United States Department of Labor
Employees' Compensation Appeals Board

P.T., Appellant	)	
and	)	**Docket No. 13-429**
	)	**Issued: May 23, 2013**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Jackson, MS, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 19, 2012 appellant filed a timely appeal from the August 17, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for compensation. 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 established that she sustained an employment-related injury on June 19, 2012 as alleged.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 2, 2012 appellant, then a 45-year-old nurse, filed a traumatic injury claim alleging upper back pain on June 19, 2012 after changing a resident's diaper and removing linen from underneath the resident.

By letter dated July 13, 2012, OWCP informed appellant that she must submit further information in support of her claim. Appellant submitted a response, noting that she was diagnosed with a lumbosacral/cervical strain on June 19, 2012. She described the incident and noted that she was unable to return to work the next day.

In a June 28, 2012 work capacity evaluation, Dr. Xiaohong Si, a Board-certified neurologist, stated that appellant complained of pain over her hip, neck, back and shoulder. In a July 2, 2012 report, he noted that she informed him that she injured her back at work on June 19, 2012. Dr. Si made a preliminary diagnosis of muscle strain and possible median neuropathy; sciatica; lumbar stenosis and arthritis. He scheduled an x-ray and recommended that appellant work four-hour light-duty shifts for two months. The record also contains July 12 and 16, 2012 reports signed by a nurse.

By letter dated August 1, 2012, the employing establishment controverted appellant's claim.

In an August 2, 2012 report, Dr. L. Alfred Norville, a chiropractor, stated that appellant had reached maximum chiropractic improvement as of August 1, 2012. He noted that many soft tissue injuries, such as those she experienced, were irreversible and required supportive chiropractic care well into the future. In an August 3, 2012 form report, Dr. Norville described a history that appellant was changing the diaper of a 400-pound patient and strained herself. Appellant returned to work the next week and suffered an exacerbation. Dr. Norville diagnosed cervical strain/sprain; thoracic strain/sprain; lumbar strain/sprain and myofascitis. He answered a form question, "Is this condition solely a result of this accident?" by responding, "Yes." Dr. Norville attached the results of x-rays taken on June 29, 2012 which he interpreted as showing subluxations in the cervical and lumbar spine at levels C1-5-7 and L5-S1.

By decision dated August 17, 2012, OWCP denied appellant's claim. It found that the medical evidence did not establish a diagnosed condition causally related to the accepted employment incident.

LEGAL PRECEDENT

OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.[2] 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

[2] 20 C.F.R. § 10.5(ee).

meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

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 or exposure, which is alleged to have occurred.[4] In order to meet his or her burden of proof to establish the fact that he or she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he or she actually experienced the employment injury or exposure at the time, place and in the manner alleged.[5]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[6] 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.[7]

ANALYSIS

OWCP accepted that appellant established the employment incident of June 19, 2012. It denied her claim as the medical evidence did not establish that her back condition was causally related to the accepted incident.

Causal relationship must be established by a rationalized medical opinion. Neither the fact that appellant's condition became apparent during a period of employment nor her belief that the condition was caused by her employment, is sufficient to establish a causal relationship.[8]

[3] *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

[4] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

[5] *Linda S. Jackson*, 49 ECAB 486 (1998).

[6] *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

[7] *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

[8] *I.G.*, Docket No. 12-1925 (issued March 11, 2013); *see also Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

The Board finds that none of the medical evidence is sufficient to establish a causal relationship between the accepted employment incident of June 19, 2012 and a diagnosed medical condition.

Dr. Si diagnosed muscle strain, sciatica, lumbar stenosis and arthritis and placed appellant on limited duty for two months. However, he did not provide a rationalized medical opinion addressing how these conditions were causally related to the accepted employment incident.

OWCP found that the opinion of the chiropractor, Dr. Norville, could not establish the medical aspect of appellant's claim because he did not diagnose a subluxation of the spine. FECA only allows the reports of chiropractors to be treated as medical evidence if there is a diagnosed spinal subluxation as demonstrated by x-ray.[9] The record reflects that Dr. Norville obtained x-rays on June 29, 2012. He noted that the x-rays showed subluxations to appellant's cervical and lumbar spine. Dr. Norville is therefore a physician as defined under FECA, but he did not provide a rationalized medical opinion addressing how the cervical or lumbar subluxations were caused by the accepted employment incident. Although he indicated that appellant's diagnosed conditions were solely the result of the employment incident, he provided no medical explanation for his opinion other than a check mark on a form report. Simply responding "yes" to a question as to whether an employee's condition was the result of an accepted incident is insufficient to establish causal relationship.[10]

The record also contains notes by a nurse. However, a nurse is not a physician as defined by FECA. Their opinions regarding diagnosis and causal relationship are not probative medical evidence.[11] Accordingly, appellant has not met her burden of proof to establish that she sustained an employment injury causally related to the accepted June 19, 2012 employment incident.

Appellant submitted new evidence after the issuance of the August 17, 2012 decision. However, the Board lacks jurisdiction to review evidence for the first time on appeal.[12] Appellant may submit this or any 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 established that she sustained an employment-related injury on June 19, 2012, as alleged.

[9] A chiropractor is not considered a physician under FECA unless their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary. 5 U.S.C. § 8101(2); *see Mary Ceglia*, 55 ECAB 626 (2004); *Sean O'Connell*, 56 ECAB 195 (2004). Without diagnosing a spinal subluxation from x-ray, a chiropractor is not a physician under FECA. *W.D.*, Docket No. 12-968 (issued November 2, 2012).

[10] *See A.L.*, Docket No. 09-192 (issued July 27, 2009).

[11] *See Roy L. Humphrey*, 57 ECAB 238 (2005).

[12] 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 17, 2012 is affirmed.

Issued: May 23, 2013
Washington, DC

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

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

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