United States Department of Labor
Employees' Compensation Appeals Board

C.S., Appellant	)	
	)	
and	)	**Docket No. 13-1037**
	)	**Issued: September 9, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Grand Rapids, MI, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 26, 2013 appellant filed a timely appeal from a February 7, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying 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 this case.[2]

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty on October 1, 2012.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence after OWCP rendered its February 7, 2013 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 510.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to OWCP, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

FACTUAL HISTORY

On October 2, 2012 appellant, then a 54-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 1, 2012 she sustained a back injury when she was twisting, turning, stepping down, bending and lifting a tray of mail for delivery. She notified her supervisor and first received medical care on October 1, 2012.[3]

Appellant submitted medical reports dated October 1 to November 29, 2012 from Dr. Loida S. Medina, a treating physician. In her October 1, 2012 report, Dr. Medina reported that on that same date, appellant was picking up a tray and turned when she felt a sharp pain on her left side. She diagnosed lumbar strain and restricted appellant from working. Appellant sought continued treatment with Dr. Medina due to pain and in subsequent visits, the physician provided diagnoses of low back pain, left middle back pain, muscle spasm, neck pain and hip pain.

In an October 1, 2012 Attending Physician's Report (Form CA-20), Dr. Medina diagnosed lumbar strain and checked the box marked "yes" when asked if she believed appellant's condition was caused or aggravated by her employment condition. The form did not contain a history of injury as provided by appellant.

In Duty Status Reports (Form CA-17) dated October 1 to November 29, 2012, Dr. Medina stated that appellant injured her back while lifting. The physician diagnosed low back pain and provided appellant with work restrictions.

In an October 5, 2012 physical therapy report, Jerry Espiritu, a physical therapist (PT), reported that on October 1, 2012 appellant twisted her body and lifted a tray of mail while at work when she felt immediate sharp pain on the left side of her lower back. He noted that appellant was diagnosed with low back pain and presented with possible strain on left upper lumbar and posterior thigh. Physical therapy was recommended three to four times a week. On October 8, 2012 Dr. Medina signed a statement in the October 5, 2012 report stating, "I certify the need for skilled physical therapy services as outlined above." Physical therapy reports documenting appellant's treatment were also submitted dated October 29 and November 29, 2012, signed by both Mr. Espiritu and Dr. Medina.

On October 22, 2012 appellant accepted an offer of modified assignment which provided her with work restrictions.

By letter dated January 3, 2013, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the medical and factual evidence needed and was asked to respond to the questions provided in the letter within 30 days.

In support of her claim, appellant submitted a chiropractic record dated December 5, 2012 and January 9, 2013 from McDonald Chiropractic Clinic. The record noted that she

[3] The Board notes that appellant has 9 other traumatic and occupational injury claims before OWCP beginning January 26, 2006 to July 12, 2012. The record before the Board contains no other information regarding these additional claims.

complained of numbness and tingling in her left leg and foot, as well as numbness in her hand. The treatment notes contained no legible signature.

By decision dated February 7, 2013, OWCP denied appellant's claim finding that the medical evidence of record failed to establish that her injury was causally related to the accepted October 1, 2012 employment incident.

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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed are causally related to the employment injury.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on 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 can be established only by medical evidence.

When an employee claims that he or she sustained an injury in the performance of duty he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He or she must also establish that such event, incident or exposure caused an injury.[7] Once an employee establishes that he or she sustained an injury in the performance of duty, he or she has the burden of proof to establish that any subsequent medical condition or disability for work, for which he or she claims compensation is causally related to the accepted injury.[8]

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. In determining whether a case has been established, such circumstances as late notification of injury, lack of confirmation of injury

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[4] *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

[5] *Michael E. Smith*, 50 ECAB 313 (1999).

[6] *Elaine Pendleton*, *supra* note 4 at 1143.

[7] *See generally John J. Carlone*, 41 ECAB 354 (1989); *see also* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (occupational disease or illness and traumatic injury defined). *See Victor J. Woodhams*, 41 ECAB 345 (1989) regarding a claimant's burden of proof in an occupational disease claim.

[8] *Supra* note 5.

and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on the employee's statements. The employee has not met his or her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.[9]

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.[10] The opinion of the physician must be based on 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[11]

ANALYSIS

OWCP accepted that the October 1, 2012 employment incident occurred as alleged. The issue is whether appellant established that the incident caused her a back injury. The Board finds that she did not submit sufficient medical evidence to support that her back injury is causally related to the October 1, 2012 employment incident.[12]

In medical reports and CA-17 forms dated October 1 to November 29, 2012, Dr. Medina reported that on October 1, 2012 appellant was picking up a tray and turned when she felt a sharp pain on her left side. She diagnosed lumbar strain, low back pain, left middle back pain, muscle spasm, neck pain and hip pain and provided appellant with work restrictions. In an October 1, 2012 Form CA-20, Dr. Medina diagnosed lumbar strain and checked the box marked "yes" when asked if she believed that appellant's condition was caused or aggravated by her employment condition. The form did not contain a history of injury as provided by appellant.

The Board finds that the opinion of Dr. Medina is not well rationalized. Dr. Medina failed to provide any details regarding appellant's medical history. She provided a diagnosis of lumbar strain but her medical reports failed to state any opinion on causal relationship. While Dr. Medina noted that appellant was picking up a tray and turned when she felt a sharp pain on her left side, she failed to state that the incident caused appellant's injury and did not provide an explanation on how this incident would result in lumbar strain. She also provided additional diagnoses of low back pain, left middle back pain, muscle spasm, neck pain and hip pain. The Board has held that pain is a description of a symptom rather than a clear diagnosis of the

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[9] *Betty J. Smith*, 54 ECAB 174 (2002).

[10] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[11] *James Mack*, 43 ECAB 321 (1991).

[12] *See Robert Broome*, 55 ECAB 339 (2004).

medical condition.[13] It is not possible to establish the cause of a medical condition, if the physician has not stated a diagnosis, but only notes pain.[14]

Dr. Medina's October 1, 2012 Form CA-20 diagnosed lumbar strain and the physician checked the box marked "yes" when asked if she believed that appellant's condition was caused or aggravated by her employment condition. However, the form contained no history of injury and it is unclear what employment incident Dr. Medina is attributing to appellant's lumbar strain. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" on a medical form report without further explanation or rationale is of diminished probative value.[15] Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.[16] The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.[17] Dr. Medina's reports do not meet that standard and are insufficient to meet appellant's burden of proof.

The remaining medical evidence is also insufficient to support appellant's claim. Mr. Espiritu's October 5, 2012 report was not signed by a physician. Rather, Dr. Medina signed a certification approving physical therapy. Registered nurses, physical therapists and physicians assistants, they are not physicians as defined under FECA, their opinions are of no probative value.[18] The Chiropractic Record from McDonald Chiropractic Clinic did not contain a legible signature and thus, it is unclear if the treatment notes were signed by a physician.[19] These notes lack probative medical value as the author(s) cannot be identified as a physician.[20]

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[13] *C.F.,* Docket No. 08-1102 (issued October 10, 2008).

[14] *T.G.*, Docket No. 13-76 (issued March 22, 2013).

[15] *Alberta S. Williamson*, 47 ECAB 569 (1996).

[16] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

[17] *See Lee R. Haywood*, 48 ECAB 145 (1996).

[18] 5 U.S.C. § 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. FECA 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 State law. *See also Roy L. Humphrey*, 57 ECAB 238 (2005).

[19] Nurses, physician's assistants, physical and occupational therapists are not "physicians" as defined by FECA, their opinions regarding diagnosis and causal relationship are of no probative medical value. 5 U.S.C. § 8101(2).

[20] *See Ricky S. Storms*, 52 ECAB 349 (2001); *Morris Scanlon*, 11 ECAB 384, 385 (1960). 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. § 8102(2); *see Sean O'Connell*, 56 ECAB 195 (2004); *Mary A. Ceglia*, 55 ECAB 626 (2004).

In the instant case, the record lacks rationalized medical evidence establishing a causal relationship between the October 1, 2012 employment incident and appellant's injury. Thus, appellant has failed to meet her burden of proof.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that her back injury is causally related to the October 1, 2012 employment incident, as alleged.

ORDER

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

Issued: September 9, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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