United States Department of Labor
Employees' Compensation Appeals Board

M.M., Appellant	)	
and	)	**Docket No. 13-1776**
	)	**Issued: January 6, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Omaha, NE, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 23, 2013 appellant filed a timely appeal from a May 31, 2013 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 this case.

ISSUE

The issue is whether appellant established a traumatic injury in the performance of duty on March 26, 2013.

FACTUAL HISTORY

On March 26, 2013 appellant, then a 33-year-old postal support employee clerk, filed a traumatic injury claim (Form CA-1) alleging that she sustained an injury to her low back and left

[1] 5 U.S.C. § 8101 *et seq.*

hip in the performance of duty on that date. She stated that bending, lifting and throwing caused her injury. The employing establishment issued a Form CA-16 on March 26, 2013.[2]

In a statement dated March 26, 2013, Dr. Eric Hawkins, a chiropractor, noted that appellant was treated that day. He provided her with chiropractic adjustment and physiotherapy. Dr. Hawkins recommended work restrictions of no kneeling or squatting, no repetitive bending or stooping, no climbing of stairs or ladders, no repetitive shoveling, lifting only up to 10 pounds, pushing and pulling with up to 20 pounds of force and reaching to shoulder level only. He diagnosed sprain/strain of the lumbar muscles. Dr. Hawkins did not state that x-rays were obtained.

In an attending physician's form dated March 26, 2013, Dr. Hawkins noted that appellant had no history of preexisting injury, disease or physical impairment. He checked a box indicating that he believed her condition was caused or aggravated by her employment, noting that she was twisting and throwing magazine bundles.

By letter dated April 22, 2013, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It afforded her 30 days to submit additional evidence and to respond to its inquiries, noting that chiropractors do not qualify as physicians under FECA unless there is a diagnosed spinal subluxation, demonstrated by x-ray.

In a duty status report (Form CA-17) dated April 2, 2013, Dr. Hawkins recommended work restrictions of no bending or stooping, no twisting, no reaching above the shoulder, and pulling and pushing no more than six to seven hours per day.

In a note dated March 26, 2013, Dr. Hawkins diagnosed appellant with lumbago and spasm of the lumbar muscle. He provided appellant with a chiropractic adjustment, electrical muscle stimulation and mechanical traction. Dr. Hawkins noted that appellant's lower back and sacrum exhibited misalignment of moderate departure from the center, moderate range of motion abnormality, moderate tissue and tone changes and moderate palpatory pain.

In notes dated March 27 through April 3, 2013, Dr. Hawkins reiterated the diagnoses and appellant's treatment. He noted gradual improvement in her condition over this period of time.

On April 5, 2013 Dr. Hawkins reported improvement in appellant's condition. He noted that her low back and sacrum exhibited misalignment of mild departure from the center, mild range of motion abnormality, mild tissue and tone changes, and mild palpatory pain. Additionally, Dr. Hawkins provided appellant with C/T mobilization.

In notes dated April 8 through 19, 2013, Dr. Hawkins reported improvement in appellant's condition. He reiterated the prior diagnosis and treatment. Dr. Hawkins provided appellant with a chiropractic adjustment and T/S mobilization. He noted that appellant's lower back and sacrum exhibited misalignment of mild departure from the center and mild range of motion abnormality.

[2] When a medical treatment authorization Form CA-16 is issued to a specific health provider by the employing establishment, the form creates a contractual obligation to pay for the cost of services rendered under the limitations set forth by statute and the CA-16 form. *See Luke M. Patch, Jr.*, 38 ECAB 259 (1986). The CA-16 form of record, in this case, however, was not fully completed to authorize treatment by any specific medical provider.

On April 26, 2013 Dr. Hawkins reported improvement in appellant's condition. He reiterated that her low back and sacrum exhibited misalignment of mild departure from the center. Dr. Hawkins provided appellant with a chiropractic adjustment.

By letter dated May 6, 2013, appellant responded to OWCP's inquiries. Describing the incident of March 26, 2013, she stated that her injury occurred when she was sorting bundled circulars that had been palletized. The pallet was roughly two and a half feet above the ground. It was appellant's job to push it using a pallet jack to the needed location, then to sort the bundles. The bundles weighed about five pounds each. Appellant lifted the bundles off the pallet, then twisted to stack the bundles on the floor at the carrier case, estimating that she did this approximately two hundred times. Her back began to hurt, but she continued to work despite the pain. Appellant eventually asked a coworker to take over her task. Appellant began to put mail into post office boxes, but could not bend over. She told the acting postmaster that she needed to leave to see a chiropractor. Appellant described the duties of her position as a mail clerk as working the dock, loading and unloading loads of mail and mail containers, and sorting through trays, tubs, sacks of mail, parcels and bundled flats. She lifted, scanned, and threw hundreds of parcels, sorted through stock, and delivered post office box mail. Appellant asserted that she had not previously been treated for a back or hip condition, but was treated by Dr. Hawkins on July 24, 2012 for a shoulder condition. She never saw a medical doctor for her claimed injury because no one told her she needed to do so. Appellant listed her activities outside of federal employment as sleeping, driving, grocery shopping, paying bills, housework, errands and watching her son play sports. She asserted that she had no similar disability or symptoms before the claimed date of injury. Appellant clarified that her claim was for traumatic injury.

In a witness statement dated May 6, 2013, a coworker stated that appellant was teaching her how to distribute mail when she hurt her back. Another coworker noted that appellant left to see her chiropractor. For the next week, the coworker helped appellant on the dock on night dispatch, loading and unloading trucks, due to her injury.

By decision dated May 31, 2013, OWCP denied appellant's claim. It found that she did not submit any medical evidence from a qualified physician. It noted that the medical evidence was from a chiropractor who did not diagnose a subluxation of the spine as demonstrated by x-ray.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 timely filed within the applicable time

[3] 5 U.S.C. §§ 8101-8193.

limitation period of FECA, that an injury[4] was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[5]

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. A fact of injury determination is based on two elements. 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 sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.[6]

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.[7] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[8] The weight of the 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.[9]

ANALYSIS

Appellant alleged that on March 26, 2013, she sustained an injury to her low back and left hip in the performance of duty. The Board finds that she did not submit sufficient medical evidence to establish an injury causally related to the accepted incident.

Appellant submitted reports from Dr. Hawkins, a chiropractor. Section 8101(2) of FECA[10] provides that 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 regulations by the Secretary.[11] The evidence of record does not substantiate that Dr. Hawkins obtained x-rays of

[4] OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events of 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. 20 C.F.R. § 10.5(ee).

[5] *T.H.*, 59 ECAB 388, 393 (2008); *see Steven S. Saleh*, 55 ECAB 169, 171-72 (2003); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *Id*. *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

[7] *See J.Z.*, 58 ECAB 529, 531 (2007); *Paul E. Thams*, 56 ECAB 503, 511 (2005).

[8] *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[9] *James Mack*, 43 ECAB 321, 329 (1991).

[10] 5 U.S.C. § 8101(2).

[11] *See* 20 C.F.R. § 10.311.

appellant's spine. While he noted a misalignment of appellant's spine, he did not diagnose a spinal subluxation based upon x-ray evidence. Without a diagnosis of a spinal subluxation by x-ray, a chiropractor is not a physician as defined under FECA and his opinion does not constitute competent medical evidence.[12] Therefore, the reports of Dr. Hawkins are of no probative value on the issue of whether appellant sustained a low back or hip injury due to the incident of March 26, 2013.

Because appellant did not submit rationalized medical opinion evidence, from a physician, she has failed to meet her burden of proof.

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 not established that she sustained an injury in the performance of duty on March 26, 2013, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the May 31, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 6, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

[12] *See Jay K. Tomokiyo*, 51 ECAB 361, 367-68 (2000).