

**United States Department of Labor
Employees' Compensation Appeals Board**

C.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Placida, FL, Employer**

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**Docket No. 12-1619
Issued: April 3, 2013**

Appearances:

*Alan J. Shapiro, 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 July 25, 2012 appellant, through her attorney, filed a timely appeal from the March 9 and June 29, 2012 merit decisions of the Office of Workers' Compensation Programs (OWCP) denying her claim for compensation. Pursuant to the Federal Employees' Compensation Act¹ (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 an employment-related injury on January 9, 2012, as alleged.

On appeal appellant, through counsel, contends that OWCP's decisions are contrary to fact and law.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 9, 2012 appellant, then a 46-year-old sales and service associate, filed a traumatic injury claim alleging that she picked up a package and stepped off a mat when she felt a sharp pain in her right and middle low back. She attached an attending physician's form completed by Dr. Andrew Eisenberg, a Board-certified family practitioner, who saw appellant on January 9, 2012 in the Emergency Department. Dr. Eisenberg diagnosed sciatica and checked a box indicating that he believed that her condition was caused or aggravated by the employment activity described. He noted that appellant should be reevaluated prior to reinstatement to work.

In a January 14, 2012 Florida Workers' Compensation Form, Dr. Dale Greenberg, a Board-certified orthopedic surgeon, listed the date of accident as January 9, 2012, diagnosed low back pain and concluded that the condition was work related. In a January 24, 2012 report, he again assessed appellant with low back pain, and indicated that he would see her for a follow-up after a magnetic resonance imaging (MRI) scan and x-rays. In a duty status report of the same date, Dr. Greenberg stated that she was advised to be off work. In response to questions sent by OWCP on January 30, 2012, he stated that appellant was injured at work but he was unable to determine if her sciatica was aggravated by the work injury of January 9, 2012.

By decision dated March 9, 2012, OWCP denied appellant's claim. It found that the medical evidence did not establish her back condition was related to the accepted incident of January 9, 2012.

Thereafter, OWCP received a January 31, 2012 report from Dr. Greenberg who reviewed appellant's x-rays and set forth findings upon physical examination. Dr. Greenberg noted that appellant's MRI scan revealed some mild disc degeneration and the possibility of a pilonidal cyst. On physical examination there was tenderness over the lower lumbar spine radiating into the right buttock region and tenderness over the right gluteal area, right lower lumbar spine and lower lumbar areas. Dr. Greenberg noted that appellant had pain with hyperextension and trunk rotation and pain in a radicular fashion radiating down her right leg. He listed an impression of low back pain with right lower extremity radiculopathy and possible pilonidal cyst.

Dr. Greenberg referred appellant to Dr. Gregory P. Gebauer, a Board-certified orthopedic surgeon. In a March 14, 2012 report, Dr. Gebauer noted that appellant's MRI scan revealed disc degeneration at the L4-5 and L5-S1 levels with no evidence of significant neural compression. He listed an impression of radiculopathy and sacroiliac joint pain. Dr. Gebauer noted that, although appellant did have radicular symptoms, she had no significant neural compression. He recommended physical therapy and pain medication. In a March 28, 2012 report, Dr. Gebauer noted that appellant continued to have debilitating pain. He diagnosed radiculopathy with S1 joint and low back pain. Dr. Gebauer opined that given the awkward step, the "landing funny," her pain developed while at work and was causally related to the employment incident.

On April 5, 2012 appellant requested reconsideration.

In an April 25, 2012 report, Dr. Gebauer noted that appellant continued to have severe pain. He reiterated the diagnosis of radiculopathy and S1 joint pain.

By decision dated June 29, 2012, OWCP denied appellant's claim. It denied modification of the March 9, 2012 decision.

LEGAL PRECEDENT

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.²

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, that an injury was sustained 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

In order to determine whether an employee sustained an 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, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.⁴ In order to meet his or her burden of proof to establish the fact that he or she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he or she actually experienced the employment injury or exposure at the time, place and in the manner alleged.⁵

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁶ The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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 of the claimant, must be one of reasonable medical certainty and

² 20 C.F.R. § 10.5(ee).

³ *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

⁴ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁵ *Linda S. Jackson*, 49 ECAB 486 (1998).

⁶ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

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 she sustained a back injury on January 9, 2012 when she stepped off a mat and felt a sharp pain. OWCP accepted that the employment incident occurred as alleged.

OWCP denied appellant's claim because it found that the medical evidence was not sufficient to establish a back condition causally related to this accepted incident. The Board notes that the medical evidence submitted by appellant is not sufficiently well rationalized or detailed to establish that she sustained a back condition causally related to the accepted incident. The evidence reflects that appellant sought medical attention on the date of the January 9, 2012 employment incident. Dr. Eisenberg saw appellant in the emergency department on that date; but he did not give a detailed report or offer adequate medical rationale in support of causal relation. He noted with a check mark that her condition was employment related. The Board has held that such forms are of diminished probative value on the issue of causal relation without further detail or explanation.⁸

Dr. Greenberg diagnosed low back pain and a possible pilonidal cyst. The Board has consistently held that pain is generally a symptom, not a firm medical diagnosis.⁹ A medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.¹⁰ Dr. Greenberg did not explain how the accepted employment incident caused or contributed to a diagnosed injury. Lacking this medical explanation, the Board finds that his report is insufficient to establish appellant's claim.

Dr. Gebauer noted generally that appellant's work injury caused her symptoms due to the fact that she had previous similar pain prior to the awkward step at work. However, he did not provide a full history of her back condition or a specific medical diagnosis.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition were caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.¹¹ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

⁷ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

⁸ *See Lester Covington*, 47 ECAB 539 (1996).

⁹ *C.F.*, Docket No. 08-1102 (issued October 10, 2008); *Robert Broome*, 55 ECAB 339 (2004).

¹⁰ *N.C.*, Docket No. 12-761 (issued November 1, 2012).

¹¹ *M.I.*, Docket No. 12-1519 (issued February 8, 2013).

Consequently, appellant has not met her burden of proof in establishing that she sustained an employment-related injury on January 9, 2012.

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 establish that she sustained an employment-related injury on January 9, 2012, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 29 and March 9, 2012 are affirmed.

Issued: April 3, 2013
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