United States Department of Labor
Employees' Compensation Appeals Board

L.H., Appellant	)	
and	)	**Docket No. 13-184**
	)	**Issued: April 15, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Fort Worth, TX, 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
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On November 2, 2012 appellant filed a timely appeal from May 21 and October 17, 2012 merit decisions of the Office of Workers' Compensation Programs (OWCP). 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 to establish a back injury in the performance of duty on March 17, 2012.

FACTUAL HISTORY

On March 21, 2012 appellant, then a 53-year-old rural carrier, filed a traumatic injury claim alleging that on March 17, 2012 she ruptured a disc in her lower back after picking up Delivery Point Sequencing Mail. She stopped work and returned to full duty on April 12, 2012.

[1] 5 U.S.C. § 8101 *et seq.*

The employing establishment controverted appellant's claim based on fact of injury and causal relationship.

On April 16, 2012 OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested additional factual evidence to establish that she experienced the incident alleged to have caused her injury and a medical report, which included dates of examination and treatment, history of injury, description of findings, a medical diagnosis and an opinion, supported by medical rationale, explaining how the alleged employment incident caused or aggravated her medical condition.

In an April 13, 2012 duty status report, a chiropractor with an illegible signature noted that appellant was a letter carrier who experienced pain in her lumbar area when she picked up Delivery Point Sequencing Mail. Appellant was authorized to return to full duty.

In an April 18, 2012 report, Dr. Jarrett Armstrong, a chiropractor, recommended appellant be evaluated by Dr. Robert Myles, a Board-certified orthopedic surgeon, due to her limited results and continued pain in the lumbar and sacroiliac regions.

Appellant submitted requests for absences from the employing establishment for the period March 17 to 31 and April 7 to 20, 2012.

In a decision dated May 21, 2012, OWCP denied appellant's claim finding insufficient evidence to establish fact of injury. It determined that she did not provide sufficient evidence to establish that the March 17, 2012 incident occurred as alleged and that she sustained any diagnosed condition as a result of the alleged incident.

On June 20, 2012 appellant requested a review of the written record.

In an undated handwritten statement, appellant stated that she tried to contact various physicians but they were out of business and that she was waiting until June 2012 to see the referred physician. She noted that she would do anything that OWCP asked her to do and that she wanted to fix her back as soon as possible so she could return to work.

Dr. Ronald L. Chio, a Board-certified internist, in a May 24, 2012 report, stated that he was unable to examine appellant because his office did not accept workers' compensation cases.

In a June 6, 2012 report, Dr. Les Benson, a Board-certified psychiatrist and neurologist, noted appellant's complaints of a low back injury at work. He explained that she picked up Delivery Point Sequencing Mail to place it in case when she felt a pop in her back. Appellant was initially just uncomfortable, but the pain quickly worsened until she could not bear the pain. She tried to work the next week, but went home because of intense pain. Dr. Benson reviewed appellant's history and conducted an examination. He observed decreased range of motion of the spine and palpable spasm. Straight leg raise testing was positive. Dr. Benson diagnosed lumbar strain and intervertebral disc disease (IVD) of the lumbar spine. He opined with reasonable medical certainty that the injuries appellant suffered on March 17, 2012 were the result of the performance of her duties while working as a letter carrier for the employing establishment. Dr. Benson concluded that appellant's lumbar injury was a direct result of when she picked up Delivery Point Sequencing Mail and felt a pop in her low back.

In nearly identical reports dated from June 19 to October 2, 2012, Dr. Benson noted that appellant was treated for an injury sustained while working for the employing establishment. He diagnosed lumbar sprain/strain and lumbar disc disease. Upon examination, Dr. Benson observed decreased range of motion and inability to tolerate walking and standing. He opined that appellant was totally disabled from June 6 to November 6, 2012 when she would be evaluated for further care.

In a June 30, 2012 magnetic resonance imaging (MRI) scan report, Dr. Paul Marsh, a radiologist, noted severe scoliotic curvature of the lumbar spine and severe facet arthropathy especially rightward at T10-11. He also observed diffuse disc bulge and slight foraminal narrowing at the L1-2, mild facet arthropathy and mild diffuse disc bulge at L2-3, moderate to severe facet arthropathy and diffuse disc bulge at L4-5 and moderate to severe facet arthropathy and mild diffuse disc bulge at L5-S1.

The employing establishment again controverted appellant's claim, by statement of September 4, 2012, finding that she had been off work since April 10, 2012 and continued to be diagnosed with lumbar sprain/strain, which should have resolved. It noted that the diagnosis of lumbar IVD was more conducive with an occupational disease claim and not a traumatic injury. The employing establishment reported that no medical evidence was provided to establish that appellant's condition was caused by her federal employment.

By decision dated October 17, 2012, an OWCP hearing representative affirmed the May 21, 2012 denial decision finding insufficient evidence to establish that she sustained any injury as a result of the alleged March 17, 2012 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of proof to establish the essential elements of her claim by the weight of the reliable, probative and substantial evidence[3] including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether "fact of injury" has been established.[5] There are two components involved in establishing the fact of injury. 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.[6] Second, the employee must submit

[2] 5 U.S.C. §§ 8101-8193.

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[4] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[6] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[7]

An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. An employee has not met his or her burden of proof establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[8]

The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[9] Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.[10] 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.[11] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[12]

ANALYSIS

Appellant alleged that she sustained a back injury on March 17, 2012 when she picked up Delivery Point Sequence Mail at work.[13] She stopped work and filed a traumatic injury claim on March 21, 2012. By decisions dated May 21 and October 17, 2012, OWCP denied appellant's claim finding insufficient evidence to establish fact of injury.

[7] *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *D.B.*, 58 ECAB 464, 466-67 (2007).

[9] *J.Z.*, 58 ECAB 529 (2007).

[10] *Id.*; *Paul E. Thams*, 56 ECAB 503 (2005).

[11] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

[12] *James Mack*, 43 ECAB 321 (1991).

[13] "[Direct point sequence]" denotes presorted mail.

OWCP found that the evidence was not sufficient to establish the March 17, 2012 employment incident. The Board finds, however, that the evidence is sufficient to establish the March 17, 2012 work incident. The record reflects that appellant's subsequent course of action following the alleged employment incident is consistent with her statement describing the March 17, 2012 incident. Appellant stopped work immediately on March 17, 2012 after the employment incident occurred and filed a traumatic injury claim a few days later on March 21, 2012. She did not return to work until April 12, 2012. As previously noted, an employee's statement regarding the occurrence of an employment incident is of great probative force and will stand unless refuted by strong or persuasive evidence. There is no evidence in the record, such as inconsistent statements, late notification of injury or failure to obtain medical treatment, to refute appellant's description of the March 17, 2012 incident.[14] The fact that Dr. Benson parrotted what she stated is not evidence of the incident. Accordingly, the Board finds that appellant has established the March 17, 2012 employment incident.[15]

Although appellant has established that, the March 17, 2012 incident occurred, she also bears the burden of proof to establish that the employment incident caused a personal injury.[16]

Appellant submitted nearly identical reports by Dr. Benson dated June 19 to October 2, 2012. In his June 6, 2012 report, Dr. Benson reviewed her history and related that on March 17, 2012 she picked up mail at work and felt a pop in her low back. Upon examination, he observed decreased range of motion of the spine and noted positive straight leg raise testing. Dr. Benson diagnosed lumbar strain and disc disease of the lumbar spine. He opined that the injuries appellant suffered on March 17, 2012 were the result of the "performance of her duties while working as a letter carrier for the employing establishment." Although Dr. Benson provides an accurate history of injury and a firm, medical diagnosis, his conclusion regarding causal relationship is insufficient to establish appellant's claim because he does not explain, with medical rationale, how picking up mail at work caused her lumbar sprain and lumbar spine disc disease. The Board has held that medical evidence that states a conclusion but does not offer any rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[17] Thus, Dr. Benson's opinion is insufficient to establish causal relationship.

Appellant also submitted a May 24, 2012 report by Dr. Chio and a June 30, 2012 MRI scan report by Dr. Marsh. While both physicians noted appellant's back injury, neither provided an opinion on the cause of the injury. 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.[18] These reports, therefore, are also insufficient to meet appellant's burden of proof.

[14] *Supra* note 8.

[15] *See M.H.*, 59 ECAB 461 (2008).

[16] *Supra* note 7.

[17] *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

[18] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *Id*.

The additional medical evidence is from a chiropractor. 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 subluxation as demonstrated by x-ray to exist.[19] As none of the reports contain a diagnosis of spinal subluxation based on an x-ray, the chiropractor is not considered a physician under FECA and her opinions are of no probative valuable.

On appeal, appellant alleges that OWCP's decision erred in fact of law in regard to 5 U.S.C. § 8122, but she does not otherwise explain how the decision was erroneous. Because the record does not contain probative medical evidence establishing that her back condition was causally related to the March 17, 2012 employment incident, the Board finds that she did not meet her burden of proof to establish her claim. Causal relationship is a medical issue that can only be shown by reasoned medical opinion evidence that is supported by medical rationale.[20] Appellant has not provided such evidence in this case.

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 did not meet her burden of proof to establish that her back condition was causally related to the March 17, 2012 employment incident.

[19] 5 U.S.C. § 8101(2); *see also E.W.*, Docket No. 09-6 (issued February 17, 2009); *George E. Williams*, 44 ECAB 530 (1993).

[20] *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

ORDER

IT IS HEREBY ORDERED THAT the October 17 and May 21, 2012 decisions of the Office of Workers' Compensation Programs are affirmed as modified.

Issued: April 15, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board