United States Department of Labor
Employees' Compensation Appeals Board

W.W., Appellant	)	
and	)	**Docket No. 13-1622**
	)	**Issued: December 23, 2013**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Charleston, SC, 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
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 28, 2013 appellant filed a timely appeal from the January 7, 2013 decision of the Office of Workers' Compensation Programs' (OWCP), which affirmed the denial of her claim. Pursuant to 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 May 22, 2005.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 28, 2005 appellant, then a 40-year-old passenger screener, filed a traumatic injury claim alleging injury to her right side and mid back on May 22, 2005 while removing a heavy bag from a workstation table. Appellant's supervisor signed the claim form on May 28, 2005. She did not indicate if appellant stopped work. The claim was dormant until 2012.

By letter dated March 7, 2012, OWCP advised appellant that additional factual and medical evidence was needed. Appellant was requested to provide a physician's explanation as to how the reported work incident caused or aggravated a medical condition.

OWCP received medical reports dated March 5, 2008 through February 29, 2012. These reports did not address the May 28, 2005 incident, but rather appear related to a July 12, 2007 employment incident or other activities unrelated to the May 22, 2005 incident.[2] In a March 5, 2008 report, Dr. Charles H. Hughes, Jr., a Board-certified orthopedic surgeon, noted that appellant had intermittent right hip pain. He related that appellant had an episode of foot drop on the left after a dental procedure.

In an April 1, 2008 report, Dr. James K. Aymond, a Board-certified orthopedic surgeon, noted that appellant was released from treatment from a work-related injury in July 2007. He noted that she also had a "slip and near fall episode at a Food Lion store in December 2007" and received treatment. Dr. Aymond reviewed a March 27, 2008 lumbar magnetic resonance imaging (MRI) scan and found no evidence of disc herniation, facet arthropathy or spinal canal stenosis. He diagnosed multiple somatic complaints of back pain, lower extremity pain and right upper extremity pain.

In a May 1, 2008 report, Dr. Bright McConnell, III, a Board-certified orthopedic surgeon, noted that appellant sustained an initial injury to her right groin and hip in July 2007 while at work doing a sweep check of a passenger terminal. He suspected an iliopsoas muscle strain of the right hip with mild underlying acetabular labral pathology and mild degenerative osteoarthritis. Dr. McConnell believed that she reaggravated her condition with her fall in December. In a July 22, 2008 report, he noted that appellant sustained her initial injury while at the employing establishment and it was later complicated "apparently" by a fall in a grocery store several months later. It appeared that the continued symptoms to her right lower extremity were secondary to the injury she sustained at work. Dr. McConnell stated that the "majority of her right lower extremity complaints were referable to the S1 neuropathy, most likely secondary to moderate degenerative disease which has been aggravated."

In a January 5, 2012 letter, appellant noted that in May 2005 she lifted a 90-pound untagged bag. She did not have a treatment note because she did not go to a doctor. The manager did not indicate that she had to see a physician and placed her off baggage for two weeks. Appellant noted that when she took the bag off the table, it felt like someone had punched her in the back, "like the size of a fist over my buttock on the right side." She indicated

[2] The record reflects that appellant has prior claims: No. xxxxxx635 for a July 12, 2007 injury and No. xxxxxx241 for a July 6, 2009 injury. These matters are not presently before the Board.

that she continued to have spasms seven years later. OWCP also received documents related to leave and reasonable accommodations for the period March 24, 2009 to March 23, 2011.

In an April 6, 2012 letter, Martha A. Stitt, an employing establishment human resources specialist, advised OWCP that the claim for a traumatic injury on May 22, 2005 was not submitted sooner as the employer had been unaware of the claim.

By decision dated April 17, 2012, OWCP denied appellant's claim for compensation. It found that the medical evidence did not sufficiently address causal relation.[3]

On April 21, 2012 appellant requested a telephonic hearing, which was held on October 10, 2012. She explained that she did not immediately report the incident to her supervisor because she did not want to appear weak. Appellant confirmed that she did not receive any treatment for her injury until approximately 2007. She alleged that her employing establishment never advised her to seek medical treatment.

By letter dated October 16, 2012, appellant advised OWCP that she had provided notes from her physicians indicating that she lifted a 90-pound untagged bag at work in May 2005.

By letter dated October 26, 2012, Bobbi Smith, an employing establishment human resources specialist, responded to the hearing transcript. She noted that appellant did not immediately report her injury. Ms. Smith advised that appellant worked regular duty until her 2007 injury.

By letter dated November 3, 2012, appellant responded to Ms. Smith's letter. She noted that Ms. Smith had no knowledge of what transpired in 2005. Appellant asserted that the employing establishment did not take her well being seriously. In a November 5, 2012 letter, she indicated that in 2007, she was required to sign a note and fill out forms when she was injured. Appellant indicated that her physicians advised that she needed work modifications and that the employing establishment did not take this seriously.

OWCP received medical records dated from July 16, 2007 to February 29, 2010 related to her 2007 employment injury.

In a November 9, 2011 report, Dr. Dowse D. Rustin, a Board-certified orthopedic surgeon, noted first seeing appellant on that date with regard to her July 12, 2007 injury. Appellant complained of back and right hip pain from that injury. Dr. Rustin described how that injury occurred and her treatment. He noted that she returned to restricted duty on July 13, 2007. Dr. Rustin noted that appellant had not worked since June 2010. He advised that appellant also related that in 2005 she was lifting heavy baggage at work and had low back and right buttock discomfort, but her symptoms later cleared. Dr. Rustin opined that her symptoms were related to the July 12, 2007 injury and diagnosed spinal stenosis with nerve root impingement on the right. He continued to treat appellant for her 2007 injury. OWCP also received several diagnostic

[3] In an undated letter received by OWCP on May 4, 2012, appellant requested an explanation regarding the disappearance of her 2005 claim. She filed a notice of recurrence on April 20, 2012 alleging a recurrence on March 15, 2012 of her July 12, 2007 injury.

reports that included a March 27, 2008 lumbar MRI scan, nerve conduction studies from July 8, 2008, chiropractic notes dated January 4, 2011 and a June 27, 2012 MRI scan of the right hip.

By decision dated January 7, 2013, OWCP's hearing representative affirmed the April 17, 2012 decision.

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

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. 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.[7] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[8]

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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]

ANALYSIS

Appellant alleged that on May 22, 2005 she was removing a heavy bag that weighed about 90 pounds. There is no dispute that appellant lifted a heavy bag on this date. OWCP found that the first component of fact of injury, the claimed incident, occurred as alleged.

However, the medical evidence is insufficient to establish the second component of fact of injury, that the employment incident caused an injury. The medical reports of record do not establish that moving a bag at work on May 22, 2005 caused appellant a personal injury.

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

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

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

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

[8] *Id*.

[9] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

While the record contains numerous medical records, these generally relate to a July 12, 2007 injury claim that is not presently before the Board. There are no medical records contemporaneous with the May 22, 2005 work incident and appellant acknowledges that she did not seek treatment after the claimed injury but that she continued working. The medical records also reference a nonwork-related incident at a grocery store in December 2007 and a dental procedure.

The only report that mentions the May 22, 2005 work incident is Dr. Rustin's November 9, 2011 report. He noted symptoms and treatment referable to the July 12, 2007 injury. Dr. Rustin listed a history that in 2005 she related that she was lifting heavy bags at work and experienced low back and right buttock discomfort and that her symptoms later cleared. He indicated that her present symptoms were related to her July 12, 2007 injury. Dr. Rustin did not attribute any condition to the May 22, 2005 work incident. Therefore, this report is of limited probative value and insufficient to establish that the May 22, 2005 incident caused or contributed to a diagnosed medical condition.

The other medical reports submitted by appellant did not diagnose a specific condition or address causal relationship to the May 22, 2005 employment incident. Appellant has not submitted a reasoned, or rationalized medical report, which explains how the May 22, 2005 work incident caused or contributed to a specific medical condition. The need for medical rationale is particularly important where the claimed injury occurred in 2005, but the claim was dormant until 2012.

The record contains also numerous reports from nurses, physician's assistants and physical therapists. However, this evidence is of no probative medical value as these providers are not physicians under FECA.[10] Consequently, this evidence is not relevant as it cannot be considered medical evidence and, as noted above, the underlying point at issue is medical in nature.

For these reasons, appellant has not established that the May 22, 2005 employment incident caused or aggravated a specific injury.

On appeal, appellant disagreed with OWCP's decision and argued that her claim was timely filed. The Board notes that there is no dispute that her claim was timely filed. Appellant also argued that she sustained an injury in May 2005 and in July 2007. However, as explained above, she has not submitted any reasoned medical evidence that explains how the May 22, 2005 work incident caused or contributed to a specific injury. Furthermore, the July 2007 claim is not before the Board on the present appeal. Appellant also submitted additional evidence with her appeal. However, the Board has no jurisdiction to review this evidence for the first time on appeal.[11]

[10] *See* 5 U.S.C. § 8101(2) (provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by the applicable state law). *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

[11] 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

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 has not met her burden of proof in establishing that she sustained an injury in the performance of duty on May 22, 2005.

ORDER

IT IS HEREBY ORDERED THAT the January 7, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 23, 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