United States Department of Labor
Employees' Compensation Appeals Board

V.E., Appellant	)	
and	)	**Docket No. 12-913**
	)	**Issued: September 13, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Goldsboro, NC, Employer	)	

Appearances:
Daniel F. Read, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 13, 2012 appellant, through her attorney, filed a timely appeal from a January 17, 2012 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 established that she sustained a traumatic cervical spine injury causally related to an accepted August 13, 2008 work incident.

On appeal, counsel asserts that the medical evidence establishes that appellant sustained a traumatic injury to the cervical spine while pulling metal dividers at work on August 13, 2008. OWCP erred by finding that the evidence submitted in support of appellant's August 17, 2011 request for reconsideration was insufficient to establish her claim.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case was previously before the Board. In a January 11, 2011 decision,[2] the Board affirmed OWCP's January 7, 2010 decision denying appellant's claim for a traumatic cervical spine injury. The Board found that appellant had established as factual that on August 13, 2008, she pulled metal shelf dividers at work. Appellant did not submit sufficient medical evidence, however, to support that pulling the dividers caused or aggravated her cervical condition. The facts of the case as set forth in the Board's prior decision and order are incorporated by reference.

In an August 17, 2011 letter, appellant, through her attorney, requested reconsideration.[3] Counsel asserted that while Dr. Bronec could not say that appellant's condition was caused by the work incident, he could say that it was "probable." He submitted 243 chiropractic chart notes from the Goldsboro Spine Center dated August 9, 2006 to May 11, 2009. An October 1, 2008 treatment summary diagnosed chronic pain and stated that cervical x-rays were "on file." The signatures on each of the chart notes and the summary are not legible.

In August 11, 2011 comments to questions posed by counsel in a June 1, 2011 letter, Dr. Peter Bronec, an attending Board-certified orthopedic surgeon, affirmed his prior statement that pulling metal shelf dividers at work on August 13, 2008 "probably aggravated the underlying condition." He stated that his opinion on causal relationship was unchanged by the knowledge that appellant sought chiropractic care for her neck and back pain beginning two years prior to the August 13, 2008 work incident.

By decision dated January 17, 2012, OWCP denied appellant's claim on the grounds that causal relationship was not established. It found that the chiropractic notes, summary reports and Dr. Bronec's August 11, 2011 comments did not contain adequate medical rationale to support the causal relationship between pulling metal shelf dividers on August 13, 2008 and a worsening of appellant's preexisting cervical spine condition.

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 as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[5]

[2] Docket No. 10-841 (issued January 11, 2011).

[3] In November 29 and December 5, 2011 letters, counsel requested status updates on the reconsideration request.

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

[5] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

In order to determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.[6] 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.[7]

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medial 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 accepted that on August 13, 2008, appellant pulled metal shelf dividers at work. She claimed that this task caused a cervical spine injury or aggravated a preexisting neck condition. Pursuant to the prior appeal, the Board found that the medical evidence did not support the claimed causal relationship.

On August 17, 2011 counsel requested reconsideration. In support of this request, he submitted August 11, 2001 comments from Dr. Bronec, an attending Board-certified orthopedic surgeon, who reiterated his prior opinion that pulling the metal shelf dividers on August 13, 2008 "probably" aggravated appellant's neck condition, and that she sought chiropractic treatment for neck pain as early as 2006 did not change that opinion. However, Dr. Bronec did not explain how and why pulling the metal shelf dividers on August 13, 2008 would cause a cervical spine injury or aggravate a preexisting neck condition. He did not set forth the pathophysiologic process whereby the accepted work incident caused a new injury or precipitated an objective, demonstrable change in appellant's neck condition. Therefore, Dr. Bronec's report is insufficient to establish causal relationship in this case.[9]

Additionally, Dr. Bronec stated that the August 13, 2008 incident "probably" caused or aggravated a neck condition. In his request for reconsideration, counsel acknowledged that Dr. Bronec had not expressed his opinion with certainty. Coupled with the lack of medical rationale, the equivocal nature of Dr. Bronec's opinion further diminishes its probative quality.[10]

[6] *Gary J. Watling*, 52 ECAB 278 (2001).

[7] *Deborah L. Beatty*, 54 ECAB 340 (2003).

[8] *Victor J. Woodhams*, 41 ECAB 345 (1989); *Solomon Polen*, 51 ECAB 341 (2000); *I.S.*, 59 ECAB 408 (2008).

[9] *I.S.*, *supra* note 8.

[10] *T. M.*, Docket No. 08-975 (issued February 6, 2009).

Counsel also submitted chart notes from a chiropractor associated with the Goldsboro Chiropractic Center, dated from August 9, 2006 through May 11, 2009, as well as an October 1, 2008 treatment summary. 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] A chiropractor cannot be considered a physician under FECA unless it is established that there is a subluxation as demonstrated by x-ray evidence.[12] While the treatment summary mentions that there were cervical x-rays on file, there is no diagnosis of record based on those x-rays. The notes do not mention a spinal subluxation. As the chiropractor did not diagnose a subluxation as demonstrated by x-ray, he or she is not considered a physician under FECA and his or her report is of no probative medical value.[13]

As appellant did not submit rationalized medical evidence supporting a causal relationship between pulling metal shelf dividers on August 13, 2008 and the claimed neck condition, OWCP's January 17, 2012 decision denying the claim is proper under the law and facts of this case.

On appeal, counsel contends that OWCP erred by finding that the evidence submitted in support of appellant's August 17, 2011 request for reconsideration was insufficiently rationalized to establish her traumatic injury claim. Dr. Bronec's comments are found too speculative to establish causal relationship. The chiropractic notes do not constitute probative medical evidence.

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 a traumatic cervical spine injury in the performance of duty causally related to an accepted August 13, 2008 work incident.

[11] 5 U.S.C. § 8101(2); *see also Michelle Salazar*, 54 ECAB 523 (2003).

[12] OWCP's regulations, at 20 C.F.R. § 10.5(bb), defines subluxation to mean an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrated on x-ray. *See Mary A. Ceglia*, 55 ECAB 626 (2004).

[13] *Isabelle Mitchell*, 55 ECAB 623 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision dated January 17, 2012 of the Office of Workers' Compensation Programs is affirmed.

Issued: September 13, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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