United States Department of Labor
Employees' Compensation Appeals Board

S.J., Appellant	)	
and	)	**Docket No. 12-511**
	)	**Issued: September 6, 2012**
DEPARTMENT OF JUSTICE, BUREAU OF PRISONS-ALL OTHER, Los Angeles, CA, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 10, 2012 appellant filed a timely appeal from the November 18, 2011 Office of Workers' Compensation Programs' (OWCP) decision which denied modification of an August 5, 2011 decision, which found that appellant did not sustain an injury in the performance of duty. 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 case.

ISSUE

The issue is whether appellant met her burden of proof in establishing that she sustained a traumatic injury in the performance of duty on June 10, 2011.

FACTUAL HISTORY

On June 16, 2011 appellant, then a 45-year-old correctional system officer, filed a traumatic injury claim alleging that on June 10, 2011 she felt a sharp pain shooting from her

[1] 5 U.S.C. § 8101 *et seq.*

tailbone to the base of her neck while lifting boxes in the performance of duty. She did not initially stop work. The employing establishment supervisor indicated that he was not notified until June 16, 2011.

In a June 16, 2011 treatment note, Dr. Rory S. Brinkerhoff, a chiropractor, advised that he examined appellant for low back and neck pain. He indicated that she was unable to perform her normal duties due to pain and restricted motion and placed her off duty from June 16 through 30, 2011.

In a June 22, 2011 statement, Steve Gagliardi, the case management coordinator, explained that on June 15, 2011 Art Moore, a supervisory correctional systems specialist, advised him that appellant called in sick on Monday, June 13, 2011. Furthermore, he indicated that on June 14, 2011 she advised him that she was stuck in traffic and would not make it to the employing establishment. Mr. Gagliardi noted that Mr. Moore advised appellant that she did not have enough leave. Shortly thereafter, the present claim was filed. Furthermore, appellant did not inform her supervisor that she was injured until after she was informed that she had exhausted her annual and sick leave.

OWCP also received an injury assessment and follow-up sheet, which was illegible.

By letter dated June 27, 2011, OWCP advised appellant that additional factual and medical evidence was needed. It explained that the physician's opinion was crucial to appellant's claim and allotted her 30 days to submit the requested information.

In a July 13, 2011 statement, appellant indicated that her injury occurred on June 10, 2011. She noted that she did not immediately notify her supervisor because she did not think her injury was severe. However, over the weekend, appellant experienced back and neck pain and she did not work on Monday and Tuesday due to the pain. She advised that, on Wednesday, June 15, 2011, she reported the injury to the duty shift physician and the acting supervisor. Appellant explained that she saw her chiropractor on June 16, 2011 and he found that she was incapacitated for work.

In a July 13, 2011 statement, Officer R. Butler confirmed that he was working with appellant on June 10, 2011 and they were moving, lifting and stacking boxes. He noted that she indicated that she "hurt" her back and had to sit down. Mr. Butler advised that appellant was unable to continue lifting boxes.

In duty status reports dated July 12 and 22, 2011, Dr. Stacie Cruz, Board-certified in family medicine, diagnosed prophylactic vaccine for tetanus, diphtheria, acellular pertussis and strain of the back. She placed appellant off work from July 12 to 26, 2012. Dr. Cruz indicated that appellant could return to work on July 27, 2012. He saw appellant on July 22, 2011 and diagnosed strain of the shoulder, trapezius muscle and strain of the back. Dr. Cruz placed appellant off work from July 27 through August 1, 2011.

In a July 6, 2011 report, Dr. Michael Collins, an osteopath, noted appellant's history of injury. He advised that on June 10, 2011 appellant was processing files and lifting heavy boxes when she developed pain in her tailbone radiating to her neck. Dr. Collins noted that this happened on a Friday and she "did not seek immediate medical attention because she didn't

think it was serious so she self-treated with ice packs." He indicated that appellant reported the event to her employer and was seen on June 15, 2011 by the jobsite physician, who diagnosed strains and recommended that she see her physician. Dr. Collins related that she saw a chiropractor, whom she believed worsened her condition. He related that appellant advised that prior to June 10, 2011 she "did have chronic back pain rated 2/10 for which she would take Aleve" as needed. Dr. Collins noted that she had an established history of low back pain for the past three years for which she had sought treatment. He indicated that diagnostic tests such as x-rays and a magnetic resonance imaging (MRI) scan showed lumbar disc degeneration. Dr. Collins explained that appellant indicated that the activities she was performing on the date of injury did not include any specific lifting injury and she related that "she was lifting boxes no different than usual and in no different way than usual." He also noted that she reported that there was no improvement in her pain, despite being off work since June 16, 2011. Dr. Collins found mild disc degeneration without evidence of disc protrusion at L1-2 and an unremarkable disc at L2-3, L3-4 and L5-S1. Regarding L4-5, he determined that appellant had disc degeneration with disc space narrowing and diffuse disc protrusion with mild effacement of the dural sac and mild narrowing of the neural foramina. Dr. Collins diagnosed spondyloarthropathy and backache. He advised that, with regard to causation, he could not establish occupational causation to appellant's complaints. Dr. Collins opined that the "probability of [appellant's] current condition occurring independent of occupational factors is high. In other words [appellant's] condition is affected more by preexisting conditions rather than any specific occupational injury. I therefore opine that her back and neck pain are nonoccupational in nature, and should therefore be treated in a nonindustrial basis."

By decision dated August 5, 2011, OWCP denied appellant's claim on the grounds that she did not establish an injury as alleged. It found that there was no medical evidence supporting that the accepted employment incident caused a diagnosed condition. OWCP further found that Dr. Collins opined that the condition was preexisting rather than work related.

Appellant requested reconsideration on August 22, 2011 and submitted additional evidence. She advised OWCP that Dr. Collins was not her primary physician. Appellant indicated that his opinion was based on her medical history; however, previously, it had not interfered with her work duties until June 10, 2011 when she strained her back. She reiterated that her injury was work related. Appellant also requested continuation of pay for 38 days and noted that she returned to work on August 9, 2011.

In an August 11, 2011 report, Dr. Cruz opined that she treated appellant for muscle pain in the upper back on July 12, 2011. She noted that appellant lifted and turned while carrying a box and that she experienced back pain while carrying a box that weighed about 30 to 40 pounds.

In an August 17, 2011 report, Dr. Brinkerhoff advised that appellant was seen and treated in his office on August 17, 2011 for low back and neck pain. He explained that, while at work on June 10, 2011, she began experiencing pain while carrying approximately 47 boxes that weighed between 30 to 40 pounds. Dr. Brinkerhoff opined that appellant's subjective complaints and objective findings of palpatory tenderness, muscle spasms and restricted range of motion were consistent with the injury described.

By decision dated November 18, 2011, OWCP denied modification of its August 5, 2011 decision.

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 timely filed within the applicable time limitation period of FECA[2] and that an injury was sustained in the performance of duty.[3] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

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. 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.[5] 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.[6]

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.[7]

ANALYSIS

Appellant alleged that on June 10, 2011 she felt a sharp pain shooting from her tailbone to the base of her neck while lifting boxes in the performance of duty. The Board finds that the first component of fact of injury, the claimed incident, lifting boxes at work, occurred as alleged.

However, the medical evidence is insufficient to establish the second component of fact of injury, that the employment incident caused an injury. The medical reports of record do not establish that lifting boxes at work caused a personal injury to appellant's back, shoulder or neck.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989).

[3] *James E. Chadden Sr.*, 40 ECAB 312 (1988).

[4] *Delores C. Ellyett*, 41 ECAB 992 (1990).

[5] *John J. Carlone*, 41 ECAB 354 (1989).

[6] *Id*.

[7] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

The medical evidence contains no reasoned explanation of how the specific employment incident on June 10, 2011 caused or aggravated an injury.[8]

Appellant submitted several reports from Dr. Cruz, however, this evidence is insufficient to establish appellant's claim as she does not specifically address whether any factors of appellant's employment caused a diagnosed condition. Dr. Cruz merely noted in her August 11, 2011 report that she treated appellant for muscle pain on July 12, 2011. She advised that appellant experienced back pain after carrying a box weighing about 30 to 40 pounds. However, pain is considered a symptom, not a diagnosis and does not constitute a basis for payment of compensation in the absence of objective findings of disability.[9] The fact that work activities produced pain or discomfort revelatory of an underlying condition does not raise an inference of causal relation.[10] This is especially important in light of the fact that appellant had a chronic back condition and Dr. Cruz did not otherwise explain how appellant's work activities on June 10, 2011 caused or aggravated a diagnosed medical condition. Thus, these reports are of limited probative value.

Appellant submitted reports dated June 16 and August 17, 2011 from Dr. Brinkerhoff, a chiropractor, who advised that appellant was seen and treated for low back and neck pain. Section 8101(2) of FECA 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.[11] Dr. Brinkerhoff did not diagnose a subluxation based on x-rays.[12] In the absence of a diagnosis of subluxation based on x-rays, he is not a physician under FECA. Thus, the reports from Dr. Brinkerhoff have no probative value.[13]

The Board also notes that Dr. Collins was of the opinion that appellant's condition was not work related. Dr. Collins opined in his July 6, 2011 report that the "probability of [appellant's] current condition occurring independent of occupational factors is high. In other words [appellant's] condition is affected more by preexisting conditions rather than any specific occupational injury. I therefore opine that her back and neck pain are nonoccupational in nature, and should therefore be treated in a nonindustrial basis." He found no basis on which to attribute appellant's condition to work activities on June 10, 2011.

[8] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[9] *See John L. Clark*, 32 ECAB 1618 (1981); *Huie Lee Goad*, 1 ECAB 180 (1948).

[10] *Jimmie H. Duckett*, 52 ECAB 332 (2001).

[11] 5 U.S.C. § 8101(2).

[12] OWCP's implementing federal regulations define subluxation to mean an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrated on x-ray. *See* 20 C.F.R. § 10.5(bb).

[13] *Michelle Salazar*, 54 ECAB 523 (2003).

Other reports submitted by appellant do not specifically address how any particular diagnosed condition is causally related to appellant's work activities on June 10, 2011.

Because the medical reports submitted by appellant do not address how the June 10, 2011 incident caused or aggravated a neck, back or shoulder condition, these reports are of limited probative value[14] and are insufficient to establish that the June 10, 2011 employment incident caused or aggravated a specific injury.

On appeal, appellant disagreed with OWCP's findings and advised that her condition was work related. However, as noted above, the medical evidence does not establish that her condition is work related.

Appellant may submit evidence or argument with a written request for reconsideration 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 met her burden of proof in establishing that she sustained an injury in the performance of duty.

[14] *See Linda I. Sprague*, 48 ECAB 386, 389-90 (1997).

ORDER

IT IS HEREBY ORDERED THAT the November 18 and August 5, 2011 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 6, 2012
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board