United States Department of Labor
Employees' Compensation Appeals Board

S.A., Appellant	)	
and	)	**Docket No. 15-1092**
	)	**Issued: August 3, 2015**
DEPARTMENT OF THE NAVY, CHILD DEVELOPMENT CENTER, JOINT BASE ANACOSTIA-BOLLING, Washington, DC, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On April 9, 2015 appellant filed a timely appeal from a December 10, 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 a back injury on December 19, 2013 while in the performance of duty.

On appeal, appellant contends that she sustained an employment-related back injury for which she received medical treatment in an emergency room as directed by the employing establishment.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 13, 2014 appellant, then a 51-year-old child development program technician, filed a traumatic injury claim alleging that on December 19, 2013 she sustained a back injury in the employing establishment's kitchen. She stated that a coworker was opening an oven door and accidently hit her in the back with the door. Appellant stopped work on the date of injury and returned to work on December 24, 2013.

Appellant submitted emergency room records dated December 19, 2013 from Calvert Memorial Hospital. In a note, Luis DaConceicao, a certified physician assistant, advised that appellant could return to work in two days. Discharge instructions indicated that appellant was treated by Mr. DaConceicao and provided a diagnosis of back pain and information about appellant's medication and follow-up instructions.

An order requisition form dated December 20, 2013 from Bayside Primary Care contained an unknown signature. The form requested studies and stated that appellant would be off work through December 23, 2013 due to an injury.

A choice of doctor statement dated December 20, 2013 indicated that appellant chose Dr. Dhimitri E. Gross, Board-certified in family medicine, as her physician.

A December 20, 2013 prescription sheet from Walmart Pharmacy indicated that appellant was prescribed Cyclobenzapr to treat her muscle spasm.

By letter dated February 7, 2014, OWCP notified appellant of the deficiencies of her claim and afforded her 30 days to submit additional medical evidence. It also requested that the employing establishment submit medical evidence, if appellant had been treated at its medical facility.

Appellant submitted additional emergency room records dated December 19, 2013 from Calvert Memorial Hospital. In a report and progress note, Dr. William A. White, a Board-certified internist, provided a history which included, among other things, that on December 19, 2013 appellant was hit on the left lower back by an industrial-type oven door at work. The report also provided examination findings and laboratory urinalysis test results. Appellant was diagnosed as having back pain. She could return to work in two days with restrictions.

In a December 19, 2013 lumbar x-ray report, Dr. Peter M. Mamalakis, a Board-certified radiologist, found no acute fracture or dislocation.

In an April 15, 2014 decision, OWCP accepted that the December 19, 2013 incident occurred as alleged. However, it denied appellant's claim as the medical evidence did not establish a causal relationship between her back condition and the accepted employment incident.

On May 7, 2014 appellant requested a review of the written record by an OWCP hearing representative.

In a December 20, 2013 report, Dr. Gross provided a history of the accepted December 19, 2013 employment incident, and appellant's medical treatment, and social and

family background. He reported findings on physical examination and diagnosed back contusion and muscle spasm.

In a December 10, 2014 decision, an OWCP hearing representative affirmed the April 15, 2014 decision. He found that the medical evidence was insufficient to establish a back injury causally related to the accepted December 19, 2013 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence[3] including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established.[5] There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.[6]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[7] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[8] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[9]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a traumatic injury caused by the accepted December 19, 2013 employment incident. Appellant failed to submit sufficient medical evidence to establish that she had a back injury causally related to the accepted employment incident.

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[2] 5 U.S.C. §§ 8101-8193.

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[4] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[6] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[7] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

[8] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[9] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

Dr. Gross' December 20, 2013 report found that appellant had a back contusion and muscle spasms. He provided a history of the accepted December 19, 2013 employment incident, but failed to provide an opinion stating that the diagnosed back conditions were caused or aggravated by the accepted employment incident. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[10]

Dr. Mamalakis' December 19, 2013 lumbar x-ray report found no acute fracture or dislocation. He did not opine that appellant had a lumbar condition causally related to the accepted employment incident.

The December 19, 2013 report and progress note of Dr. White found that appellant had back pain and that she could return to work in two days with restrictions. The Board finds that Dr. White's diagnosis of back pain is a description of a symptom rather than a clear diagnosis of the medical condition.[11]

The December 19, 2013 note and discharge instructions from Mr. DaConceicao, a physician assistant, which noted that appellant could return to work in two days, has no probative medical value as a physician assistant is not a physician as defined under FECA.[12]

The December 20, 2013 order requisition form from Bayside Primary Care which contained an unknown signature and excused appellant from work through December 23, 2013 due to an injury is insufficient to establish the claim. A report that is unsigned or bears an illegible signature lacks proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.[13]

The remaining medical evidence of record, including a choice of doctor statement and prescription sheet, does not contain a rationalized medical opinion by a physician on the cause of appellant's claimed condition, and thus, is insufficient to establish appellant's claim.

Therefore, the Board finds that there is insufficient medical evidence to establish that appellant sustained a back injury causally related to the accepted December 19, 2013 employment incident.

On appeal, appellant contended that she sustained an employment-related back injury for which she received medical treatment in an emergency room as directed by the employing establishment. A properly executed CA-16 form can create a contractual agreement for payment of medical expense, even if the claim is not accepted.[14] Although there is evidence of record that

[10] *See K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

[11] The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. *See P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[12] *A.C.*, Docket No. 08-1453 (issued November 18, 2008). Under FECA, a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2). *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

[13] *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

[14] *See Val D. Wynn*, 40 ECAB 666 (1989); 20 C.F.R. § 10.300.

appellant received emergency medical treatment on the date of occurrence and the employing establishment does not controvert the claim, the Board notes that a Form CA-16 is not contained in the record. However, the Board notes that, under 5 U.S.C. § 8103, OWCP also has broad discretion to approve medical care which it finds necessary and reasonable in cases of emergency or other unusual circumstances. Upon return of the case record, OWCP shall determine whether appellant's initial medical care in the hospital emergency room should be authorized pursuant to 20 C.F.R. § 10.304, which provides that, in cases involving emergencies or unusual circumstances, OWCP may authorize treatment.[15]

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 meet her burden of proof to establish a back injury on December 19, 2013 while in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the December 10, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 3, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

[15] *See, e.g., A.S.*, Docket No. 15-101 (issued April 24, 2015) (as there was no Form CA-16 of record, the Board remanded this aspect of the case for OWCP to determine whether appellant's initial care in the hospital emergency room should be authorized, pursuant to 20 C.F.R. § 10.304).