United States Department of Labor
Employees' Compensation Appeals Board

C.N., Appellant	)	
and	)	**Docket No. 14-1805**
	)	**Issued: December 8, 2014**
NATIONAL AERONAUTICS & SPACE ADMINISTRATION, GLENN RESEARCH CENTER, Cleveland, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On August 12, 2014 appellant, through her attorney, filed a timely appeal of a May 28, 2014 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 to consider the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof to establish a traumatic injury in the performance of duty on September 13, 2012, as alleged.

FACTUAL HISTORY

On June 7, 2013 appellant, then a 48-year-old budget analyst, filed a traumatic injury claim alleging that she sustained a left leg injury on September 13, 2012 in the performance of duty. She stated that she participated in the Combined Federal Campaign (CFC) car show.

[1] 5 U.S.C. § 8101 *et seq.*

Appellant was on her way to sit in a chair on the grass outside of building 21 when she stepped into a hole bruising and cutting her left leg. She stated that she tried to stop herself from falling which jolted her whole body. The injury occurred at 11:25 a.m. Later that evening, appellant experienced severe pain in her upper back and shoulders. On the reverse of the form, her supervisor indicated that she was injured in the performance of duty. He did not indicate that appellant stopped work.

Appellant submitted a narrative statement asserting that the employment incident occurred on the day of the CFC car show and that she was a member of a car club invited to participate. She and her husband were walking toward a group of people when her left leg entered a grass covered pipe hole causing bleeding, burning, and bruising of her left leg. Appellant's leg went into the pipe up to her knee and her left shoe fell in the hole. She sought treatment from the employing establishment medical clinic. Later that day, appellant developed aching through her body including her back, wrists and legs. She submitted a witness statement from her husband noting that she fell while walking in the grass into a four- to six-inch cleanout pipe that was missing its cover. Appellant's leg went down into the pipe and she was unable to free herself. Her husband pulled her out.

The employing establishment completed an incident report and stated that on September 13, 2012 at 11:25 a.m. appellant sustained an abrasion. It noted that she stepped into an open sewer pipe with her left leg. Appellant visited the occupational medical services. Notes from the employing establishment dated September 13, 2012 diagnosed two superficial abrasions on her left lower leg. Appellant denied pain when palpated and demonstrated full strength and full range of motion to the left leg, ankle, and feet. She walked without pain. The abrasions were cleaned and bandaged.

Appellant provided additional notes from the employing establishment health clinic describing her injury. A nurse practitioner indicated that appellant's left leg entered a plastic sewer pipe and caused abrasions and redness to her lower leg. She indicated that appellant could perform her regular-duty work.

OWCP advised appellant that the case had originally been handled as a minor injury with no lost wages. As the medical expenses had exceeded $1,500.00, it explained it was reopening the claim for a determination on the merits. OWCP requested that appellant provide additional factual and medical evidence on August 1, 2013. It specifically asked that she provide factual evidence substantiating that she was in the performance of duty at the time her injury occurred and medical evidence describing any and all resulting diagnosed conditions. OWCP further asked that the employing establishment describe the relationship of appellant's activities at the time of her injury on September 13, 2012 to her employment.

Appellant submitted a narrative statement dated August 7, 2013 and stated that her employment incident occurred during a CFC car show which she and her husband participated in every year for the previous five years. She described her leg entering the pipe to her knee and the resulting burning and bleeding. Appellant stated that later that day her whole body began to ache including her back, neck, wrists, and legs. The pain progressed and she sought medical treatment from her family practitioner and a chiropractor. Appellant stated that she was able to work from home from March and did not miss any work.

Appellant submitted a note from a chiropractor who provided initials only, R.L., D.C.,[2] dated August 27, 2013 diagnosing cervical disc lesion, and left cervical radiculitis. The chiropractor indicated that the work injury of September 13, 2012 caused nerve root irritation to appellant's cervical spine. Appellant underwent a cervical magnetic resonance imaging (MRI) scan on April 30, 2013 which demonstrated a left central disc herniation at C5-6. She otherwise had a normal study.

Michael J. Patrick, Chief, Technical Capability and Integration Branch, responded on behalf of the employing establishment to OWCP's request for information on September 4, 2013. He stated that, while appellant was not required to participate in the CFC car show, all employees were encouraged to attend. Mr. Patrick noted that she was asked to participate and she had agreed. He stated that appellant's participation benefitted the employing establishment and that all employees were permitted and encouraged to participate. The injury occurred on premises during regular work hours and the employing establishment provided all support as it was an employee-sponsored event held onsite with participation encouraged by immediate supervisors and senior management.

By decision dated September 12, 2013, OWCP denied appellant's claim on the grounds that she had not submitted sufficient medical evidence to establish that a diagnosed condition resulted from her accepted employment incident. It informed her that a chiropractor was not a physician for the purposes of FECA without a diagnosis of subluxation of the spine as demonstrated by x-ray.

Counsel requested an oral hearing from the Branch of Hearings and Review on September 25, 2013. Appellant testified at the hearing on March 13, 2014. She stated that she sought treatment from Dr. Ludrosky. Appellant described the employment incident and stated that when her left leg dropped into the pipe her right side bent. She stated that she was working with attorneys from the employing establishment and did not realize that she had to file a separate claim under FECA.

Following the oral hearing, appellant submitted treatment notes from Dr. Sandra M. Berglund, an osteopath, who first treated appellant on February 14, 2013 due to pain and numbness in the left arm. Dr. Berglund stated that, in September 2012, appellant's left foot fell in a drain hole and she landed forward with her arms stretched out in front. Appellant was jolted on her left side. Dr. Berglund diagnosed cervical radiculitis in the left arm. She completed a note dated March 31, 2014 and stated that appellant fell in a hole at work in September 2012. Dr. Berglund noted treating appellant from February 14 through October 7, 2013 and reported appellant's increasing neck and left arm problems. She stated that appellant felt that her neck and left arm conditions were related to her fall at work.

Dr. Jonathan Salewski, an osteopath, examined appellant on October 25, 2013 due to severe neck and left shoulder pain. He diagnosed cervical C5-6 disc herniation causing no obvious nerve root impingement on the MRI scan consistent with her symptoms of left shoulder and arm pain into her wrist. Appellant underwent a translaminar cervical epidural steroid injection on November 5, 2013 due to C5-6 and C6-7 radiculopathy secondary to a herniated disc with nerve root impingement.

[2] At the oral hearing on March 13, 2014, appellant identified her treating chiropractor as Dr. R. Ludrosky.

By decision dated May 28, 2014, the hearing representative found that appellant had not submitted medical opinion evidence sufficient to establish a causal relationship between her diagnosed condition and her accepted employment injury. She found that the medical evidence diagnosed cervical radiculopathy, but failed to provide a reasoned medical opinion explaining how appellant's condition was causally related to the fall that occurred in September 2012.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of FECA and 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 or specific condition for which compensation is claimed is 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 upon a traumatic injury or an occupational disease.[5]

OWCP defines 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."[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 a medical evidence, to establish that the employment incident caused a personal injury.[8] A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.[9] Medical rationale includes a physician's detailed opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, 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 specific employment activity or factors identified by the claimant.[10]

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[3] 5 U.S.C. §§ 8101-8193.

[4] *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

[5] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[6] 20 C.F.R. § 10.5(ee).

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

[8] *J.Z.*, 58 ECAB 529 (2007).

[9] *T.F.*, 58 ECAB 128 (2006).

[10] *A.D.*, 58 ECAB 149 (2006).

ANALYSIS

Appellant filed a claim for traumatic injury on June 7, 2013 alleging that she sustained a left leg injury on September 13, 2012 when she stepped in a hole. OWCP determined that the claimed work incident occurred as alleged and that she was in the performance of duty at the time the incident occurred. Therefore, the Board finds that the first component for fact of injury is established. The medical evidence is not sufficient, however, to establish that the employment incident on September 13, 2012 caused appellant's diagnosed cervical radiculitis.

In support of her claim for a cervical condition resulting from her accepted employment incident, appellant submitted a note dated August 27, 2013 from Dr. Ludrosky, a chiropractor, diagnosing cervical disc lesion, and left cervical radiculitis. Dr. Ludrosky indicated that the work injury of September 13, 2012 caused nerve root irritation to her cervical spine. Under FECA, a chiropractor is a physician only to the extent that the reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.[11] Dr. Ludrosky did not diagnose a subluxation of the spine and did not provide x-rays demonstrating such a subluxation of the spine. Accordingly, the Board finds that he does not qualify as a physician under FECA.

Appellant also submitted treatment notes from Dr. Berglund who first treated appellant on February 14, 2013 due to pain and numbness in the left arm. Dr. Berglund described appellant's employment incident in September 2012 and diagnosed cervical radiculitis in the left arm. On March 31, 2014 she stated that appellant felt that her neck and left arm conditions were related to her fall at work. An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment, nor her belief that her condition was caused by her employment, is sufficient to establish causal relationship.[12] Dr. Berglund did not provide a medical opinion that appellant's September 2012 employment incident resulted in the diagnosed cervical condition. Instead she repeated appellant's opinion that this incident caused her cervical injury.

On October 25, 2013 Dr. Salewski examined appellant due to severe neck and left shoulder pain. He did not provide any history of injury and did not offer any medical opinion evidence regarding the cause of her diagnosed cervical C5-6 disc herniation. This note, therefore, does not contain the necessary factual background and medical opinion to establish that appellant's diagnosed cervical condition resulted from her September 13, 2012 employment incident.

Appellant sought treatment from the employing establishment medical clinic from a nurse practitioner on September 13, 2012. The nurse practitioner indicated that appellant's left leg entered a plastic sewer pipe and caused abrasions and redness to her lower leg. Nurse

[11] Section 8101(2) of FECA provide as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners with the scope of their practice as defined by State law. The term physician includes chiropractors only to the extent that 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. *See Merton J. Sills*, 39 ECAB 572, 575 (1988); *P.R.*, Docket No. 14-1007 (issued August 13, 2014).

[12] *Walter D. Morehead*, 31 ECAB 188 (1986).

practitioners are not physicians under FECA and are not competent to render a medical opinion.[13]

The Board finds that appellant has failed to establish a diagnosed condition as a result of the accepted employment incident due to the lack of medical opinion evidence.

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 failed to establish an injury as a result of her September 13, 2012 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the May 28, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 8, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

[13] *G.G.*, 58 ECAB 389 (2007).