United States Department of Labor
Employees' Compensation Appeals Board

D.G., Appellant	)	
and	)	**Docket No. 13-1785**
	)	**Issued: January 14, 2014**
SOCIAL SECURITY ADMINISTRATION, Jamaica, NY, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
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 July 24, 2013 appellant, through her attorney, filed a timely appeal from an April 22, 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 merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish an injury in the performance of duty on July 13, 2012.

FACTUAL HISTORY

On July 23, 2012 appellant, then a 57-year-old contract representative, filed a traumatic injury claim alleging that on July 13, 2012 she injured her neck, back and extremities when the elevator in which she was riding dropped abruptly between floors. The record reflects that under

[1] 5 U.S.C. § 8101 *et seq.*

claim file number xxxxxx243, OWCP had accepted a prior neck strain due to a prior injury on January 16, 2004 due to an elevator accident.

Appellant submitted an August 2, 2012 Form CA-16 Authorization for Examination and/or Treatment. In a July 12, 2012 note, Dr. Sreevani Thota, a Board-certified internist, advised that appellant was totally disabled for work from July 16 to August 3, 2012.

In a July 24, 2012 report and an August 2, 2012 letter, Dr. Robert Robbins, a chiropractor, diagnosed cervical, thoracic, lumbosacral and left shoulder strains arising from the July 13, 2012 elevator incident. He found that appellant was totally disabled from July 13 until September 4, 2012 having been treated with physical therapy.

By letter dated August 10, 2012, OWCP notified appellant of the deficiencies in the evidence. It requested additional medical and factual evidence to support her claim.

In a July 23, 2012 report, Dr. Robbins noted the history of injury and appellant's elevator accident. He set forth findings on examination. Dr. Robbins provided a diagnostic impression postelevator accident with multiple trauma resulting in cervical, thoracic and lumbar sprains, intersegmental joint dysfunction and associated myofascial pain; bilateral shoulder sprains and joint dysfunction with associated myofascial pain, secondary to cervicothoracic spine weakness and injury at C5-T1; bilateral lower extremity radicular symptoms secondary to lumbosacral spine weakness and injury at L2-S1. He stated that trauma to the spine created an acute subluxation syndrome as the vertebrae had deviated from normal biomechanical functions and supportive spinal structures. Dr. Robbins indicated that no special tests were ordered or reviewed during his examination. He noted that appellant was sent for x-rays to rule out fracture to the cervical, thoracic and lumbar spine.

In response to OWCP's August 10, 2012 request, appellant submitted August 1, 2012 x-ray reports of the left shoulder, lumbosacral spine, cervical spine and thoracic spine obtained for Dr. Robbins.

In a handwritten September 1, 2012 report, Dr. Thomas Damato, a Board-certified surgeon, recommended appellant not return to work as her medication was being adjusted. He noted that an appropriate return to work date was in 60 to 90 days.

In an August 30, 2012 report, Dr. Thota stated that the July 13, 2012 elevator incident traumatized appellant and her symptoms were worsened with severe pain behavior. He diagnosed anxiety disorder/panic attack and lumbar/cervical radiculopathy. Dr. Thota opined that the conditions were caused or aggravated by the July 13, 2012 employment incident as appellant was claustrophoblic after the incident. In an August 30, 2012 prescription note, he opined that she was disabled from work until October 2, 2012 due to the diagnosed conditions.

By decision dated September 19, 2012, OWCP denied appellant's claim. It found that the medical evidence was insufficient to relate the diagnosed conditions to the accepted work incident.

In a letter dated October 1, 2012, appellant requested reconsideration. She described her symptoms and alleged the July 13, 2012 elevator incident left her with physical, neurological and mental/emotional injuries.

In handwritten reports of September 22 and 29, 2012, Dr. Damato stated that appellant was under his care since September 1, 2012 for post-traumatic stress disorder, major depression and anxiety due to the July 13, 2012 work injury. Appellant's medication was being adjusted and she would be out of work until December 1, 2012.

In a September 27, 2012 report, Dr. Michel S. Badin, a Board-certified internist, noted that appellant was first seen on July 17, 2012 for a July 3, 2012 elevator accident and that she was anxious and restless. He noted that she was under care of her chiropractor for her cervical and shoulder pain and under the care of Dr. Damato for her anxiety insomnia and restlessness. Dr. Badin noted that appellant was admitted to the hospital from September 4 until 11, 2012 for hyperglycemia, acute gastristis and esophagitis which were aggravated by her anxiety and restlessness following the reported incident. He noted that per Dr. Damato, appellant has been disabled from July 13 until December 1, 2012.

In September 27 and October 22, 2012 duty status reports, Dr. Robbins, appellant's chiropractor, diagnosed cervical, thoracic, lumbar spine injury with radiculopathy as related to the July 13, 2012 employment incident and opined that she was able to perform limited-duty work with restrictions.

By decision dated January 3, 2013, OWCP denied modification of its prior decision.

In a January 17, 2013 letter, appellant, through her attorney, requested reconsideration.

Dr. Thota stated that, in an August 30, 2012 report, appellant was disabled because of the July 13, 2012 incident. He stated that she became claustrophobic after the elevator stopped and she was now afraid to drive a car. Dr. Thota indicated that he saw appellant on July 17 and August 22, 2012 and described her symptoms, which he noted had improved.

In a November 28, 2012 report, Dr. Robbins opined that appellant was totally disabled from the date of the accident on July 13, 2012 until present. He indicated that she suffered severe injuries to her neck, back and left shoulder and that, although improvement had been noted, she should refrain from any sort of work as it would likely exacerbate her condition.

Dr. Damato, in a November 24, 2012 handwritten report, indicated that appellant suffered from post-traumatic stress disorder, generalized anxiety and major depression and a multiple of medical issues. He opined that she was unable to return to work.

A copy of November 12, 2012 electromylogram (EMG) results were also provided.

In a January 31, 2013 letter, OWCP advised Dr. Damato that in order for appellant to establish her claim for an emotional condition, he needed to provide a rationalized explanation as to how the July 13, 2012 incident caused an emotional condition and any disability. It noted that it is accepted that appellant was stuck in an elevator and had to climb backward onto the ladder to the next floor.

In a January 28, 2013 report, Dr. Damato noted that appellant experienced a similar incident in an elevator on January 16, 2004. He opined that the two elevator accidents of January 16, 2004 and July 13, 2012 had a definite effect on her medical well-being and that she currently suffered from psychiatric symptoms of major depression, generalized anxiety, post-traumatic stress disorder, panic attacks and several other medical issues. Dr. Damato advised that appellant would require psychiatric and medical care to return her to baseline functioning prior to the two accidents. He further advised that she remains totally disabled from work at this time.

By decision dated April 22, 2013, OWCP denied modification of its prior decisions.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.[2] 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.[3]

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.[4] 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.[5] 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.[6]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[7] An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that

[2] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[3] *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 2.

[5] *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

[6] *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 2.

[7] *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Katherine J. Friday*, 47 ECAB 591 (1996).

the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[8]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[9] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.[10] 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.[11]

ANALYSIS

OWCP accepted that appellant sustained the employment incident as alleged on July 13, 2012. It denied her claim on the grounds that she failed to submit any rationalized medical evidence explaining how the July 13, 2012 employment incident caused or aggravated her numerous diagnosed conditions.

The Board finds that appellant failed to submit sufficient rationalized medical evidence to establish the causal connection between her diagnosed conditions and the July 13, 2012 incident.[12]

Appellant submitted reports from her chiropractor, Dr. Robbins, who opined that the cervical, thoracic, lumbosacral and left shoulder strains arose from the July 13, 2012 elevator incident. The reports from Dr. Robbins are of limited probative value. The Board finds that he is not a physician as defined under FECA. Section 8101(2) of FECA 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.[13] A chiropractor is not considered a physician under FECA unless reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.[14] In a July 23, 2012 report, Dr. Robbins indicated that the trauma to appellant's spine caused an acute subluxation

[8] *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[9] *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D Wayne Avila*, 57 ECAB 642 (2006).

[10] *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

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

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

[13] 5 U.S.C. § 8101(2).

[14] *Id.*; *see Sean O Connell*, 56 ECAB 195 (2004); *Mary A. Ceglia*, 55 ECAB 626 (2004).

syndrome.[15] As of that date, no x-rays of the cervical or lumbar spine had been obtained to support a spinal subluxation. X-rays were performed for Dr. Robbins on August 1, 2012, but his August 2, 2012 report did not address the diagnostic testing. Therefore, the diagnosis of a subluxation as demonstrated by x-ray is not established. Dr. Robbins is not a "physician" and his medical opinion is of no probative value.[16]

Dr. Thota provided July 12 and August 30, 2012 out of work notes and an August 30, 2012 report. He opined that appellant's anxiety disorder/panic attack and lumbar/cervical radiculopathy were caused or aggravated by the July 13, 2012 employment incident. The Board has held that brief medical notes consisting solely of conclusory statements without supporting rationale are of diminished probative value.[17] Medical reports not containing rationale on causal relationship are generally insufficient to support an employee's burden of proof.[18] In view of the lack of any rationale provided by Dr. Thota on the issue of causal relationship, the Board finds that his opinion fails to establish that appellant's diagnosed anxiety disorder/panic attack and lumbar/cervical radiculopathy were caused or aggravated by the July 13, 2012 employment incident.

Dr. Damato found appellant disabled for work from July 13, 2012 due to post-traumatic stress disorder, major depression and anxiety and multiple medical issues which arose due to the July 13, 2012 work injury. In a January 28, 2013 report, he opined that her elevator accidents of January 16, 2004 and July 13, 2012 had a definite effect on her mental and medical well-being. Dr. Damato failed to provide a full or accurate medical history or adequate rationale as to how the elevator incidents caused appellant's diagnosed mental conditions.[19] His stated conclusion on causal relationship fails to establish that she sustained an emotional condition caused or aggravated the July 13, 2012 elevator incident.

In a September 27, 2012 report, Dr. Badin referenced the findings of the other attending physicians, but fails to offer his own opinion on causal relationship. Medical evidence that offers no opinion regarding the cause of an employee's condition is of diminished probative value and insufficient to meet appellant's burden of proof.[20]

The x-rays and EMG test results submitted by appellant are diagnostic in nature and do not address causal relation. An award of compensation may not be based on surmise, conjecture

[15] A spinal subluxation is an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae. *See* 20 C.F.R. § 10.5(bb).

[16] *See Jack B. Wood*, 40 ECAB 95, 109 (1988).

[17] *See T.M.*, Docket No. 08-975 (issued February 6, 2009); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *William C. Thomas*, 45 ECAB 591 (1994) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

[18] *See D.U.*, Docket No. 10-144 (issued July 27, 2010); *S.S.*, 59 ECAB 315 (2008); *William C. Thomas, supra* note 17.

[19] *See supra* note 16.

[20] *A.F.*, 59 ECAB 714 (2008); *Ellen L. Noble*, 55 ECAB 530 (2004); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

or speculation. Neither the fact that appellant's conditions became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.[21] Causal relationship must be established by rationalized medical opinion evidence and she failed to submit such evidence.

OWCP advised appellant that it was her responsibility to provide a comprehensive medical report which described her symptoms, test results, diagnosis, treatment and a physician's opinion, with medical reasons, on the cause of her condition. Appellant failed to submit sufficient medical documentation. She has not met her burden of proof.[22]

On appeal, counsel contends that the medical evidence submitted is sufficient to either accept the claim or to require further medical development. As noted, the medical evidence submitted to the record is deficient on the issue of causal relation.

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 met her burden of proof to establish that she sustained an injury in the performance of duty on July 13, 2012 as alleged.

[21] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[22] The record contains a Form CA-16 signed by the employing establishment official on August 2, 2012. When the employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the April 22, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 14, 2014
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