

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

C.K., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS HEALTH ADMINISTRATION,)
Sheridan, WY, Employer)

**Docket No. 13-504
Issued: April 25, 2013**

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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 2, 2013 appellant filed a timely appeal from an August 15, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her traumatic injury claim. 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 met her burden of proof to establish that she sustained an injury in the performance of duty on April 3, 2012.

FACTUAL HISTORY

On April 4, 2012 appellant, then a 51-year-old pharmacy technician, filed a traumatic injury claim (Form CA-1) alleging that on April 3, 2012 she sustained low back and leg pain and

¹ 5 U.S.C. § 8101 *et seq.*

numbness in the left foot when she was pushing a medication cart full of medication and supplies up an incline. Two witness statements dated April 4, 2012 were provided which stated that she complained of back pain after pushing a cart at work. Appellant notified her supervisor on April 3, 2012.

By letter dated April 16, 2012, the employing establishment controverted the claim stating that appellant failed to establish causal relationship.

In an April 10, 2012 medical report, Dr. Susan K. Roberts, Board-certified in family medicine, reported that she began treating appellant on April 10, 2012 for a work-related back injury which occurred on April 3, 2012. She diagnosed sciatica and muscle spasms and restricted appellant from lifting, pushing or pulling objects over 20 pounds.

In an April 11, 2012 diagnostic report, Dr. Jason M. White, a Board-certified diagnostic radiologist, reported that an x-ray of the thoracic spine revealed mild disc space narrowing and spondylosis at T11-12 and T12-L1 with no fracture. An x-ray of the lumbar spine revealed multilevel disc space narrowing with spondylosis without fracture. Dr. White noted a history of injured back when pushing cart, pain.

In an April 18, 2012 medical report, Dr. Roberts reported that appellant experienced the onset of pain after pushing a cart weighing 50 to 75 pounds. She noted that x-rays revealed degenerative disc disease, T11-12 and showed no evidence of serious injury. Dr. Roberts stated that appellant's musculoskeletal back pain and sciatica were improving and recommended continued work restrictions. In a May 2, 2012 medical report, she reported that appellant had fully healed, reached maximum improvement and could return to regular duty without restrictions.

By letter dated May 22, 2012, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the medical and factual evidence needed and was directed to submit it within 30 days.

In a June 3, 2012 narrative statement, appellant reported that she informed her coworkers and supervisor on April 3, 2012 when she initially began to experience low back pain. The following day she also felt tingling in her left leg and foot. Appellant sought treatment with Dr. Roberts on April 10, 2012 and had trouble working due to the pain in her neck and back. She stated that she had no prior back injuries or back problems until April 3, 2012.

In support of her claim, appellant resubmitted medical evidence already of record and an April 10, 2012 chart note from Dr. Roberts which repeated her diagnosis of sciatica and muscle spasms. She also submitted a June 4, 2012 witness statement from Jollene Hallcroft, a coworker, who reported that appellant could not make deliveries because her back was out.

By decision dated August 15, 2012, OWCP denied appellant's claim on the grounds that the evidence was insufficient to establish that she sustained an injury. It found that the incident occurred as alleged; however, the evidence failed to provide a firm medical diagnosis which could be reasonably attributed to the accepted employment incident. OWCP further noted that the medical evidence submitted contained a diagnosis of "pain" which is a symptom and not a diagnosed medical 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 or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.³

In order to determine whether an employee actually 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 which is alleged to have occurred.⁴ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁵ 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 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. This medical opinion must include an accurate history of the employee’s employment injury and must explain how the condition is related to the injury. The weight of 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.⁶

ANALYSIS

OWCP accepted that the April 3, 2012 incident occurred as alleged. It denied appellant’s claim on the grounds that it lacked sufficient medical evidence to support that the alleged condition was medically related to the April 3, 2012 employment incident. The Board finds that

² *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

³ *Michael E. Smith*, 50 ECAB 313 (1999).

⁴ *Elaine Pendleton*, *supra* note 2.

⁵ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁶ *James Mack*, 43 ECAB 321 (1991).

she did not submit sufficient medical evidence to support that she sustained a back injury causally related to the April 3, 2012 employment incident.⁷

In an April 11, 2012 diagnostic report, Dr. White reported that an x-ray of the thoracic spine revealed mild disc space narrowing and spondylosis at T11-12 and T12-L1. An x-ray of the lumbar spine revealed multilevel disc space narrowing with spondylosis. In medical reports dated April 10 to May 2, 2012, Dr. Roberts diagnosed sciatica, muscle spasms, musculoskeletal back pain and degenerative disc disease at T11-12.

In its August 15, 2012 decision, OWCP found insufficient evidence to establish a firm medical diagnosis of appellant's condition. The Board finds, however, that, contrary to the OWCP finding, the medical evidence of record establishes a sufficient diagnosis of sciatica, muscle spasms, degenerative disc disease, mild disc space narrowing, spondylosis at T11-12 and T12-L1 and multilevel disc space narrowing of the lumbar spine with spondylosis. Dr. White provided a diagnosis of mild disc space narrowing, spondylosis at T11-12 and T12-L1 and multilevel disc space narrowing with spondylosis based on x-rays of the lumbar and thoracic spine. Upon physical examination and review of diagnostic test results, Dr. Roberts established a sufficient diagnosis of sciatica, muscle spasms and degenerative disc disease. Her diagnosis of musculoskeletal back pain is a symptom, however, and not a compensable medical diagnosis.⁸ Given that appellant has established a diagnosed condition, the question becomes whether the April 3, 2012 incident caused her back injury. Thus, appellant must submit rationalized medical evidence to establish that her diagnosed medical conditions are causally related to the accepted April 3, 2012 employment incident.

In medical reports dated April 10 to May 2, 2012, Dr. Roberts reported that she began treating appellant for a work-related back injury which occurred on April 3, 2012 after she experienced the onset of back pain from pushing a cart weighing 50 to 75 pounds. She diagnosed sciatica, muscle spasms, musculoskeletal back pain and noted that x-rays revealed degenerative disc disease at T11-12. Dr. Roberts provided appellant with work restrictions and stated that she could return to regular duty and was fully healed as of May 2, 2012.

While Dr. Roberts' reports establish a diagnosis, they are not rationalized as to the issue of causal relation. In her reports, she noted that appellant sustained a work-related injury on April 3, 2012 when she was pushing a cart weighing 50 to 75 pounds. Though Dr. Roberts diagnosed appellant's injury, she failed to provide an opinion on causal relationship. She did not provide details regarding appellant's medical history or comment on any potential preexisting back conditions. Dr. Roberts merely recounted the incident as described by appellant, did not determine that her condition was work related and did not offer a rationalized opinion on the issue of causal relationship.⁹ 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

⁷ See *Robert Broome*, 55 ECAB 339 (2004).

⁸ *Id.*

⁹ *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

relationship.¹⁰ The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.¹¹ Dr. Roberts' reports do not meet that standard and are insufficient to meet appellant's burden of proof.¹²

The remaining medical evidence of record is also insufficient to establish causal relationship between appellant's injuries and the April 3, 2010 employment incident. While Dr. White noted a history of back injury when pushing a cart, his diagnostic report fails to state any opinion on causal relationship.¹³ Thus, the additional medical reports are of limited probative value.

On appeal, appellant provided extensive detail regarding her back injury and the pain she experienced. Her recitation of the facts does not support her allegation that the April 3, 2012 employment incident caused her injury.¹⁴ Nor do the statements by appellant's coworkers confirm allegations of back pain. An award of compensation may not be based on surmise, conjecture or speculation.¹⁵ To establish a firm medical diagnosis and causal relationship, appellant must submit a physician's report in which the physician reviews those factors of employment alleged to have caused her condition and, taking these factors into consideration, as well as findings upon examination and her medical history, explain how these employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his opinion.¹⁶ Thus, she has failed to meet her burden of proof.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 and 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a back injury on April 3, 2012 in the performance of duty.

¹⁰ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹¹ *See Lee R. Haywood*, 48 ECAB 145 (1996).

¹² *Supra* note 10.

¹³ *Supra* note 10.

¹⁴ *Paul Foster*, 56 ECAB 1943 (2004); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

¹⁵ *D.D.*, 57 ECAB 734 (2006).

¹⁶ *Supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the August 15, 2012 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: April 25, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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