United States Department of Labor
Employees' Compensation Appeals Board

S.A., Appellant	)	
and	)	**Docket No. 11-1814**
	)	**Issued: February 8, 2012**
DEPARTMENT OF THE NAVY, NAVAL FACILITIES ENGINEERING COMMAND, APO, AE, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 22, 2011 appellant, through her attorney, filed a timely appeal from a June 28, 2011 merit decision of the Office of Workers' Compensation Programs' (OWCP) hearing representative which denied her traumatic injury claim. Pursuant to the Federal Employees' Compensation Act (FECA)[1] 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 in the performance of duty on May 6, 2009.

On appeal, appellant's counsel alleges that OWCP's decision was contrary to fact and law.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 2, 2010 appellant, then a 63-year-old senior realty specialist, filed a traumatic injury claim alleging that on May 7, 2009 she hurt her back when she picked up her suit case from an airport carousel.[2]

In a June 30, 2009 letter, Dr. Ryan A. Bell, a Board-certified internist, stated that appellant had a history of lower back pain that had greatly worsened over the past two months to the point that she could not walk without considerable pain. He noted that a June 29, 2009 neurological evaluation indicated that appellant may benefit from surgical intervention and that she requested to return to the United States for surgery and rehabilitation.

In a July 8, 2009 letter, the employing establishment explained that appellant began working overseas on April 10, 2009 after signing a 36-month transportation agreement. Appellant requested to be released from her transportation agreement due to medical reasons and the human resources office recommended that her request be approved. On July 14, 2009 the employing establishment approved her request to be released from her overseas service agreement. Appellant also submitted correspondence between the employing establishment's human resources office and her supervisors stating that she did not inform the human resources office of an on-the-job injury.[3]

On November 19, 2010 OWCP advised appellant that the evidence submitted was insufficient to establish that she experienced the alleged incident that caused her injury and to demonstrate that she suffered any diagnosed medical condition as a result of that incident. It requested additional factual and medical evidence to support her claim.

In a December 21, 2010 decision, OWCP denied appellant's claim finding that she failed to meet her burden of proof to establish that she experienced the alleged May 7, 2009 employment incident and that she sustained a diagnosed medical condition as a result of the alleged incident.

On December 30, 2010 appellant, through her representative, requested a telephone hearing that was held on April 19, 2011. Her representative was present. Appellant reported that she suffered a slipped disc in 2008 and underwent a microdiscectomy in 2006. She explained that she was on temporary-duty assignment from Naples, Italy to Bahrain, Iraq from May 3 to 7, 2009. Appellant brought a suitcase that weighed about 20 pounds. When she arrived in Bahrain, she picked up her suitcase from the conveyer belt and experienced a very sharp pain

[2] During her telephone hearing, appellant clarified that the employment incident occurred on May 6, 2009 and that the May 7, 2009 date on the claim form was a typographical error.

[3] In an October 19, 2010 memorandum, the employing establishment noted that appellant did not notify her supervisor of any claimed injury at the time that the alleged incident occurred but only requested to return early to the United States for medical reasons. The employing establishment stated that individuals who would have first-hand knowledge of the reason for her early return had also transferred so any details regarding an alleged job injury was unknown. In a November 10, 2010 e-mail, human resource specialist for the employing establishment stated that the human resources office was only aware of a request for an early release due to medical reasons and was not informed of any job-related injury and did not receive any information regarding an alleged job-related injury.

down her back. Appellant informed her supervisor that she hurt her back and her supervisor volunteered to carry her suitcase for her. She stated that there were no witness statements because the individuals she was traveling with did not see the incident, but she did tell them as soon as it happened that she hurt her back. Appellant did not see a doctor until she arrived back in Italy a few days later and was advised to rest for a few days. The pain, however, did not go away. By the end of July, appellant was in so much pain that she could not walk. She was referred to a neurosurgeon who recommended surgery.

On August 4, 2009 appellant returned to the United States for surgery. Her representative pointed out that appellant's doctor examined her on August 11, 2009 and indicated that she picked up something wrong in Italy and felt pain down her right side.[4] Appellant related the various medical treatments she received and surgeries she underwent. Her representative noted that he would submit the medical reports he mentioned.

In a June 28, 2011 decision, an OWCP hearing representative accepted that the May 7, 2009 incident occurred as alleged but found that the medical evidence was insufficient to establish that she sustained any diagnosed condition as a result of the accepted event.[5]

LEGAL PRECEDENT

An employee seeking compensation under FECA[6] has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,[7] including that she is an "employee" within the meaning of FECA[8] and that she filed her claim within the applicable time limitation.[9] 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.[10]

Casual relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical opinion evidence.[11] Rationalized medical opinion

[4] Appellant noted that the physician incorrectly stated that the incident in Italy when it actually occurred in Bahrain, Iraq.

[5] It pointed out that the only medical evidence submitted was Dr. Bell's June 30, 2009 report, which did not mention any May 7, 2009 work event or explain whether appellant's back pain resulted from a specific incident or event. The hearing representative also noted that, while additional medical evidence was discussed during the hearing, no evidence was received following the hearing.

[6] 5 U.S.C. §§ 8101-8193.

[7] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[8] *See M.H.*, 59 ECAB 461 (2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); *see* 5 U.S.C. § 8101(1).

[9] *R.C.*, 59 ECAB 42 (2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

[10] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[11] *D.E.*, 58 ECAB 448 (2007); *Mary J. Summers*, 55 ECAB 730 (2004).

evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the specified employment factors or incident.[12] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[13]

The Board has recognized that FECA covers an employee 24 hours a day when the employee is on travel status and engaged in activities essential or incidental to such duties.[14]

ANALYSIS

Appellant alleged that on May 6, 2009 she sustained a low back and leg injury when she picked up luggage at an airport carousel while on temporary travel status. It is not in dispute that she was in the performance of duty at the time of the incident. In a December 21, 2010 decision, OWCP denied appellant's claim finding insufficient factual evidence to demonstrate that the incident occurred as alleged and insufficient medical evidence establishing that the work event caused any condition. In a June 28, 2011 decision, a hearing representative accepted that the May 6, 2009 incident occurred as alleged but found the medical evidence insufficient to establish that she sustained any diagnosed condition as a result of the accepted employment incident. The Board finds that appellant failed to provide sufficient evidence demonstrating that she sustained a back condition as a result of the May 6, 2009 employment incident.

The only medical evidence submitted was Dr. Bell's June 30, 2009 report. Dr. Bell did not provide any diagnosis for appellant's condition but only noted that she suffered from back pain that had worsened over the past two months. The Board has found, however, that pain is not a compensable medical diagnosis.[15] Dr. Bell also failed to provide any opinion on the cause of appellant's back pain or explain how her back pain resulted from the May 6, 2009 work event. The Board has found that 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 causal relationship.[16] Thus, Dr. Bell's report is insufficient to establish appellant's claim.

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical opinion evidence.[17] As appellant has not submitted such rationalized medical opinion evidence in this case, she did not meet her burden of proof to establish her claim.

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

[13] *B.B.*, 59 ECAB 234 (2007); *D.S.*, Docket No. 09-860 (issued November 2, 2009).

[14] *See L.A.*, Docket No. 09-2778 (issued September 27, 2010).

[15] *Robert Broome*, 55 ECAB 339, 342 (2004).

[16] *K.W.*, 59 ECAB 271 (2007); *R.E.*, Docket No. 10-679 (issued November 16, 2010).

[17] *Mary J. Summers*, *supra* note 11.

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 did not meet her burden of proof to establish that she sustained an injury in the performance of duty on May 6, 2009.

ORDER

IT IS HEREBY ORDERED THAT the June 28, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 8, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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