

**United States Department of Labor
Employees' Compensation Appeals Board**

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T.A., Appellant)	
)	
and)	Docket No. 14-1334
)	Issued: October 27, 2014
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SECURITY)	
ADMINISTRATION, Omaha, NE, Employer)	
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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 May 22, 2014 appellant filed a timely appeal from a March 24, 2014 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act¹ (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 has established total disability from November 1, 2012 to January 7, 2013 due to her October 19, 2012 employment injury.

On appeal, appellant contends that she will never fully recover from her employment-related injury and that her medical bills related to the treatment of this injury should be paid.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 19, 2012 appellant, then a 40-year-old transportation security officer, filed a traumatic injury claim alleging that she sustained hip and groin injuries while trying to close an overstuffed bag at work. She did not stop work.

An accidental injury form dated October 22, 2012 stated that appellant sustained an injury while trying to close a bag.

In an October 28, 2012 witness statement, Bonita Mentzer, an employee, stated that she and appellant were checking bags at an airline on October 19, 2012. Ms. Mentzer heard appellant scream that she had just pulled something in her groin and hip area while trying to close a bag. When she saw that appellant was in tears and apparent pain, she helped her close the bag.

On December 15, 2012 appellant accepted the employing establishment's job offer for limited-duty work, six hours a day, five days a week, effective December 14, 2012.

On January 3, 2013 appellant filed a claim (Form CA-7) for compensation for leave without pay (LWOP) from December 16 to 29, 2012. A time analysis form (CA-7a) dated January 3, 2013 indicated that she used 14.50 hours of LWOP from December 20 to 29, 2012 due to medical restrictions and physician's appointments.

Unsigned medical notes dated October 22 to December 17, 2012 addressed the chiropractic treatment of appellant's neck, back, pelvis and right thoracic conditions.

An October 22, 2012 medical report that contained an illegible signature stated that appellant had backache, post-traumatic headache, muscle spasm, unspecified myalgia and myosistis and cervicalgia.

In work limitation slips dated October 23 to November 15, 2012, Dr. Erin Komp, an attending chiropractor, advised that appellant could not work shifts over six hours or lift more than 10 to 25 pounds. In a November 19, 2012 report, he noted her complaints of pain in the lower back, groin, neck and thoracic spine. Dr. Komp provided findings on examination. In a November 19, 2012 referral slip, he ordered a lumbar magnetic resonance imaging (MRI) scan. In October 22 and November 19, 2012 lumbar and cervical imaging reports, Dr. Komp found no fractures, pathologies or severe dislocation; essentially normal boney structure of the cervical spine; well-maintained disc spaces except as noted; and generally good alignment of the right cervical tower and lateral lumbar spine with a proper lordosis. He reported abnormal findings, which included a reversal of the cervical curve; a left spinous rotation at C4, C7, L2 and L4; mild degenerative joint disease at C5, C6, L3, L4 and L5; and subluxation at C3, C4, C5 and T3. An undated treatment plan cosigned by Dr. Komp and Dr. Sheri Millard, a chiropractor, stated that appellant was to be seen three times a week for five weeks, two times a week for three weeks and one time a week for three weeks, totaling 24 visits.

By letter dated January 10, 2013, OWCP advised appellant that her traumatic injury claim initially appeared to be a minor injury that resulted in minimal or no lost time from work and the claim was administratively handled to allow medical payments. However, appellant's

claim was now being reopened for adjudication because she had filed a claim for wage loss. OWCP requested that she submit additional factual and medical evidence. It also requested that the employing establishment submit any medical evidence regarding treatment appellant received at its medical facility.

On January 23, 2013 appellant filed CA-7 forms for compensation and CA-7a forms indicating that she used 86.75 hours of LWOP from December 30, 2012 to January 20, 2013 due to medical restrictions, a medical appointment and medical orders.

On January 24, 2013 appellant referenced Ms. Mentzer's witness statement in support of her claim. She stated that the immediate effect of her claimed injury was pain in her hip and groin. Appellant stated that she continued to work and sat down when possible. She related that she had no problems with her hip or groin prior to the claimed injury.

In an undated letter, Dr. Komp noted that appellant presented to his office on October 22, 2012 following an injury at work on October, 19, 2012. Appellant's primary complaint was low back pain into the right hip and groin along with upper back and neck pain on the right. Dr. Komp obtained a history of injury that she was closing an overstuffed bag and when she pushed down on the bag, she felt her right hip pop and experienced immediate pain into her right hip and groin. He noted appellant's current complaints of pain and aggravating factors of her injury which included sitting, walking and overall movement. Dr. Komp provided findings on physical examination of the cervical and lumbar spine. On x-ray examination of the cervical and lumbar spines, he reported loss of cervical lordosis, mild degeneration at C4-6 and L5/S1, mild disc thinning at C4/5, C5/6 and L5/S1 and subluxations of C3, C4, C5, T3, L3 and L4. Dr. Komp examined appellant again on January 3, 2013. Appellant rated her improvement as 3 out of 10 with 10 being the most improvement. She reported that her groin pain had improved, but her hip and low back pain continued. Appellant's average pain at that time was 8 out of 10 with 10 being the most severe pain. Dr. Komp reported findings on physical examination of the cervical and lumbar spines. In a November 16, 2012 disability slip, he advised that appellant could return to work on that date. In a December 31, 2012 disability slip, Dr. Komp requested that she be excused from work through January 3, 2013. In a January 3, 2013 report, he diagnosed lumbago and muscle spasm in the cervical, lumbar and thoracic region. In a work limitation slip dated January 4, 2013, Dr. Komp advised that appellant could not work a shift over six hours or lift more than 25 pounds for two weeks.

In a November 19, 2012 lumbar MRI scan report, Dr. Douglas F. Niemann, a Board-certified radiologist, found minimal spondylitic changes considered age appropriate, no spinal canal or lateral recess stenosis and minimal to mild foraminal narrowing most pronounced at L4-5.

In a January 10, 2013 note, Dr. Steven G. Kumagai, an attending Board-certified orthopedic surgeon, obtained a history of injury that appellant was leaning over a large suitcase and felt sudden onset of pain in her right buttock that radiated to her right hip and groin on October 19, 2012. He also obtained a history of her medical treatment and family background. Dr. Kumagai provided findings on physical and x-ray examination. He advised that appellant had mechanical back pain and some spondylosis in her lumbar spine. Appellant had bilateral foraminal stenosis at the 3/4 level. Dr. Kumagai placed her off work because he did not believe

that she should be driving or could work taking Flexeril three times a day. In a January 22, 2013 note, he reiterated the history of the October 19, 2012 incident. On physical examination, Dr. Kumagai reported that appellant was walking much better. Appellant had good range of motion and no neurological deficit. Dr. Kumagai concluded that she seemed much better and addressed her treatment plan.

In a February 15, 2013 decision, OWCP denied appellant's traumatic injury claim. It accepted that the October 19, 2012 incident occurred as alleged. However, OWCP found that the medical evidence was insufficient to establish that appellant sustained a medical condition causally related to the accepted employment incident.

On March 7, 2013 appellant requested a review of the written record by an OWCP hearing representative.

In a January 10, 2013 lumbar x-ray report, Dr. Kevin L. Nelson, a Board-certified radiologist, stated that the radiographs were negative.

In a January 10, 2013 prescription, Dr. Kumagai ordered appellant off work for 10 days. In a February 12, 2013 note, he stated that she appeared to have right-sided lumbar disc radiculopathy. Dr. Kumagai found that appellant was doing well and released her to return to full-time, full-duty work with no restrictions. In a March 14, 2013 note, he provided normal findings on physical examination. Dr. Kumagai determined that appellant had reached maximum medical improvement on the date of his examination. He found that she could work with no restrictions.

In a June 12, 2013 letter, Dr. Kumagai noted his prior examination findings and stated that appellant had responded well to physical therapy. He, however, stated that she still remained symptomatic even though she had been able to return to work without restrictions. Dr. Kumagai opined that appellant aggravated her L4 nerve root on the right by lifting and bending. He stated that it was likely exacerbated by some underlying spondylosis on the right side in her lumbar spine. Dr. Kumagai concluded that appellant's injuries as reported were the result of her October 19, 2012 injury.

In a January 17, 2013 prescription, Christina A. Prauner, a registered nurse and nurse practitioner, ordered appellant off work until January 22, 2013.

In a July 31, 2013 decision, an OWCP hearing representative reversed the February 15, 2013 decision. She found that Dr. Kumagai's June 12, 2013 report established that appellant sustained an aggravation of underlying L4 spondylosis due to the accepted October 19, 2012 employment incident.

By letter dated August 6, 2013, OWCP accepted appellant's claim for employment-related aggravation of underlying L4 spondylosis.

By letters dated August 20 and 23 2013, OWCP advised appellant that the evidence submitted was insufficient to establish her claims for compensation from November 1, 2012 to January 20, 2013. It requested additional medical evidence.

In a September 24, 2013 decision, OWCP denied appellant's claims for compensation from November 1, 2012 to January 7, 2013, finding that the medical evidence did not establish that she was totally disabled during the claimed period due to her accepted October 19, 2012 employment injury.²

On October 24, 2013 appellant requested a review of the written record by an OWCP hearing representative.

In a March 24, 2014 decision, an OWCP hearing representative affirmed the September 24, 2013 decision. She found that the medical evidence was insufficient to establish that appellant sustained a subluxation of the spine and was disabled from November 1, 2012 through January 7, 2013 due to her accepted October 19, 2012 employment injury.

LEGAL PRECEDENT

With respect to a claimed period of disability, an employee has the burden of establishing that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³ The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.⁴

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁵ The medical evidence required to establish a period of employment-related disability is rationalized medical evidence.⁶ Rationalized medical evidence is medical evidence based on a complete factual and medical background of the claimant, of reasonable medical certainty, with an opinion supported by medical rationale.⁷ The Board, however, will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed.⁸ To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.⁹

² OWCP paid appellant disability compensation for the period January 13 to 20, 2013.

³ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ 20 C.F.R. § 10.5(f); *see e.g.*, *Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

⁵ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁶ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁷ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁸ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

⁹ *See William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, *supra* note 5.

ANALYSIS

OWCP accepted that appellant sustained an aggravation of underlying L4 spondylosis while working as a transportation security officer. Appellant claimed compensation for disability from November 1, 2012 through January 20, 2013. The evidence reflects that she has been paid disability compensation for the period January 13 to 20, 2013. OWCP denied appellant's claimed compensation for disability from November 1, 2012 to January 7, 2013 on the grounds that the evidence was insufficient to establish that the claimed disability was due to her accepted lumbar injury. Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed disability and the accepted condition.¹⁰ The Board finds that she did not submit sufficient medical evidence to establish employment-related disability for the period claimed due to her accepted injury.

Dr. Komp, an attending chiropractor, reported abnormal findings, based on October 22 and November 19, 2012 lumbar and cervical imaging reports, which included a reversal of the cervical curve; a left spinous rotation at C4, C7, L2 and L4; mild degenerative joint disease at C5, C6, L3, L4 and L5; and subluxation at C3, C4, C5 and T3. In work limitation slips dated October 23 to November 15, 2012, he advised that appellant could not work shifts over six hours or lift more than 10 to 25 pounds. Dr. Komp further found that she could return to work on November 16, 2012 and from December 31, 2012 through January 3, 2013. He also reported that x-ray examination of the cervical and lumbar spines demonstrated loss of cervical lordosis, mild degeneration at C4-6 and L5/S1, mild disc thinning at C4/5, C5/6 and L5/S1 and subluxation of C3, C4, C5, T3, L3 and L4. An undated treatment plan cosigned by Dr. Komp and Dr. Millard, a chiropractor, stated that appellant was to be seen three times a week for five weeks, two times a week for three weeks and one time a week for three weeks, totaling 24 visits.

In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under 5 U.S.C. § 8101(2). The Board has held that a chiropractor is a physician as defined under FECA 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 As Dr. Komp diagnosed vertebral subluxations in the cervical, thoracic and lumbar spine confirmed by x-ray, he is considered to be a physician under FECA as to this specific diagnosis only.¹² Dr. Millard is not a physician as defined under FECA as the evidence does not establish that she diagnosed subluxation as demonstrated by x-ray.¹³

While Dr. Komp made other diagnoses, including reversal of the cervical curve, left spinous rotation at C4, C7, L2 and L4, mild degenerative joint disease at C4, C5, C6, L3, L4 and

¹⁰ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

¹¹ 5 U.S.C. § 8102(2); *Cf.*, *D.S.*, Docket No. 09-860 (issued November 2, 2009). *See Sean O'Connell*, 56 ECAB 195 (2004); *Mary A. Ceglia*, 55 ECAB 626 (2004). 20 C.F.R. § 10.311(a).

¹² A chiropractor may interpret his x-rays to the same extent as any other physician. 20 C.F.R. § 10.311(c). *See Mary A. Ceglia*, 55 ECAB 626 (2004).

¹³ *See Jack B. Wood*, 40 ECAB 95, 109 (1988).

L5, loss of cervical lordosis and mild disc thinning at C4/5, C5/6 and L5/S1, he is limited only to the diagnosis and treatment of a spinal subluxation. He is not considered a physician for diagnosis and treatment of the other diagnosed conditions.¹⁴ Dr. Komp's opinion regarding appellant's resultant disability and work restrictions is still of no probative value.

With respect to the subluxation diagnosis, Dr. Komp's lumbar and cervical x-ray report and undated letter provided a diagnosis of multiple vertebral subluxations. However, he did not provide an opinion stating that the diagnosed conditions and any resultant disability during the claimed period were causally related to the accepted October 19, 2012 employment injury. The Board has held that a physician's opinion, which does not address causal relationship, is of diminished probative value.¹⁵ Thus, Dr. Komp's report and letter are insufficient to meet appellant's burden of proof.

Dr. Kumagai's January 10, 2013 note found that appellant had bilateral foraminal stenosis at the 3/4 level. He opined that she could not work because she took Flexeril three times a day which prevented her from driving. Dr. Kumagai did not adequately explain how this medication prevented appellant from performing any work. The Board has held that a medical opinion not supported by medical rationale is of little probative value.¹⁶ Further, Dr. Kumagai did not provide an opinion on the causal relationship between the diagnosed condition and the accepted employment injury.¹⁷ Similarly, in a January 10, 2013 prescription, he ordered appellant off work for 10 days, but failed to provide an opinion addressing whether her disability was caused by the accepted September 12, 2012 employment injury.¹⁸ In addition, the other notes and letter from Dr. Kumagai did not provide any opinion on the cause of her alleged disability.¹⁹

Dr. Niemann's and Dr. Nelson's diagnostic test results addressed appellant's lumbar conditions. Neither physician provided an opinion on the causal relationship between the accepted October 19, 2012 employment injury and the diagnosed conditions and any resultant disability.²⁰ The Board finds, therefore, that the reports of Drs. Niemann and Nelson are insufficient to establish appellant's claim.

¹⁴ *K.L.*, Docket No. 11-955 (issued October 18, 2011).

¹⁵ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹⁶ *Caroline Thomas*, 51 ECAB 451 (2000).

¹⁷ *See cases cited, supra* note 15.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

The January 17, 2013 prescription from Ms. Prauner, a nurse practitioner and registered nurse, has no probative value in establishing appellant's claim. Neither a nurse practitioner nor a nurse is a physician as defined under FECA.²¹

The unsigned chiropractic notes and the October 22, 2012 report that contained an illegible signature have no probative value in establishing that appellant has any employment-related disability during the claimed period, as it is not clear whether a physician as defined under FECA prepared the notes and report. It is well established that medical evidence lacking proper identification is of no probative medical value.²²

Appellant failed to submit rationalized medical evidence establishing that her disability from November 1, 2012 through January 7, 2013 resulted from residuals of her accepted employment-related lumbar condition.

On appeal, appellant contended that she will never fully recover from her employment-related injury and that her medical bills related to the treatment of this injury should be paid. As explained, however, she has failed to establish that her claimed disability from November 1, 2012 to January 7, 2013 was causally related to the accepted October 19, 2012 employment injury.

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 that she was totally disabled from November 1, 2012 through January 7, 2013 due to her October 19, 2012 employment injury.

²¹ *L.D.*, 59 ECAB 648 (2008) (a nurse practitioner is not a physician as defined under FECA). *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

²² *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004); *Merton J. Sills*, 39 ECAB 572 (1988).

ORDER

IT IS HEREBY ORDERED THAT the March 24, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 27, 2014
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