United States Department of Labor
Employees' Compensation Appeals Board

M.Z., Appellant	)	
and	)	**Docket No. 13-1427**
	)	**Issued: November 8, 2013**
DEPARTMENT OF VETERANS AFFAIRS,VETERANS ADMINISTRATION MEDICAL CENTER, Syracuse, 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 May 29, 2013 appellant timely appealed the April 3, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied her traumatic injury 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 the claim.[2]

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on January 3, 2012.

[1] 5 U.S.C. §§ 8101-8193.

[2] Appellant submitted medical evidence with her application for review. As this evidence was not part of the record when OWCP issued its April 3, 2013 decision, the Board is precluded from considering it on appeal. *See* 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On February 1, 2012 appellant, then a 53-year-old nurse practitioner, filed a claim (Form CA-1) for a right arm sprain/strain that occurred on January 3, 2012 when a patient she was helping to sit up grabbed and pulled her arm. She did not submit any additional information or medical evidence with her claim form.

On February 7, 2012 OWCP advised appellant of the need for additional factual and medical evidence in support of her claim. It afforded her 30 days to submit the requested information, but it did not receive any evidence within the allotted time.

By decision dated March 15, 2012, OWCP denied appellant's traumatic injury claim.

On January 16, 2013 appellant requested reconsideration. She explained that she mistakenly identified an arm injury on Form CA-1 when in fact she had injured her low back on January 3, 2012. Appellant was assisting a patient to a sitting position when he pulled on her arm causing back pain.She noted a history ofpreviously sustained back injury on May 6, 1986.Additionally, appellant advised that she had undergone back surgery on October 22, 2012.

Appellant submittedtreatment notes from Dr. D. Christopher Clark, a Board-certified family practitioner, who diagnosed lumbar strain with radiculopathy and excused her from work for the period January 3 to 26, 2012. Dr. Clark recommended physical therapywhich she began on January 4, 2012. The referring diagnoses were intervertebral disc degeneration, sciatica and Achilles bursitis or tendinitis. The initial physical therapy examination notes indicated that appellant originally injured her back in the 80's and had subsequent intermittent episodes of recurring back pain several times a year. Her latest episode started "a month ago." Appellant had physical therapy on seven occasions from January 4 to 24, 2012.

Dr. Clark's January 24, 2012 follow-up treatment notes listed, "back acting up since strained back assisting patient...."Appellant'scurrent problems included degenerative disc disease and right sciatica. Dr. Clark recommended a return to work effective January 27, 2012,continued physical therapy and additional imaging studies.

A January 27, 2012 lumbar magnetic resonance imaging (MRI) scan revealed multilevel degenerative changes,particularly at L3-4 and L4-5.

On January 30, 2012 Dr. Clark had referred appellant for pain management. A March 14, 2012 follow-up treatment noteidentified appellant's current problem as right lumbar radiculopathy. She received a steroid injection which helped for two weeks. Dr. Clark recommended another lumbar injection and noted that appellant mightrequire referral to a neurosurgeon if the next injection proved ineffective.

Dr. Craig T. Montgomery, a Board-certified neurosurgeon, examined appellant on May 29, 2012. He noted a work-related back injury in 1986 and a more recent injury in January 2012 where sheagain injured her low back. Dr. Montgomery noted that, since the latest injury, appellant had undergone physical therapy and received injections with no relief from any of the symptomatology. Rather,her symptoms had progressed. Dr. Montgomery conducted a

physical examination and reviewed her lumbar MRI scan. He diagnosed progressive bilateral L4 radiculopathy secondary to disc collapse and lateral recess stenosis at the L3-4 level. Dr. Montgomery recommended a complete workup with additional testing.

In an April 3, 2013 decision, OWCP denied appellant's claim. It found that the medical evidence was not sufficient to establish that the diagnosed lumbar condition was causally related to the January 3, 2012 employment incident.

LEGAL PRECEDENT

A claimant seeking benefits under FECA has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[3]

To determine if an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[4] The second component is whether the employment incident caused a personal injury.[5]

ANALYSIS

The Board finds that the medical evidence of record is not sufficient to establish a causal relationship between the January 3, 2012 employment incident and appellant's diagnosed lumbar condition. There is evidence of preexisting degenerative disc disease. This was noted in Dr. Clark's treatment records and confirmed by the January 27, 2012 lumbar MRI scan. In a January 24, 2012 report,Dr. Clark diagnosed lumbar strain with radiculopathy. His treatment notes indicated "back acting up since strained back assisting patient." Dr. Clark did not state a specific date of injury or describe the mechanism of injury apart from "assisting patient." Appellant indicated her back was injured when a patient pulled her arm. Dr. Clark did not address how the pulling ofher arm on January 3, 2012 caused or contributed to her diagnosed lumbar condition. Dr. Montgomery's May 29, 2012 report is similarly insufficient to establish causal relationship. While he noted that appellant reportedly injured her back at work in January 2012,he did not provide a specific history of injury.

[3] 20 C.F.R. § 10.115(e), (f); *seeJacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[4]*Elaine Pendleton*, 40 ECAB 1143 (1989).

[5]*John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.*Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

Neither Dr. Clark nor Dr. Montgomery provided a rationalized medical opinion on causal relationship.As noted, a physician's opinion on causal relationship must be based on a complete factual and medical background.[6] It must also be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's employment.[7] The current record is devoid of any rationalized medical evidence addressing causal relationship.

Appellant has not submitted probative medical evidence demonstrating that her accepted January 3, 2012 employment exposure either caused or contributed to her diagnosed lumbar condition. Accordingly, OWCP properly denied her traumatic injury claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision.[8]

CONCLUSION

Appellant has not established that she sustained an injury in the performance of duty on January 3, 2012.

[6] *Victor J. Woodhams*, *supra* note 5.

[7] *Id.*

[8] 5 U.S.C. § 8128(a); 20 C.F.R. §§ 10.605-10.607.

ORDER

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

Issued: November 8, 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