United States Department of Labor
Employees' Compensation Appeals Board

S.B., Appellant	)	
and	)	**Docket No. 12-858**
	)	**Issued: September 4, 2012**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Covington, KY, 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 March 7, 2012 appellant filed a timely appeal from the December 30, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying 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 case.

ISSUE

The issue is whether appellant sustained a lumbar spine injury causally related to her employment on October 20, 2011.

FACTUAL HISTORY

On October 20, 2011 appellant, then a 63-year-old clerk, filed a traumatic injury claim alleging that she sustained a lower back injury at work on that date. She stated that she was

[1] 5 U.S.C. § 8101 *et seq.*

walking to retrieve a sweater when she felt dizzy and fell down outside Room 603. The employing establishment controverted the claim, contending that appellant had failed to establish the fact of injury, that the claimed incident occurred in the performance of duty or that the claimed incident caused a diagnosed condition.

On November 21, 2011 OWCP advised appellant that the information submitted was insufficient to establish her claim and requested additional information, including a detailed account of the alleged injury and a physician's report, with a diagnosis and a rationalized opinion as to the cause of the diagnosed condition.

Appellant submitted October 20, 2011 emergency department records from St. Elizabeth Covington North, where she was treated on that date by Dr. David L. Bracken, Board-certified in emergency medicine. The records reflect her report that she stumbled and fell backwards at work after becoming dizzy while standing. Examination revealed diffuse tenderness to palpation of the lower lumbosacral spine as well as over the sacrum. X-rays showed no fracture, malalignment or acute osseous abnormality. They did, however, reveal very mild hypertrophic degenerative changes in both hips and moderate to severe disc space narrowing and hypertrophic end plate changes at L4-5. Dr. Bracken diagnosed acute lumbosacral strain.[2]

The record contains a December 21, 2011 letter from Dr. Gregory A. Benbow, an employing establishment physician, who opined, based on his review of the record, that appellant did not sustain an employment-related injury, contending that appellant fell because she was dizzy. The record also contains an employing establishment claim for injury form wherein she alleged that she bruised her tailbone when she felt dizzy and fell down at work on October 20, 2011.

By decision dated December 30, 2011, OWCP denied appellant's claim. Although it accepted that the work event occurred as alleged, namely, that she fell at work on October 20, 2011 OWCP found that the evidence did not establish that the claimed medical condition was causally related to the established work-related event.

LEGAL PRECEDENT

FECA provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[3] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, arising out of and in the course of employment.[4]

[2] The October 20, 2011 emergency records also contain nursing notes, notes from a respiratory therapist and x-ray reports.

[3] 5 U.S.C. § 8102(a).

[4] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his 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 OWCP, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[5] When an employee claims that she sustained a traumatic injury in the performance of duty, he must establish the fact of injury, consisting of two components, which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place and in the manner alleged. The second is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[6]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[7] An award of compensation may not be based on appellant's belief of causal relationship.[8] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[9] Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under FECA.[10]

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 that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion must be based on a complete factual and medical background of the claimant, 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 established incident or factor of employment.[11]

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

[6] *Deborah L. Beatty*, 54 ECAB 340 (2003). *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). The term injury as defined by FECA, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q)(ee).

[7] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[8] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[9] *Id.*

[10] 20 C.F.R. § 10.303(a).

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

ANALYSIS

OWCP accepted that the workplace incident occurred as alleged, namely, that appellant fell at work on October 20, 2011. The issue, therefore, is whether she has submitted sufficient medical evidence to establish that the employment incident caused an injury. The medical evidence presented does not contain a rationalized medical opinion establishing that the work-related incident caused or aggravated any particular medical condition or disability. Therefore, appellant has failed to satisfy her burden of proof.

Medical evidence submitted in support of appellant's claim included October 20, 2011 emergency department records from St. Elizabeth Covington North, where she was treated by Dr. Bracken, who provided examination findings and diagnosed acute lumbosacral strain. Dr. Bracken related appellant's report that she stumbled and fell backwards at work after becoming dizzy while standing. He did not, however, provide an opinion that her fall caused her diagnosed back condition. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[12] Dr. Bracken did not identify or describe the nature of a relationship between the diagnosed lumbar condition and the established incident. Therefore, his report is insufficient to establish appellant's claim.[13]

Emergency department records also contain nursing notes, notes from a respiratory therapist and x-ray reports. As nurses and respiratory therapists do not qualify as "physicians" under FECA, these reports do not constitute probative medical evidence.[14] The remaining medical evidence of record including disability slips, x-rays and test results, which do not contain an opinion as to the cause of appellant's diagnosed back condition, are of limited probative value.

Appellant expressed her belief that her back condition resulted from the October 20, 2011 employment incident. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[15] Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[16]

OWCP advised appellant that it was her responsibility to provide a comprehensive medical report describing her symptoms, test results, diagnosis, treatment and the physician's

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

[13] *Cecilia M. Corley*, 56 ECAB 662 (2005).

[14] A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as "physician" as defined in 5 U.S.C. § 8101(2). Section 8101(2) of OWCP provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

[15] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[16] *Id.*

opinion, with medical reasons, on the cause of her condition. Appellant failed to submit appropriate medical documentation in response to OWCP's request. As there is no probative, rationalized medical evidence addressing how her back condition was caused or aggravated by her employment, she has not met her burden of proof to establish that she sustained an injury in the performance of duty on October 20, 2011.

The Board also notes that the employing establishment controverted the claim as an idiopathic fall. It is a well-settled principle of workers' compensation law that an injury resulting from an idiopathic fall where a personal nonoccupational pathology causes an employee to collapse and suffer injury upon striking the immediate supporting surface and there is no intervention or contribution by any hazard or special condition of employment is not within the coverage of FECA. Such an injury does not arise out of a risk connected with the employment and is, therefore, not compensable. However, the fact that the cause of a particular fall cannot be ascertained or that the reason it occurred cannot be explained, does not establish that it was due to an idiopathic condition. If the record does not establish that the particular fall was due to an idiopathic condition, it must be considered as merely an unexplained fall and therefore compensable. Even though appellant may have mentioned dizziness prior to the fall, there is no medical evidence that she fell due to an idiopathic cause. The fall remains an unexplained fall.[17]

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 failed to meet her burden of proof to establish that she sustained a traumatic injury in the performance of duty on October 20, 2011.

[17] *See A.C.*, Docket No. 11-952 (issued March 9, 2012); *G.B.*, Docket No. 10-2155 (issued June 1, 2011).

ORDER

IT IS HEREBY ORDERED THAT the December 30, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 4, 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