United States Department of Labor
Employees' Compensation Appeals Board

R.W., Appellant	)	
and	)	**Docket No. 14-1816**
	)	**Issued: February 9, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Blaine, WA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On August 19, 2014 appellant, through her attorney, filed a timely appeal from a July 21, 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 sustained an injury on November 13, 2012 in the performance of duty.

FACTUAL HISTORY

On January 26, 2013 appellant, then a 50-year-old rural carrier associate, filed a traumatic injury claim alleging that on November 13, 2012 she injured her left knee and both arms and shoulders when she fell off a porch onto her hands and knees. She also filed a traumatic injury

[1] 5 U.S.C. § 8101 *et seq.*

claim alleging that on November 13, 2012 she strained her upper back when she fell off a wet porch delivering a package and landed on her hands and knees. The employing establishment indicated that it received notice of the injury on December 20, 2012. Appellant's supervisor indicated that he did not have knowledge of the injury as at the time he was not working at that location.

In an incident report dated November 13, 2012, appellant related:

> "I am filing this incident report for an injury while delivering a package. I was delivering a package to a front door and when stepping down from the porch on the steps I fell landed on my knee (ripping my knee out of my jeans) and arms. My knee is banged up and when landing on my arms I hurt my shoulders and am in pain. I am not seeking medical attention right now but if the pain persists, I will go to doctor."

OWCP previously had accepted that appellant sustained a closed dislocation of a lumbar vertebra and a closed dislocation of a thoracic vertebra due to a February 22, 2012 traumatic injury that occurred when she crawled in a cage to get a heavy package. It assigned the claim file number xxxxxx003, which is the Master File number.

In a report dated November 27, 2012, issued under file number xxxxxx003, Dr. Frederick John Gunningham, Board-certified in family medicine, related that appellant's back was "really stiff and hard to move." He assessed her status as "unchanged" and diagnosed lumbar strain. Dr. Gunningham found that appellant should continue performing light duty.

In a progress report dated January 22, 2013, also contained in file number xxxxxx003, Dr. Gunningham indicated that appellant's left two fingers had been numb since earlier that month and that she experienced left leg numbness beginning that day. He noted that she "did slip and fall on a porch while delivering [a] package and hurt the [left] knee." Appellant informed her employing establishment of the incident but did not obtain medical treatment. Dr. Gunningham diagnosed unchanged lumbar strain, a new diagnosis of either left ulnar neuropathy, or cervical radiculopathy and a deteriorated neurogenic bladder, which began again with the start of her arm numbness. He referred appellant for a cervical magnetic resonance imaging (MRI) scan study.

In a duty status report dated February 8, 2013, Dr. Gunningham diagnosed ulnar neuropathy and disc disease. He checked "yes" that the history of injury provided by appellant corresponded to that on the form of an injury to the left knee, both arms, and shoulders on November 13, 2012.

On February 19, 2013 the employing establishment controverted the claim as appellant did not provide written notice of the incident until December 20, 2012.

In a report dated March 7, 2013, Dr. Kelvin K. Ma, a Board-certified neurologist, evaluated appellant for lumbar, and neck pain and sprain, left ulnar paraesthesia, and urinary and fecal incontinence. He noted that she sustained low back sprain on February 22, 2012 from a lifting injury. Appellant returned to work in August 2012 but fell in November 2012 landing on her knees and arms. Subsequently, she had left ulnar paraesthesia and episodes of incontinence.

Dr. Ma related that a February 6, 2013 cervical MRI scan showed mild central canal narrowing and bilateral neural foraminal stenosis at C5-6. He found normal neurological findings on examination and recommended a lumbar MRI scan study.

By letter dated March 25, 2013, OWCP requested that appellant submit additional factual and medical information, including a detailed report from her attending physician addressing the cause of any diagnosed condition and its relationship to the November 13, 2012 work incident.

In a report dated April 30, 2013, Dr. Gunningham discussed his treatment of appellant for a February 22, 2012 back strain. He stated, "[Appellant] continued to improve until she fell on November 13, 2012 while at work. She reported this to work but not to me until I saw her on January 22, 2013 when she had arm and pelvic weakness again." Dr. Gunningham described the results of diagnostic testing and noted that appellant's work status improved until her November 13, 2012 fall.

By decision dated May 2, 2013, OWCP denied appellant's claim on the grounds that she did not establish an injury as alleged. It found that she had established that occurrence of the November 13, 2012 work incident but that the medical evidence was insufficient to show a diagnosed condition causally related to the identified incident.

In a statement dated March 25, 2013, appellant related that on November 13, 2012 she slipped on a porch and fell while delivering a package. When she returned to work she filed an incident report. Appellant indicated that her supervisor could see that her jeans were ripped and her knee and hands had blood on them. She related, "The pain I felt indicated to me that this time the fall had impacted my neck, arms, shoulder, and knees, besides possibly aggravating my lower back again, but at the time the workload was heavy and I continued to work." On December 1, 2012 appellant experienced urinary incontinence, which she initially believed was due to her February 2012 injury. She described her continued symptoms and treatment.

In a March 28, 2013 Department of Labor Certification of Health Care Provider form for the Family and Medical Leave Act, Dr. Gunningham opined that appellant was not able to lift more than 20 pounds. He found that she initially experienced a back injury which progressed to bowel and bladder incontinence aggravated by radiculopathy. Dr. Gunningham indicated that appellant would have periodic flare-ups of her condition necessitating work absences.

On April 30, 2013 appellant related that she experienced a back injury on February 22, 2012. When she fell on November 13, 2012 she again injured her lower back and also sustained a neck condition and numbness, and weakness of the hands and legs.

On May 28, 2013 Dr. Gunningham noted that he had treated appellant since a February 22, 2012 back injury. The back injury slowly improved until her November 13, 2012 fall at work. Dr. Gunningham indicated that appellant did not advise him of her fall until January 22, 2013. He stated, "At that time [appellant] was clearly worsened with arm and pelvic weakness again." Dr. Gunningham diagnosed lumbar strain and either ulnar or cervical radiculopathy. He related that an MRI scan study of the cervical spine did not show the need for surgical intervention. Dr. Gunningham stated, "[Appellant] had two specific dates of injury, with the original February 22, 2012 and the second on November 13, 2012…. It is my medical

opinion that the fall on November 13, 2012 did in fact aggravate the original injury and that this set her recovery back significantly."

On March 13, 2014 appellant requested reconsideration. She asserted that the November 13, 2012 fall caused numbness in her neck, shoulders, and left side and also urinary incontinence. Appellant related that witnesses saw her bloody knee and hands. She gave her supervisor an incident report but the supervisor lost the report.

By decision dated July 21, 2014, OWCP modified the May 2, 2014 decision to find that appellant had not established any of the five elements of 20 C.F.R. § 10.609[2] relative to the occurrence of the alleged November 13, 2012 work incident. It noted that Dr. Gunningham, at the time of his November 27, 2012 examination, did not mention the claimed November 13, 2012 incident and found her condition "unchanged." He also found that appellant's left leg numbness began on the day of his January 22, 2013 evaluation. OWCP thus concluded that Dr. Gunningham's findings in his May 28, 2013 report contradicted his November 27, 2012 report. It also noted that appellant did not submit her November 13, 2012 notification of injury to the employing establishment until February 15, 2013 and that her supervisor did not submit a statement supporting her contention that she saw her injuries. OWCP further determined that the medical evidence was insufficient to show that appellant sustained a medical condition due to her employment.

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 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.[4] 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.[5]

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.[6] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition

[2] 20 C.F.R. § 10.609.

[3] *Id*.

[4] *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

[5] *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

[6] *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

for which compensation is claimed.[7] An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.[8]

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.[9] An injury does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.[10] An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[11] Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statements.[12] However, an employee's statement regarding the occurrence of an employment incident is of great probative force and will stand unless refuted by strong or persuasive evidence.[13]

ANALYSIS

In its July 21, 2014 decision, OWCP found that appellant had not factually established the occurrence of the November 13, 2012 work incident. The Board finds, however, that the evidence does not contain inconsistencies sufficient to cast serious doubt on her version of the employment incident. Appellant related that she informed her supervisor on November 13, 2012 of the incident but waited to seek medical treatment to see if her pain resolved. She informed her physician of her injury on January 22, 2013 and submitted a claim for a traumatic injury on January 26, 2013. The employing establishment challenged the occurrence of the work incident, indicating that appellant did not provide notification until December 20, 2012. However, appellant prepared an incident report for the employing establishment dated November 13, 2012 in which she described her fall from a porch while delivering a package. She noted that she landed on her knee and arms and that her shoulder hurt. The employing establishment did not receive the incident report until February 19, 2013; however, appellant explained that her supervisor lost a copy of the report. Her current supervisor was not able to comment on the

[7] *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[8] *Id.*

[9] *See Louise F. Garnett*, 47 ECAB 639 (1996).

[10] *See Betty J. Smith*, 54 ECAB 174 (2002).

[11] *Id*.

[12] *Linda S. Christian*, 46 ECAB 598 (1995).

[13] *Gregory J. Reser*, 57 ECAB 277 (2005).

claim as he was not working at that location at the time the injury occurred. The medical reports subsequent to January 22, 2013 contain a history of injury generally consistent with appellant's account of events and the record contains no contemporaneous factual evidence indicating that the claimed incident did not occur as alleged.[14] OWCP noted that Dr. Gunningham, in his November 27, 2012 report contained in file number xxxxxx003, did not mention the November 13, 2012 work incident and assessed her status as unchanged. Dr. Gunningham, however, evaluated appellant on November 27, 2012 for a lumbar condition associated with another claim number. He did not address the status of her upper back, left knee, arms, or shoulders, the parts of the body she claimed she injured on November 13, 2012. As noted, an employee's statement regarding the occurrence of an employment incident is of great probative force.[15] Under the circumstances of this case, the Board finds that appellant's allegations have not been refuted by strong or persuasive evidence. The Board therefore finds that the evidence of record is sufficient to establish that the November 13, 2012 incident occurred at the time, place, and in the manner alleged.

The remaining issue is whether the medical evidence establishes that appellant sustained an injury causally related to the employment incident. In order to establish a causal relationship between the diagnosed condition and the employment incident, she must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.[16]

In a report dated January 22, 2013, Dr. Gunningham noted that appellant experienced leg numbness beginning that day and numbness in two fingers in the left hand earlier that month. He related that she slipped and fell delivering a package but did not seek medical treatment. Dr. Gunningham diagnosed unchanged lumbar strain, a new diagnosis of either left ulnar neuropathy, or cervical radiculopathy and a deteriorated neurogenic bladder, which began again with the start of her arm numbness. He did not, however, address the cause of the diagnosed conditions or relate them to appellant's fall. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.[17]

In a February 8, 2013 form report, Dr. Gunningham diagnosed ulnar neuropathy and disc disease. He checked "yes" that the history of injury provided by appellant corresponded to that on the form of an injury to the left knee, both arms, and shoulders on November 13, 2012. The Board has held, however, that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form question on whether the claimant's condition was

[14] *See Thelma Rogers*, 42 ECAB 866 (1991).

[15] *See N.S.*, 59 ECAB 422 (2008); *Gregory J. Reser*, *supra* note 13.

[16] *David Apgar*, *supra* note 6; *James Mack*, 43 ECAB 321 (1991).

[17] *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003).

related to the history given is of little probative value. Without explanation or rationale for the conclusions reached, such report is insufficient to establish causal relationship.[18]

In a March 28, 2013 disability form, Dr. Gunningham found that appellant initially experienced a back injury which progressed to bowel and bladder incontinence aggravated by radiculopathy. He opined that she had work restrictions and would experience intermittent disability. Dr. Gunningham did not, however, discuss the November 13, 2012 work incident or specifically relate any condition or disability to the incident; consequently, his report is of little probative value.

On April 30, 2013 Dr. Gunningham related that appellant's back strain and work status due to her February 22, 2012 injury improved until her November 13, 2012 fall at work. He noted that she did not inform him of her fall until January 22, 2013, when she again experienced weakness of the arm and pelvis. Dr. Gunningham, however, did not provide any specific diagnosis due to the November 13, 2012 work incident or fully explain how the described work incident aggravated appellant's condition. Without a firm diagnosis supported by medical rationale, the report is of little probative value.[19]

In a report dated May 28, 2013, Dr. Gunningham related that appellant's February 22, 2012 back injury improved until her fall on November 13, 2012. When he evaluated her on January 22, 2013, her condition had deteriorated and she again had weakness of the pelvis and arm. Dr. Gunningham diagnosed lumbar strain and either ulnar or cervical radiculopathy. He opined that appellant's fall on November 13, 2012 aggravated her prior work injury. Dr. Gunningham did not, however, provide any rationale for his finding that the November 13, 2012 work injury aggravated the February 2012 injury. Such rationale is particularly necessary given his more contemporaneous finding in a report dated November 22, 2012 that appellant's condition was unchanged. To be of probative value, a physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value.[20]

In a report dated March 7, 2013, Dr. Ma discussed appellant's history of a lifting injury on February 22, 2012 to her low back and a fall in November 2012 onto her knees and arms. On examination he found normal neurological findings. Dr. Ma indicated that a cervical MRI scan study dated February 6, 2013 revealed mild central canal narrowing and bilateral neural foraminal stenosis at C5-6. He did not address causation and thus his report is of little probative value.

An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there is a causal relationship between her claimed condition and her

[18] *Cecelia M. Corley*, 56 ECAB 662 (2005); *Deborah L. Beatty*, 54 ECAB 334 (2003) (the checking of a box "yes" in a form report, without additional explanation or rationale, is insufficient to establish causal relationship).

[19] *See Samuel Senkow*, 50 ECAB 370 (1999) (finding that, because a physician's opinion of Legionnaires disease was not definite and was unsupported by medical rationale, it was insufficient to establish causal relationship).

[20] *Jean Culliton*, 337 ECAB 728 (1996).

employment.[21] Appellant must submit a physician's report in which the physician reviews those factors of employment identified by her as causing his condition and, taking these factors into consideration as well as findings upon examination and the medical history, explain how employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.[22] She failed to submit such evidence and therefore failed to discharge 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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that she sustained an injury on November 13, 2012 in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT July 21, 2014 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: February 9, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

[21] *D.E.*, 58 ECAB 448 (2007); *George H. Clark*, 56 ECAB 162 (2004); *Patricia J. Glenn*, 53 ECAB 159 (2001).

[22] *D.D.*, 57 ECAB 734 (2006); *Robert Broome*, 55 ECAB 339 (2004).