United States Department of Labor
Employees' Compensation Appeals Board

K.C., Appellant	)	
and	)	**Docket No. 13-1453**
	)	**Issued: December 24, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Cherry Hill, NJ, Employer	)	

Appearances:
Jason S. Lomax, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 3, 2013 appellant, through her attorney, filed a timely appeal from the January 3, 2013 Office of Workers' Compensation Programs' (OWCP) decision, which denied her 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 has met her burden of proof to establish that she sustained an injury in the performance of duty on February 4, 2011.

FACTUAL HISTORY

On February 24, 2011 appellant, then a 36-year-old mail handler, filed a recurrence of disability claim commencing February 4, 2011 due to an April 5, 2009 work injury. She stated that she only worked four hours a day with a 15 pound weight limit. Appellant was working

[1] 5 U.S.C. § 8101 *et seq.*

"rewrap" and taping a box when she felt pain in her back and radiating to her legs. She stopped work on February 4, 2011. The employing establishment supervisor controverted the claim.[2]

In a February 14, 2011 disability certificate, Dr. Richard J. Berger, Board-certified in family medicine and an osteopath, noted that appellant could not perform her work duties as her back pain had recurred. He explained that her electromyography (EMG) scan revealed no improvement. Dr. Berger opined that appellant was not capable of work duties due to a recurrence of her back pain.

OWCP received an EMG scan and nerve conduction studies dated February 10, 2011 from Dr. Meeta D. Peer, a Board-certified internist, who noted that appellant had an abnormal study with electrical evidence of chronic lumbar L4-5 and S1 radiculopathy. There was no essential change from the prior study in March 2010.

In a March 22, 2011 letter, OWCP advised appellant that, while she had filed a recurrence claim, it would adjudicate her claim for a new traumatic injury. On April 6, 2011 OWCP advised appellant that additional factual and medical evidence was needed. It requested a physician's opinion on causal relationship and allotted her 30 days within which to submit the requested information.

Appellant submitted an April 19, 2011 report from Dr. Eric Ratner, a Board-certified anesthesiologist, who noted that she complained of lower back and lower extremity pain due to her displaced discs and radiculitis. Dr. Ratner recommended a complete caudal or epidural steroid injection and advised that it was difficult for her to work because of her underlying disc pathology.

In an April 25, 2011 disability certificate, Dr. Berger again noted that appellant was unable to work.

By decision dated May 6, 2011, OWCP denied appellant's claim. It found that she did not submit sufficient medical evidence to establish her back condition or disability.

On May 9, 2011 appellant filed a traumatic injury claim alleging that on February 4, 2011 she sustained an injury to her back and radiating down to her legs while working "rewrap" and taping a box.

On May 16, 2011 appellant requested a telephonic hearing, which was held on September 9, 2011.

[2] The record reflects that appellant has a prior 2009 occupational disease claim which was accepted for low back conditions to include strains of the cervical, thoracic and lumbar spine. Appellant was also performing modified duties effective February 4, 2011. Claim No. xxxxxx529 is not presently before the Board.

OWCP received additional reports from Dr. Ratner dated September 15, 2009 to October 19, 2010. Dr. Ratner treated appellant for low back and right leg pain and provided epidural steroid injections.[3]

In a May 26, 2011 report, Dr. Berger noted that appellant was under his care for a reoccurrence of back pain. Appellant related that she returned to work and was doing fine until February 4, 2011, when she bent over to pick up a box and tape it. Dr. Berger noted that she felt her back pain return in the same place as her prior condition. Appellant was referred for pain management.

In a May 31, 2011 report, Dr. Ratner noted that appellant had relief from the bilateral transforaminal epidural steroid injection.

By decision dated November 10, 2011, OWCP's hearing representative affirmed the May 6, 2011 decision.

In a February 28, 2012 report, Dr. Ratner noted that appellant continued to complain of right buttock and right lower back pain. He recommended lumbar facet joint injections on the right side from L3 through S1. A February 28, 2012 treatment note of Dr. Ratner noted pain in the back and buttocks.

In a March 19, 2012 duty status report, Dr. Berger noted that appellant was working in rewrap, taping a box, when she felt pain in her back and down her legs. He checked a box "yes" to indicate that the history provided corresponded to the history reported by the employing establishment. Dr. Berger advised that she could not return to work.

In a letter dated October 16, 2012, counsel requested reconsideration.

In an October 11, 2012 report, Dr. Berger noted that appellant was under his care for injuries sustained in a work-related accident on April 5, 2009. He diagnosed a lumbar sacral spine herniated nucleus pulposus (HNP) with associated radiculopathy and acute lumbar sacral spine strain and sprain. Appellant was seen on a regular basis since April 7, 2009. As of October 9, 2012, she had chronic back pain with associated right lower extremity burning sensation. Physical examination revealed positive straight leg raising test on the right leg. Dr. Berger diagnosed lumbar sacral spine HNP with radiculopathy and chronic lumbar sacral sprain and strain with myofascial disorder. He advised that appellant was released to light-duty work on January 31, 2011 and on February 4, 2011, "she bent over and exacerbated her already chronic lumbar sacral spine HNP/radiculopathy. This was not a new injury but rather an exacerbation of her previous chronic radiculopathy." Dr. Berger noted that appellant was never released to full duty from her original lumbar injury. He opined that she had not recovered from her April 5, 2009 original injury and that she "in fact had exacerbated this chronic radiculopathy on February 4, 2011 while at light work duty level." Dr. Berger opined that appellant continued

[3] The record reflects that on August 25, September 29, October 27, 2009 and January 19, 2010, Dr. Ratner performed a right sided L5 and S1 transforaminal epidural steroid injection with fluoroscopic guidance. In an August 14, 2009, he noted that appellant related that she had a work-related accident on April 5, 2009. An MRI scan revealed a displaced disc at L4-5 and an EMG revealed lumbar radiculopathy at L4, L5 and S1.

to need pain management and treatment. He further advised that the injuries sustained while at work were "directly related to her work injury and require future care and continued treatment."

By decision dated January 3, 3013, OWCP denied modification of the November 10, 2011 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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[5] and that an injury was sustained in the performance of duty.[6] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[7]

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. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical 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] 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 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.[10]

[4] 5 U.S.C. §§ 8101-8193.

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

[6] *James E. Chadden Sr.*, 40 ECAB 312 (1988).

[7] *Delores C. Ellyet*, 41 ECAB 992 (1990).

[8] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[9] *Id*. For a definition of the term "traumatic injury," *see* 20 C.F.R. § 10.5(ee).

[10] *D.S.*, Docket No. 09-860 (issued November 2, 2009).

ANALYSIS

Appellant alleged that on February 4, 2011 she was working "rewrap" and taping a box when she felt pain in her back and radiating to her legs while in the performance of duty. The Board notes that there is no evidence refuting that the incident occurred, as alleged, by her. Therefore, the Board finds that appellant worked at "rewrap" and taping a box as alleged.

The medical evidence, however, is insufficient to establish that the employment incident caused an injury. The medical reports of record do not establish that rewrapping and taping a box caused a personal injury on February 4, 2011. The medical evidence provides no reasoned opinion from a physician on how the specific employment incident on September 11, 2004 caused or aggravated an injury.[11]

In an October 11, 2012 report, Dr. Berger noted that appellant was under his care for an April 5, 2009 work injury and diagnosed lumbar sacral spine HNP with associated radiculopathy and acute lumbar sacral spine strain/sprain. He explained that she was released to light-duty work on January 31, 2011 and on February 4, 2011, "she bent over and exacerbated her already chronic lumbar sacral spine HNP/radiculopathy. This was not a new injury but rather an exacerbation of appellant's previous chronic radiculopathy." Dr. Berger also noted that she was never released to full duty from her original injury, she had not recovered from her original injury on April 5, 2009, and that she "in fact had exacerbated this chronic radiculopathy on February 4, 2011 while at light work duty level."

Dr. Berger opined that the injuries sustained while at work were "directly related to her work injury" and required continued treatment. The Board notes that he relates appellant's condition to the April 5, 2009 injury, a matter not presently before the Board.[12] Dr. Berger did not provide rationale to explain how the rewrap and taping a box on February 4, 2011 caused or aggravated appellant's diagnosed medical condition. In a May 26, 2011 report, he noted that she was treated for a reoccurrence of back pain. Appellant related that she was doing well at work until she bent over to pick up a box on February 4, 2011. Dr. Berger noted that she felt her back pain return in the same place as her prior condition. While he described the incident, he did not provide an adequate explanation of how bending over to pick up a box caused or contributed to a diagnosed medical condition. In a March 19, 2012 duty status report, Dr. Berger noted that appellant was working in rewrap, taping a box, when she felt pain in her back and down her legs. He checked a box "yes" in response to the history provided by her was consistent and advised that she could not return to work. However, this report is of limited probative value as it did not explain how the act of taping a box contributed to a diagnosed condition. Other reports of Dr. Berger are of limited probative value because he does not specifically address how taping or picking up a box on February 4, 2011 caused or aggravated a particular medical condition.

[11] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[12] *See supra* note 2. This decision does not preclude appellant from pursuing a possible recurrence in her other claim.

Other medical reports submitted by appellant are insufficient to establish the claim as they do not specifically address how the work activities on February 4, 2011 contributed to a diagnosed condition.[13]

Because the medical reports submitted by appellant do not sufficiently address how the February 4, 2011 activities at work caused or aggravated a low back condition, these reports are of limited probative value[14] and are insufficient to establish that the February 4, 2011 employment incident caused or aggravated a specific injury.

On appeal, counsel argued that the decision was incorrect as it was based on flawed findings of fact and conclusions of law. However, as found above, the medical evidence was insufficient to establish the claim for a new injury.

Appellant may submit evidence or argument with a written request for reconsideration 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 met her burden of proof in establishing that she sustained an injury in the performance of duty on February 4, 2011.

[13] *J.F.*, Docket No. 09-1061 (issued November 17, 2009) (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).

[14] *See Linda I Sprague*, 48 ECAB 386, 389-90 (1997).

ORDER

IT IS HEREBY ORDERED THAT the January 3, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 24, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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