United States Department of Labor
Employees' Compensation Appeals Board

M.M., Appellant	)	
and	)	**Docket No. 14-1488**
	)	**Issued: November 19, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Santa Clarita, CA, Employer	)	

Appearances:
Chris Gayles, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 19, 2014 appellant, through her representative, filed a timely appeal from a May 27, 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 over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a right leg and lumbar injury in the performance of duty.

FACTUAL HISTORY

On August 13, 2013 appellant, then a 55-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that she sustained a lower back and right leg injury on August 9, 2013. She reported that her injuries were a result of lifting and carrying heavy mail

[1] 5 U.S.C. § 8101 *et seq.*

containers for a period of five days. Appellant stopped work on August 11, 2013 and notified her supervisor on August 13, 2013. Her supervisor controverted the claim stating that appellant did not work alone in her assignments. She further stated that appellant was not working on August 9, 2013, the date of the alleged injury.

In an August 9, 2013 medical report, Dr. Carlos Garrett, Board-certified in internal medicine, reported that appellant was seen for severe low back pain with radiation down her right leg to foot. Appellant reported last working the mail line on August 7, 2013 and experiencing soreness after work. The pain worsened the following day when she was off work causing her to seek medical treatment. Dr. Garrett noted that appellant was a postal employee for the last 10 years and worked 40 hours per week. Appellant's duties included prolonged standing and walking, repetitive use of hands with the computer, kneeling, squatting, bending, pushing and pulling 25 to 70 pounds of repetitive lifting. Dr. Garrett noted history of a 2012 back injury consisting of a lumbar sprain with no radicular symptoms. According to appellant, her current injury was not caused by a single specific event but was the result of a repetitive cumulative injury. Upon physical examination and review of x-rays, Dr. Garrett diagnosed lumbar sprain, lumbar radiculopathy and sciatica. Regarding appellant's work status, he found that the findings and diagnosis were consistent with her account of injury or onset of illness. Appellant was restricted from working until August 12, 2013.

By letter dated August 14, 2013, the employing establishment controverted the claim. It contended that appellant's description of injury did not conform to guidelines for a traumatic injury and that she was not working on August 9, 2013, the date she alleged being injured.

By letter dated August 13, 2013, appellant stated that beginning August 2, 2013 she was assigned to dump heavy trays of mail which required bending, lifting and loading 1,000 to 2,000 trays each shift. After lifting approximately 1,000 trays on August 7, 2013, she went home with a sore back. The following day was her day off; but she could not get out of bed due to right leg and back pain which caused her to seek medical treatment.

By letter dated August 20, 2013, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised that it was unclear whether she was claiming a traumatic injury or occupational disease claim and asked to clarify the nature of her claim. OWCP further requested additional medical and factual evidence and asked that she respond within 30 days.

On August 28, 2013 appellant responded that she was claiming a traumatic injury. She reported that lifting and carrying heavy trays caused external force and strain on her back. Appellant further reported that on August 9, 2013 she was on the employing establishment premises and the employing establishment sent her to U.S. Health Works for a medical examination.

In an August 9, 2013 report, Dr. Peter Herwitt, a Board-certified diagnostic radiologist, reported that an x-ray of the lumbar spine revealed minimal spondylolisthesis at L4-5 and mild retrolisthesis at L5-S1 with marked disc space narrowing at L5-S1.

In reports dated August 12 to September 13, 2013, Dr. Larry Barnhart, Board-certified in family medicine, provided the same medical and occupational history as described by Dr. Garrett. He reported that appellant's condition had not improved significantly. Upon physical examination and review of the diagnostic study, Dr. Barnhart diagnosed lumbar sprain, lumbar radiculopathy and sciatica. Regarding appellant's work status, he found that the findings and diagnosis were consistent with her account of injury or onset of illness. Appellant was restricted from working and referred for chiropractic treatment, physical therapy and an orthopedic consult.[2]

In a September 17, 2013 work status report, Dr. Arthur Garfinkel, a Board-certified orthopedic surgeon, diagnosed lumbosacral spondylosis and reported that appellant was restricted from working until October 1, 2013.

By decision dated September 26, 2013, OWCP denied appellant's claim. It found that the evidence did not establish that the incident occurred as alleged. OWCP noted that appellant could not have sustained a work-related traumatic injury on August 9, 2013 because she was not working on that date. It further noted that her description of injury appeared to meet the definition of an occupational disease (Form CA-2) rather than a traumatic injury.

On October 7, 2013 appellant requested an oral hearing before the Branch of Hearings and Review. She reported that her supervisor gave her the incorrect form to file and she was unclear of the difference between a traumatic injury and occupational disease. Appellant stated that she believed she suffered an occupational injury as a result of twisting and lifting heavy trays of mail from August 2 through 8, 2013.

In a September 16, 2013 report, Dr. Barry Berkowitz, a Board-certified diagnostic radiologist, provided findings pertaining to a magnetic resonance imaging (MRI) scan of the lumbar spine.

In a September 17, 2013 medical report, Dr. Garfinkel reported that appellant was referred for an initial orthopedic surgical consultation with respect to an alleged work-related injury sustained while working for the postal service on August 9, 2013. He noted that appellant had a several-month history of low back pain as a result of cumulative, repetitive and strenuous activities required at work. Appellant worked for the postal service for the last 28 years and denied other work-related or back injuries. Dr. Garfinkel reviewed her medical reports, provided findings on physical examination and summarized the September 16, 2013 MRI scan of the lumbar spine. He diagnosed sprain and strain of the lumbosacral spine, spondylolisthesis of the lumbosacral spine, lumbar spondylosis and ligamentum flavum hypertrophy of the lumbosacral spine. In reviewing appellant's history, medical records and examination, she sustained an injury to the lumbosacral spine arising out of and caused by the industrial exposure on August 9, 2013.

A hearing was held on April 8, 2014. Appellant contended that her injuries were a result of her work-related duties.

[2] Treatment notes dated August 26 and September 5, 2013 were submitted from Dr. Rodney Kaufman, a treating chiropractor.

By decision dated May 27, 2014, a hearing representative affirmed the September 26, 2013 decision. He found that appellant failed to provide sufficient evidence to support a diagnosed medical condition causally related to factors of her federal employment. The hearing representative accepted as factual appellant's occupational employment duties as described from August 2 through 7, 2013.[3]

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 is causally related to the employment injury.[4] These are the essential elements of 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.

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[7]

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

[3] The Board notes that appellant submitted additional evidence after OWCP rendered its May 27, 2014 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).

[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.

[7] *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

a causal relationship.[8] The opinion of the physician 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 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.[9]

ANALYSIS

Appellant filed a traumatic injury claim alleging that she sustained a right leg and lower back injury on August 9, 2013 as a result of lifting and carrying heavy mail trays for a period of five days. By letter dated October 7, 2013, she stated that she sustained an occupational injury as a result of twisting and lifting heavy trays of mail starting on August 2 through 8, 2013. While OWCP initially denied the claim as one for traumatic injury, in the May 27, 2014 decision, the hearing representative found that appellant's claim was for occupational disease.[10] The Board will treat this claim as an occupational disease as appellant alleged an injury resulting from her work environment over a period longer than a single workday or shift.[11]

The Board finds that appellant failed to establish that she developed a back condition or right leg injury related to factors of her federal employment as a mail handler.[12]

In an August 9, 2013 report, Dr. Garrett treated appellant for right leg and back pain after experiencing soreness from working the mail line on August 7, 2013. Upon physical examination and review of x-rays, he diagnosed lumbar sprain, lumbar radiculopathy and sciatica. While Dr. Garrett provided a medical diagnosis, the Board finds that his opinion on causal relationship is not well rationalized. He merely recounted appellant's statement that she believed her condition was the result of a repetitive cumulative injury. Dr. Garrett noted prolonged standing and walking, repetitive use of hands with the computer, kneeling, squatting, bending, pushing and pulling 25 to 70 pounds of repetitive lifting. He did not specify how often she was required to perform such tasks or the frequency of these physical movements. Dr. Garrett opined that the findings and diagnosis were consistent with appellant's account of injury, yet failed to explain how these repetitive movements caused or aggravated her diagnosed conditions. He noted a prior back injury but failed to provide sufficient detail or clarity on whether appellant's current conditions were caused or aggravated by a preexisting condition or

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

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

[10] The Board has previously held that should a claimant submit an incorrect form, such as a notice of traumatic injury rather than a notice of occupational disease, such a submission is a technical error. OWCP should inform the claimant and employing establishment of whether the claim has been converted to a different type of injury than what was originally claimed and explain the reasons for the method of adjudication. *S.N.*, Docket No. 12-1814 (issued March 11, 2013).

[11] *J.F.*, Docket No. 13-1082 (issued September 18, 2013).

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

her repetitive employment duties as a mail handler.[13] Without a sufficient explanation as to the mechanism of injury, Dr. Garrett's statement that appellant suffered a work-related injury is equivocal in nature and of limited probative value.[14]

The Board notes that the reports dated August 12 to September 13, 2013 from Dr. Barnhart are nearly identical to the August 9, 2013 report of Dr. Garrett. Additional diagnostic testing was submitted and the physician noted physical examination findings upon continued treatment. Dr. Barnhart opined that appellant's lumbar sprain, lumbar radiculopathy and sciatica were consistent with her account of injury or onset of illness. As noted, Dr. Barnhart's reports are also insufficient to establish causal relation. Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.[15] 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.[16] Dr. Barnhart's reports do not meet that standard and are insufficient to meet appellant's burden of proof.

In a September 17, 2013 medical report, Dr. Garfinkel noted that appellant had a several-month history of low back pain as a result of cumulative, repetitive and strenuous activities from her employment at the postal service. He diagnosed sprain and strain of the lumbosacral spine, spondylolisthesis of the lumbosacral spine, lumbar spondylosis and ligamentum flavum hypertrophy of the lumbosacral spine. Dr. Garfinkel's generalized statement that appellant sustained an injury to the lumbosacral spine arising out of and caused by the August 9, 2013 industrial exposure is insufficient to establish a work-related injury. He did not provide an adequately detailed medical history or adequate explanation detailing the August 9, 2013 industrial exposure. Dr. Garfinkel failed to describe appellant's work duties, did not specify how many hours she worked as a mail handler and the frequency of physical movements and tasks which would cause her injury. Moreover, he failed to provide any explanation regarding which employment duties caused appellant injury and the mechanism of injury. Without medical reasoning explaining how appellant's federal employment duties as a mail handler caused or contributed to her lumbosacral spine injury, Dr. Garfinkel's report is insufficient to meet appellant's burden of proof.[17]

The reports of Dr. Herwitt and Dr. Berkowitz provided diagnostic findings pertaining to the lumbar spine and fail to state any opinion on causal relationship.[18] There is no indication that

[13] *B.S.*, Docket No. 13-920 (issued July 9, 2013).

[14] *S.W.*, Docket 08-2538 (issued May 21, 2009).

[15] *Id.*

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

[17] *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

[18] *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

Dr. Kaufman, appellant's chiropractor, diagnosed subluxation based on the results of an x-ray.[19] As Dr. Kaufman does not meet the statutory definition of a physician, his reports lack probative value.[20] Therefore, the remaining medical evidence is also insufficient to establish appellant's claim.

In the instant case, the record lacks rationalized medical evidence establishing a causal relationship between appellant's diagnosed conditions and factors of her federal employment as a mail handler. Thus, appellant has failed to meet her burden of proof.

The Board notes that appellant submitted additional evidence following the May 27, 2014 merit decision. The Board may not consider new evidence for the first time on appeal which was not before OWCP at the time it issued its final decision.[21]

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 right leg and lumbar conditions are causally related to the accepted factors of her federal employment as a mail handler.

[19] 5 U.S.C. § 8101(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. 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).

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

[21] *Supra* note 2.

ORDER

IT IS HEREBY ORDERED THAT the May 27, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 19, 2014
Washington, DC

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

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

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