an awareness of how she was impacted during the accident. It is well established that medical reports must be based on a complete and accurate factual and medical background and that medical opinions based on an incomplete or inaccurate history are of diminished probative value.[13] Dr. Vosough also did not explain how the automobile accident caused or aggravated a particular injury. Additionally while he opined that the October 26, 2007 work injury resulted in appellant's current impairment and disability, his opinion carries little weight because no medical explanation of how the accepted employment incident caused or aggravated the diagnosed conditions is provided.[14]

In his March 30, 2009 report, Dr. Panhani noted that appellant was injured on October 26, 2007 while working for the employing establishment. However, there is no

[9] *James Mack*, 43 ECAB 321 (1991).

[10] 5 U.S.C. § 8101(2).

[11] *Jennifer L. Sharp*, 48 ECAB 209 (1996); *Thomas R. Horsfall*, 48 ECAB 180 (1996); *Barbara J. Williams*, 40 ECAB 649 (1988).

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

[13] *James R. Taylor*, 56 ECAB 537 (2005).

[14] *See Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value).

indication that he had a complete factual history of the motor vehicle accident and how she was impacted. Additionally, Dr. Panhani did not otherwise explain the reasons why the October 26, 2007 incident caused or aggravated a diagnosed medical condition. His other treatment records also did not explain the reasons why the motor vehicle accident caused a particular injury. Accordingly, Dr. Panhani's reports are not sufficient to establish appellant's claim.

Dr. Massey noted the history of the work incident and provided a general explanation of trauma physics to explain how injury could result from a collision. However, she did not specifically address the forces and mechanism regarding appellant's specific collision and her specific diagnosed conditions. Dr. Massey did not explain how the mathematical formula applied to any particular diagnosed condition that may have been caused or aggravated by the accepted work incident. Thus, her report contains insufficient medical rationale regarding the particulars of appellant's motor vehicle accident and how this accident caused or aggravated a specific diagnosed medical condition.[15]

While appellant also submitted physical therapy notes and pain management surgical notes signed by a physical therapist and a physician's assistant, it is well established that physical therapists and physician's assistants are not physicians as defined under FECA.[16] She also submitted chiropractic treatment records from an unidentified provider. As it cannot be determined who provided these records or if the chiropractic provider qualifies as a physician, this does not constitute probative medical evidence.[17] This material does not constitute probative medical evidence and is insufficient to establish appellant's claim.

Consequently, appellant has submitted insufficient medical evidence to establish a causal relationship between her accepted employment event and her diagnosed conditions.

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(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that she sustained an injury in the performance of duty on October 26, 2007 as alleged.

[15] *See Mary E. Marshall, id.*

[16] *See E.K.*, Docket No. 09-1827 (issued April 21, 2010) (lay individuals such as physicians' assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (provides that physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

[17] *See C.B.*, Docket No. 09-2027 (issued May 12, 2010) (a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8101(2) and reports lacking proper identification do not constitute probative medical evidence). Regarding chiropractors, 5 U.S.C. § 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. *See John E. Cannon*, 55 ECAB 585 (2004).

ORDER

IT IS HEREBY ORDERED THAT the May 4, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 9, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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