United States Department of Labor
Employees' Compensation Appeals Board

M.W., Appellant	)	
and	)	**Docket No. 13-26**
	)	**Issued: March 5, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Sheridan, WY, 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
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 3, 2012 appellant filed a timely appeal of a July 26, 2012 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 the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a traumatic injury while in the performance of duty on April 4, 2012.

FACTUAL HISTORY

On April 11, 2012 appellant, then a 43-year-old city carrier, filed a traumatic injury claim alleging that she was loading mail trays into her vehicle on April 4, 2012 when she hurt her lower back. She stopped work on April 7, 2012. An April 6, 2012 computerized tomography (CT) scan obtained by Dr. Daniel R. Alzheimer, a Board-certified diagnostic radiologist, exhibited L3-L4, L4-L5 and L5-S1 disc bulges as well as L4-L5 and L5-S1 degenerative facet changes.

[1] 5 U.S.C. § 8101 *et seq.*

In April 6, 2012 emergency department records, Dr. David Neilsen, a family practitioner, related that appellant experienced lower back pain when she lifted heavy objects at work on April 4, 2012. On examination, he observed antalgic gait, lower back tenderness and positive left straight leg raise test. Dr. Neilsen diagnosed acute lower back pain.

Erin Scherry, a physician assistant, remarked in an April 12, 2012 report that appellant was lifting mail trays and placing them into a postal vehicle on April 4, 2012 when she injured her lower back. She diagnosed lower back strain and lumbar disc disease. Ms. Scherry checked the "yes" box in response to a form question asking whether the condition was employment related. Work status notes for the period April 12 to May 15, 2012 placed appellant off duty through May 22, 2012.

Unsigned progress notes for the period April 12 to May 22, 2012 reiterated that appellant sustained lumbago on April 4, 2012 while lifting mail trays.

OWCP informed appellant in a June 13, 2012 letter that additional information was needed to establish her claim. It gave her 30 days to submit a report from a qualified physician explaining how loading mail trays on April 4, 2012 resulted in a diagnosed condition.[2]

Appellant submitted new evidence. Scott L. Morey, a physician assistant, stated in a May 23, 2012 report that appellant felt a pop in her lower back while loading her mail truck on April 4, 2012. On examination, he observed lumbar tenderness to palpation and diminished patellar and deep tendon reflexes. X-rays of the lumbar spine showed decreased L4-L5 and L5-S1 disc space and degenerative spine changes. Mr. Morey diagnosed lumbosacral sprain.[3]

By decision dated July 26, 2012, OWCP denied appellant's claim, finding the medical evidence insufficient to establish that the accepted April 4, 2012 employment incident caused or contributed to a back injury.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative and substantial evidence,[4] including that he or she is an "employee" within the meaning of FECA and that he or she filed her claim within the applicable time limitation.[5] The employee must also establish that she sustained an injury in the performance of duty as alleged and that his or her disability for work, if any, was causally related to the employment injury.[6]

[2] OWCP noted that appellant's claim was originally received as a simple, uncontroverted case resulting in minimal or no lost time from work and payment was approved for limited medical expenses without formal adjudication.

[3] Appellant also submitted physical therapy records for the period April 18 to May 25, 2012.

[4] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[5] *R.C.*, 59 ECAB 427 (2008).

[6] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. 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. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[7]

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.[8]

ANALYSIS

The case record supports that appellant carried and loaded mail trays into her postal vehicle on April 4, 2012. The Board finds, however, that she did not establish her traumatic injury claim because the medical evidence did not establish that this accepted employment incident caused or contributed to a lower back condition.

In April 6, 2012 emergency department records, Dr. Neilsen related that appellant experienced lower back pain when she lifted heavy objects at work on April 4, 2012. Following a physical examination, he diagnosed acute lower back pain. Dr. Neilsen merely communicated appellant's history of injury.[9] He did not address the issue of causal relationship. Dr. Neilsen did not pathophysiologically explain how loading mail trays on April 4, 2012 caused or contributed to a lower back injury.[10] Further, he did not list a specific diagnosis other than noting the complaint of low back pain.

Dr. Alzheimer's April 6, 2012 CT scan report failed to discuss whether appellant sustained a lumbar condition as a result of the April 4, 2012 work event. Therefore, it offered limited probative value on the issue of causal relationship.[11]

A medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician.[12] In this case, unsigned progress notes from April 12 to May 22, 2012 did not constitute competent medical evidence. The Board is unable to

[7] *T.H.*, 59 ECAB 388 (2008).

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

[9] *See P.K.*, Docket No. 08-2551 (issued June 2, 2009) (an award of compensation may not be based on a claimant's belief of causal relationship).

[10] *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994). *See also John W. Montoya*, 54 ECAB 306, 309 (2003) (a physician's opinion must discuss whether the employment incident described by the claimant caused or contributed to the diagnosed medical condition).

[11] *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[12] *Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949).

determine whether the individual who completed them is a qualified physician.[13] Moreover, since a physician assistant is not a "physician" as defined under FECA, Ms. Scherry and Mr. Morey's records lack probative medical value.[14] In the absence of rationalized medical opinion evidence, appellant failed to meet her burden of proof.

Appellant contends on appeal that she was injured in the manner described in the Form CA-1. The Board has already addressed the deficiencies of the claim.

Appellant may submit new evidence or argument as part of a formal 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 did not establish that she sustained a traumatic injury while in the performance of duty on April 4, 2012.

ORDER

IT IS HEREBY ORDERED THAT the July 26, 2012 merit decision of the Office of Workers' Compensation Programs be affirmed.

Issued: March 5, 2013
Washington, DC

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

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

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

[13] *R.M.*, 59 ECAB 690, 693 (2008).

[14] 5 U.S.C. § 8101(2); *E.K.*, Docket No. 09-1827 (issued April 21, 2010) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA). For the same reason, physical therapy records for the period April 18 to May 25, 2012 lacked probative value. *See supra* note 3.