United States Department of Labor
Employees' Compensation Appeals Board

D.R., Appellant	)	
and	)	**Docket No. 13-1496**
	)	**Issued: December 23, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Brooklyn, NY, Employer	)	

Appearances:
Appellant, pro se,
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 11, 2013 appellant filed a timely appeal from the May 31, 2013 merit decision 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 that she sustained an injury in the performance of duty on April 12, 2013.

FACTUAL HISTORY

On April 15, 2013 appellant, then a 41-year-old mail carrier, filed a traumatic injury claim alleging that on April 12, 2013 she felt pain in her right shoulder and down her back, hip, thigh and knee while in the performance of duty. She stated that heavy mail placed a strain on

[1] 5 U.S.C. § 8101 *et seq.*

her body. The employing establishment controverted the claim. Appellant stopped work on April 13, 2013.

In an April 12, 2013 statement, appellant related that she hurt her back and right knee but did not see a physician or go to the emergency room. She walked up and down stairs while carrying heavy mail which caused pain in her back, shoulder and right knee.

In an April 18, 2013 statement, Elizabeth Chan, a human resources specialist with the employing establishment, controverted the claim. She noted that appellant had a foot route delivery and used a carrier cart on her route. The satchel was part of a carrier cart and it carried the mail and it was not feasible to detach it or place it on the shoulder to deliver mail up and down stairs. Carriers were taught to use a cradle position when delivering the mail, with flats placed on the forearm and the letter size mail on the hand. The other hand was free to use the handrail and the weight of the bundle was no greater than five pounds. Kenneth Mui, a supervisor, questioned how appellant could have injured herself carrying mail up and down stairs. He also stated that the mail weighed no greater than five pounds.

In reports dated April 15, 2013, Dr. Leon M. Bernstein, a Board-certified orthopedic surgeon, diagnosed a strain, sprain of the right knee, sprain of the right shoulder and strain/sprain of the lumbar and cervical spine. He advised that appellant was totally disabled from work and would be reexamined on April 29, 2013. OWCP also received an April 15, 2013 physical therapy prescription. In an April 17, 2013 attending physician's report, Dr. Bernstein noted that appellant starting using a push cart for three weeks and checked the box "yes" in response to whether he believed that her condition was caused or aggravated by an employment activity. He continued to treat her and place her off work.

By letter dated April 29, 2013, OWCP advised appellant that additional factual and medical evidence was needed. It requested a physician's opinion on the issue of causal relation and allotted her 30 days to submit additional information.

OWCP received an April 29, 2013 progress note from Dr. Bernstein addressing appellant's complaints of right shoulder and right knee pain. Dr. Bernstein noted findings and advised her to return in two to three weeks.[2] In an accompanying April 29, 2013 duty status report, he diagnosed a sprain/strain of the cervical spine, right shoulder and right knee. Dr. Bernstein advised that appellant could not perform her regular duties and had been disabled since the April 12, 2013 injury. OWCP received physical therapy notes dated April 17 to May 7, 2013.

On May 24, 2013 OWCP received an undated response from appellant, who described her injury. Appellant explained that she was walking in front of 45-80 157 Street on April 12, 2013 around 3:00 p.m. when she experienced pain in her right shoulder, back, hip, thigh and knee. She had been working the same route since March 11, 2013. Appellant explained that the mail was always heavy on her route and that the first relay on the push cart was always heavily loaded with heavy flats. The journey from the first house was 25 to 30 minutes one way on foot loaded with heavy mail and the roads were steep. Appellant alleged that pushing the heavy carts

[2] Portions of the note are not legible.

for 30 minutes everyday for five weeks made her right shoulder, back, hip, thigh and knee painful. She also explained that 50 percent of the houses had 12 to 15 steps and that even with five pounds of mail to carry, 12 to 15 steps for almost two hours a day contributed to her condition. Appellant denied any prior history of injury.

By decision dated May 31, 2013, OWCP denied appellant's claim. It accepted that the April 12, 2013 incident occurred but denied the claim on the grounds that the medical evidence was insufficient to establish causal relationship.

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 timely filed within the applicable time limitation period of FECA[3] and that an injury was sustained in the performance of duty.[4] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

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.[6] The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[7] The employee must submit medical evidence to establish that the employment incident caused a personal injury.[8] 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.[9]

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

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

[5] *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *Charles B. Ward*, 38 ECAB 667 (1987).

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

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

[9] *Id.*

ANALYSIS

Appellant alleged that on April 12, 2013 she walked up and down stairs carrying mail and felt pain in her right shoulder down her back, hip, thigh and knee. OWCP accepted the incident as alleged.

The Board finds that the medical evidence is insufficient to establish that the employment incident caused an injury. The medical reports of record do not adequately address how walking on her postal route caused a personal injury on April 12, 2013. The medical evidence contains insufficient explanation of how the accepted employment incident caused or aggravated an injury.[10]

Dr. Bernstein diagnosed a strain, sprain of the right knee, sprain of the right shoulder and strain/sprain of the lumbar and cervical spine. He advised that appellant was totally disabled from work since the date of injury, but Dr. Bernstein did not offer a specific opinion as to how the April 12, 2013 work incident caused or contributed to her diagnosed conditions.[11]

In the April 17, 2013 attending physician's report, Dr. Bernstein noted that appellant starting using a push cart for three weeks and checked the box "yes" in response to whether he believed that her condition was caused or aggravated by an employment activity. However, this was insufficient to establish fact of injury. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[12]

Appellant also submitted copies of physical therapy notes dating from April 17 to May 7, 2013. Section 8101(2) of FECA provides that the term physician includes surgeons, podiatrist, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.[13] Physical therapists are not considered physicians as defined under FECA and thus their reports do not constitute competent medical evidence.[14]

Because the medical reports submitted by appellant do not address how the April 12, 2013 activities at work caused or aggravated a condition in the shoulder, back, hip, thigh or knee,

[10] *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).

[11] *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[12] *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

[13] 5 U.S.C. § 8101(2).

[14] *Id; J.M.*, 58 ECAB 448 (2007); *G.G.*, 58 ECAB 389 (2007); *David P. Sawchuk*, 57 ECAB 316 (2006); *Allen C. Hundley*, 53 ECAB 551 (2002).

these reports are of limited probative value[15] and are insufficient to establish that the April 12, 2013 employment incident caused or aggravated a specific 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 April 12, 2013.

ORDER

IT IS HEREBY ORDERED THAT the May 31, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 23, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

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