

ISSUE

The issue is whether appellant has met her burden of proof to establish that her back condition is causally related to a March 1, 2011 employment incident, as alleged.

On appeal, appellant argues the merits of her claim.

FACTUAL HISTORY

On March 3, 2011 appellant, then a 48-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained a back injury on March 1, 2011 in the performance of duty as a result of pushing and trying to lift a heavily-loaded gurney over a hose which would not budge.

Appellant submitted a March 3, 2011 return to work slip and a March 15, 2011 physical therapy note.

By letter dated March 24, 2011, OWCP requested additional factual and medical evidence. It allotted appellant 30 days to submit additional evidence and respond to its inquiries.

Subsequently, appellant submitted a March 29, 2011 report by Dr. Naser Azar, a treating physician, who diagnosed lumbosacral sprain. She also submitted return to work slips dated March 4, 10, 29 and April 5, 2011, a physical therapy note dated April 1, 2011 and an offer of limited-duty employment as a modified rural carrier, which she accepted on March 15, 2011.

By decision dated April 29, 2011, OWCP accepted that the March 1, 2011 incident occurred as alleged but denied appellant's claim finding that she failed to submit evidence containing a medical diagnosis in connection with the injury or events. Thus, it concluded that she had not established fact of injury.

On May 23, 2011 appellant requested a review of the written record by an OWCP hearing representative and submitted a narrative statement.

In an April 19, 2011 report, Dr. Azar reiterated his diagnosis and indicated that appellant had recovered and no further treatment was necessary. He advised that she was able to return to work with no limitations.

Appellant submitted physical therapy notes dated March 21 to April 1, 2011.

By decision dated September 22, 2011, an OWCP hearing representative affirmed the April 29, 2011 decision finding that, although appellant established fact of injury, the evidence submitted was insufficient to establish causal relationship between the diagnosed condition and the March 1, 2011 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 timely filed within the applicable time limitation period of FECA, that an injury⁵ was sustained in the performance of duty, as alleged and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion 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 compensable employment factors. 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.⁸

ANALYSIS

OWCP has accepted that the employment incident of March 1, 2011 occurred at the time, place and in the manner alleged. The issue is whether appellant’s back condition resulted from the March 1, 2011 employment incident. The Board finds that she did not meet her burden of proof to establish a causal relationship between the condition for which compensation is claimed and the March 1, 2011 employment incident.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ OWCP’s regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

⁶ *T.H.*, 59 ECAB 388 (2008). See *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *Id.* See *Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *Id.* See *Gary J. Watling*, 52 ECAB 278 (2001).

In his reports, Dr. Azar diagnosed lumbosacral sprain. On April 19, 2011 he indicated that appellant had recovered and no further treatment was necessary. Dr. Azar advised that she was able to return to work with no limitations. The Board has held 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.⁹ Dr. Azar did not provide medical rationale explaining how appellant's back condition was caused or aggravated by trying to lift a heavily-loaded gurney over a hose in the performance of duty on March 1, 2011. Thus, the Board finds that appellant did not meet her burden of proof with the submission of Dr. Azar's reports.

The physical therapy notes dated March 15 to April 1, 2011 do not constitute medical evidence as they were not prepared by a physician.¹⁰ As such, the Board finds that appellant did not meet her burden of proof with these submissions.

As appellant has not submitted any rationalized medical evidence to support her allegation that she sustained an injury causally related to a March 1, 2011 employment incident, she has failed to meet her burden of proof.

On appeal, appellant argues the merits of her claim. For the reasons stated above, the Board finds that her arguments are not substantiated.

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 submitted sufficient rationalized medical opinion evidence to establish that her back condition was sustained on March 1, 2011 in the performance of duty, as alleged. Therefore, appellant has failed to meet her burden of proof to establish a claim for compensation.

⁹ See *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹⁰ Physical therapists are not physicians under FECA. See 5 U.S.C. § 8101(2).

ORDER

IT IS HEREBY ORDERED THAT the September 22, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 5, 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