United States Department of Labor
Employees' Compensation Appeals Board

K.R., Appellant	)	
and	)	**Docket No. 13-1389**
	)	**Issued: December 2, 2013**
DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF PRISONS, Bennettsville, SC, Employer	)	

Appearances:
Joe Mansour, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 22, 2013 appellant, through her representative, filed a timely appeal from the December 4, 2012 merit decision and the February 27, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP), which denied her 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 to review the merits of this case.[2]

ISSUES

The issues are: (1) whether appellant sustained a traumatic injury in the performance of duty on February 27, 2012; and (2) whether OWCP properly denied his request for reconsideration under 5 U.S.C. § 8128(a).

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant's representative filed a timely request for an oral argument, which the Board denied, after exercising its discretion, by order on September 10, 2013. *Order Denying Request for Oral Argument*, Docket No. 13-1389 (issued September 10, 2013).

FACTUAL HISTORY

On March 9, 2012 appellant, a 38-year-old medication technician, filed a traumatic injury claim alleging pain in the middle of her back on the morning of February 27, 2012 after she pulled a box down from an upper shelf and stepped down from a stool.

OWCP received a medical report, dictated but not approved, from a physician's assistant. The report was unsigned.

In a decision dated April 26, 2012, OWCP denied appellant's injury claim. It found that the evidence was sufficient to establish that the February 27, 2012 work incident occurred as alleged, but there was no medical evidence from a qualified physician providing a medical diagnosis or an opinion on whether the diagnosis was causally related to the accepted work incident.

Appellant requested a telephonic hearing before an OWCP hearing representative.

OWCP received a March 31, 2012 attending physician's form report from Dr. James E. Rice, a Board-certified orthopedic surgeon, who noted a history of the February 27, 2012 incident, listed findings and diagnosed cervicalgia, degenerative disc disease and cervical radiculopathy. With an affirmative mark, Dr. Rice indicated that appellant's condition was caused or aggravated by the employment activity.

An April 11, 2012 magnetic resonance imaging (MRI) scan of the cervical spine showed very early degenerative disc disease at the C4-6 levels and no significant neural foraminal or central spinal canal narrowing.

On May 14, 2012 Dr. Rice offered a more detailed record of appellant's medical evaluation. On March 28, 2012 he electronically signed the physician's assistant's March 7, 2012 report. "Those findings were reviewed by me, [appellant's] physical exam[ination], interview and x-ray findings." Appellant related progressively worsening neck pain radiating down her arm with a sudden onset on February 27, 2012. She had pain only along the posterior aspect of her left arm with tingling and numbness of the ulnar forearm and fourth and fifth digits of the hand. Physical findings included tenderness on palpation of the cervical spine and left trapezius muscle, as well as some decrease in cervical spine motion secondary to pain. X-rays were obtained showing no acute bony abnormalities. It was noted that Dr. Rice reviewed the x-rays together with the physician assistant. Appellant was diagnosed with cervicalgia and upper extremity radiculopathy.

The narrative portion of the report by Dr. Rice noted that appellant tried to lift a box off a shelf at work on February 27, 2012. Appellant reported that she twisted and felt a sharp pain in the back of her neck and upper thoracic spine. She stated that she had not previously experienced any pain like that.

On May 14, 2012 Dr. Rice noted that the most recent evaluation showed a "small disc protrusion at the C4-5 level," but clinically appellant continued to have significant arm pain. He stated:

> "At this point it would seem that, more likely than not, [appellant] sustained a typical sprain/strain type injury to her neck. This certainly fits with the mechanism of injury that she alludes to by lifting a heavy box of IV fluids. The initial diagnosis was that of cervicalgia or neck pain and radiculopathy or arm pain. It would certainly seem more likely than not with the most recent unreasonable amount of certainty [sic] that are subject to her complaints, physical exam[ination], MRI [scan] and x-ray findings fit all in concert. [sic]"

Dr. Rice added that there was no evidence to support any preexisting problems.

In a February 28, 2012 report, the employing establishment health unit provided a consistent history of injury. Appellant had full range of motion, no pain on palpation of the vertebrae, mild pain during range of motion and no bruising or abrasions. No diagnosis was made.

Appellant testified during a telephonic hearing held before an OWCP hearing representative on September 13, 2012.

In a decision dated December 4, 2012, the hearing representative affirmed the denial of the traumatic injury claim finding that appellant's diagnosis and disability for work were based on the assessment of a physician assistant, rather than any examination by Dr. Rice. The hearing representative found that Dr. Rice's opinion on causal relationship could not be considered probative: he did not base his opinion on her benign initial examination on February 28, 2012, which showed no actual physical indication of injury nor did he base his opinion on any examination that he conducted. Rather, Dr. Rice based his opinion on appellant's report of symptoms during the physical examination conducted by his assistant on March 7, 2012.

The hearing representative noted that the report Dr. Rice electronically signed on March 28, 2012 was an alteration of his assistant's original March 7, 2012 report. The later electronically signed report referred to the February 27, 2012 incident at work and to certain findings that did not appear in the original report. Further, the diagnoses given were actually no more than symptoms: neck pain and radiculopathy. The hearing representative added that Dr. Rice offered no medical rationale to support the affirmative mark on causal relationship he provided in his March 31, 2012 attending physician's form report. "No ongoing narrative reports are provided to explain what medical findings support a work-related medical condition or ongoing need for disability." The hearing representative noted that neither Dr. Rice nor his assistant indicated any awareness that appellant attended classes during a portion of the period for which they asserted she was totally disabled from all work due to her report of symptoms.[3]

[3] Whether appellant sustained an injury in the performance of duty and whether that injury, once established, caused any specific disability for work are separate issues.

Appellant requested reconsideration. She contended that she was misled about the hearing process. Appellant alleged a lack of consideration given to the medical evidence that supported her claim.

In a decision dated February 27, 2013, OWCP denied appellant's reconsideration request. It found that she submitted no new evidence and her argument was not sufficient to require a review of her case.

Appellant stated on appeal that she did not agree with OWCP's findings on whether she sustained an injury at the time, place and in the manner alleged and on whether there was an injury that disabled her for work. She reported her injury to her supervisor on February 27, 2012 and followed up with an outside provider, as directed. Appellant noted that Dr. Rice provided a letter stating that her injury was indeed a work-related injury.

LEGAL PRECEDENT -- ISSUE 1

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[4] An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He or she must also establish that such event, incident or exposure caused an injury.[5]

Causal relationship is a medical issue[6] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant,[7] must be one of reasonable medical certainty[8] 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.[9]

When a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish causal relationship.[10]

[4] 5 U.S.C. § 8102(a).

[5] *John J. Carlone*, 41 ECAB 354 (1989).

[6] *Mary J. Briggs*, 37 ECAB 578 (1986).

[7] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[8] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[9] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[10] *E.g., Lillian M. Jones*, 34 ECAB 379 (1982).

A physician assistant is not a "physician" within the meaning of FECA and is therefore not competent to give a medical opinion.[11] A report from a physician assistant is not competent medical evidence to support a diagnosis, disability or need for additional medical treatment unless it is cosigned by a physician.[12]

ANALYSIS -- ISSUE 1

OWCP accepted that appellant established that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. On the morning of February 27, 2012 she pulled down a box from an upper shelf and stepped down from a stool. The question is whether this incident caused an injury, that is, whether it caused any firmly diagnosed medical condition.

When appellant went to the health unit on February 28, 2012, one day after the incident, the clinical findings were essentially benign. She had full range of motion. Appellant had no pain on palpation of her vertebrae. She did report mild pain during unspecified range of motion, but that was the only finding that was not entirely normal. The health unit report gave no indication that the incident at work had caused any diagnosed medical condition or injury.

Dr. Rice did not address these earlier findings or attempt to explain how they were consistent with his opinion that appellant had sustained a typical sprain/strain type injury to her neck. Appellant, however, had identified the location of her pain as "in my mid back," which is consistent with the area circled on the diagram in the February 28, 2012 report from the health unit. Medical conclusions based on inaccurate or incomplete histories are of diminished probative value.[13]

Appellant next saw a physician's assistant on March 7, 2012. A physician's assistant is not a "physician" within the meaning of FECA. A report from a physician assistant is not competent medical evidence to support a diagnosis, disability or need for additional medical treatment unless the report is cosigned by a physician. The initial report from the physician's assistant was not cosigned or counter-signed by a physician. Dr. Rice electronically signed the report three weeks later. He is a Board-certified orthopedic surgeon and is ultimately responsible for managing the care of his patients. Dr. Rice may delegate appropriate medical tasks to a physician's assistant under his supervision and by counter-signing his assistant's report, he made it his own. The counter-signed report thus stands as competent medical evidence.

[11] *Guadalupe Julia Sandoval*, 30 ECAB 1491 (1979); *see* 5 U.S.C. § 8101(2) (the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law).

[12] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.4.a (September 2010).

[13] *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete). *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

The Board finds that Dr. Rice did not explain why appellant was reporting progressively worsening neck pain or limited range of motion when, one day after the incident, she had no pain on palpation of the vertebrae and full range of motion. Dr. Rice did not identify what was causing the pain radiating down the posterior aspect of her left arm or what was causing the tingling and numbness of her ulnar forearm and fourth and fifth digits. Appellant had no acute bony abnormalities on x-ray and the April 11, 2012 MRI scan showed no significant neural foraminal or central spinal canal narrowing. The study did show a very small central disc protrusion at the C4-5 level and very early degenerative disc disease at the C4-6 levels.

The diagnosis given in the March 7, 2012 report was cervicalgia and upper extremity radiculopathy. But as the hearing representative noted, these are not diagnoses of a specific medical condition. They are simply descriptions of appellant's symptoms of neck pain and arm pain. They do not identify what medical condition or disease was causing this pain.

Dr. Rice provided an attending physician's form report dated March 31, 2012. He noted the February 27, 2012 incident and listed the same findings appearing in his assistant's March 7, 2012 report. The diagnoses again included cervicalgia and cervical radiculopathy, but also included degenerative disc disease. The ICD-9 code identified degeneration of cervical intervertebral disc.

Dr. Rice's affirmative mark on causation, however, is insufficient to establish the critical element of causal relationship. Appellant's burden includes submitting a physician's opinion on causal relationship that is supported with sound medical reasoning. Medical conclusions unsupported by rationale are of little probative value.[14] Dr. Rice offered no medical rationale to explain how appellant's neck pain, arm pain or very early degenerative disc disease at the C4-6 levels was causally related to what happened at work on February 27, 2012.

On May 14, 2012 Dr. Rice reported that it would seem more likely than not that appellant sustained a typical sprain/strain type injury to her neck. He supported his opinion by reasoning that this certainly fit with the mechanism of injury, namely, lifting a heavy box of IV fluids. Dr. Rice added that appellant's initial diagnosis was that of cervicalgia or neck pain. In fact, appellant's initial examination, the day after the work incident, resulted in no diagnosis and her complaint was pain "in my mid back." It remains for Dr. Rice to address her first examination and to explain whether the findings are consistent with a typical sprain/strain type injury to the neck or for that matter whether they are consistent with the March 7, 2012 findings reported by his physician's assistant.

The Board finds that Dr. Rice's March 31, 2012 affirmative mark and his May 14, 2012 narrative opinion on causal relationship are supportive of appellant's claim that she sustained an injury in the performance of duty on February 27, 2012, but his opinion is of diminished probative value. For this reason, the Board finds that the medical opinion evidence is insufficient to discharge her burden of proof. The Board will affirm OWCP's December 4, 2012 decision denying her injury claim.

[14] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

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.

Appellant notes on appeal that she reported the injury to her supervisor, followed up with an outside provider, had an MRI scan showing two disc protrusions and submitted a report from Dr. Rice stating that her injury was indeed work related. Although her complaint of pain in the middle of her back, her report of injury, her seeking medical attention the following day and her consistent history of injury to the health unit are all consistent with an injury in the performance of duty, the issue of causal relationship is medical in nature and must be established in this case by a well-reasoned medical opinion based on a complete and accurate factual and medical history.

LEGAL PRECEDENT -- ISSUE 2

OWCP may review an award for or against payment of compensation at any time on its own motion or upon application.[15] An employee (or representative) seeking reconsideration should send the request for reconsideration to the address as instructed by OWCP in the final decision. The request for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.[16]

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.[17] A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.[18]

ANALYSIS -- ISSUE 2

The issue is whether appellant's reconsideration request met at least one of the three standards for obtaining a merit review of her case. Appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She did not identify a specific point of law or show how OWCP erroneously applied or interpreted it. Appellant did not advance a relevant legal argument not previously considered by OWCP. Her argument pertained instead to being misled about the hearing process. Appellant added that OWCP did not give consideration to supportive medical evidence, but OWCP did review the medical evidence and found that

[15] 5 U.S.C. § 8128(a).

[16] 20 C.F.R. § 10.606.

[17] *Id*. at § 10.607(a).

[18] *Id*. at § 10.608.

Dr. Rice failed to provide any reasoned medical opinion on causal relationship. A claimant may be entitled to a merit review by submitting evidence that constitutes relevant and pertinent new evidence not previously considered by OWCP, but she submitted no evidence with her reconsideration request.

Accordingly, the Board finds that appellant's reconsideration request met none of the standards for reopening her case. OWCP thus properly denied a merit review of her case pursuant to 20 C.F.R. § 10.608. The Board will affirm OWCP's February 27, 2013 decision.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained a traumatic injury in the performance of duty on February 27, 2012. The Board also finds that OWCP properly denied her reconsideration request.

ORDER

IT IS HEREBY ORDERED THAT the February 27, 2013 and December 4, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 2, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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