United States Department of Labor
Employees' Compensation Appeals Board

N.B., Appellant	)	
	)	
and	)	**Docket No. 15-0708**
	)	**Issued: July 15, 2015**
U.S. POSTAL SERVICE, POST OFFICE, New York City, NY, Employer	)	

Appearances:
Thomas S. Harkins, Esq., for the appellant
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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 3, 2015 appellant, through counsel, filed a timely appeal from a December 9, 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 traumatic injury in the performance of duty on August 14, 2013.

FACTUAL HISTORY

On August 20, 2013 appellant, then a 55-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 14, 2013 she sustained a cervical spine contusion as a result of an elevator door hitting her head. She stopped work on August 14, 2013. The

[1] 5 U.S.C. § 8101 *et seq.*

employing establishment controverted continuation of pay, with a supervisor noting a different account of the injury.

In a note dated August 15, 2013, Dr. Barry A. Baker, a Board-certified internist, stated that appellant could not return to work until September 5, 2013 due to a traumatic neck contusion.

By letter dated August 22, 2013, OWCP informed appellant of the evidence necessary to establish her claim. It noted that she had not submitted sufficient medical evidence to establish that her diagnosed condition was causally related to the incident of August 14, 2013. OWCP afforded appellant 30 days to submit additional evidence and to respond to its inquiries.

In a report dated August 24, 2013, Dr. Albert Graziosa, an orthopedic surgeon, diagnosed appellant with cervical spine sprain and strain associated with mild degenerative change and possible radiculopathy, and with traumatic headache.[2] He noted that appellant reported that her condition was caused by an elevator door shutting on her head and neck.

A computerized tomography (CT) scan of the cervical spine taken on August 14, 2013 by Dr. Gwendolyn Hotson, a Board-certified radiologist, revealed mild degenerative changes with broad-based posterior disc-osteophyte complex and bilateral hypertrophy, along with left foraminal stenosis and mild facet degenerative disease. The scan also revealed normal cervical lordotic curvature with normal alignment and vertebral bodies of normal height.

Appellant responded to OWCP's questionnaire on September 17, 2013. She stated that the freight elevator door unexpectedly closed on her head on August 14, 2013, which caused an immediate effect of pain. Appellant was transported from her work site to the hospital *via* ambulance.

By decision dated October 1, 2013, OWCP denied appellant's claim for compensation. It accepted that she was a federal civilian employee who filed a timely claim; that the incident occurred as alleged; that a medical condition had been diagnosed; and that she was within the performance of duty. However, OWCP found that appellant had not submitted sufficient evidence to establish that her cervical spine condition was caused or aggravated by the event of August 14, 2013.

On November 4, 2013 appellant requested reconsideration of OWCP's October 1, 2013 decision.

In a follow-up report dated September 27, 2013, Dr. Graziosa noted that appellant had attended one session of therapy, which helped only minimally. He also re-stated his earlier diagnoses.

On October 15, 2013 Dr. Graziosa stated that appellant continued to have headaches. On physical examination he noted tenderness to palpation of the cervical spine along with limited

[2] Dr. Graziosa's certification in a medical specialty could not be confirmed with the American Board of Medical Specialties or the American Osteopathic Association.

range of motion and several positive tests. Dr. Graziosa diagnosed appellant with cervical spine discogenic pain and traumatic headache.

In a report dated November 26, 2013, Dr. Graziosa noted that appellant still experienced persistent traumatic headache and advised that she continue with his recommended course of treatment.

By decision dated January 6, 2014, OWCP denied modification of its prior decision, finding that appellant had still not submitted a physician's report containing a rationalized opinion explaining the causal relationship between appellant's diagnosed conditions and the incident of August 14, 2013.

In a report dated September 4, 2013, Dr. Peter C. Kwan, Board-certified in family medicine, examined appellant and diagnosed her with post-traumatic cephalgia and traumatic injury of the cervical spine, and ruled out traumatic cervical disc herniation. He stated that the incident that appellant described was the competent medical cause of her diagnosed conditions as the history was consistent with his objective findings.

On January 28, 2014 Dr. Hal Rosenfeld, a chiropractor, examined the results of an x-ray of appellant's cervical spine and diagnosed her with a subluxation at C6-C7. He also noted a decreased lordotic curve. Dr. Rosenfeld stated, "An elevator closing on your head causes vertebra to be misaligned, ligaments and muscles to be overstretched, nerves to be irritated and bulging of the discs, and various soft tissues to be inflamed." He concluded that the elevator incident was the proximate cause of appellant's medical condition and caused disability.

On September 19, 2014 appellant once again requested reconsideration of OWCP's October 1, 2013 decision.

By decision dated December 9, 2014, OWCP reviewed the merits of appellant's claim, but denied modification of its October 1, 2013 decision. It found that the reports of Drs. Kwan and Rosenfeld were not sufficiently rationalized to establish a causal relationship between her diagnosed conditions and the incident of August 14, 2013.

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]

[3] *Supra* note 1.

[4] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364, 366 (2006).

[5] *S.P.*, 59 ECAB 184, 188 (2007); *Joe D. Cameron*, 41 ECAB 153, 157 (1989).

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.[6] 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.[7] 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.[8]

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.[9] 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 the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[10]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[11] 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 compensable employment factors.[12] 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.[13]

ANALYSIS

The Board finds that the medical evidence submitted by appellant does not establish that the incident of August 14, 2013 caused a medical condition.

In support of her claim, appellant initially submitted reports from Dr. Baker and Dr. Graziosa. Dr. Baker, in his August 15, 2013 report, related that appellant could not return to work until September 5, 2013 due to a traumatic neck contusion. However, he offered no

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

[7] *D.B.*, 58 ECAB 464, 466 (2007); *David Apgar*, 57 ECAB 137, 140 (2005).

[8] *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734, 737 (2008); *Bonnie A. Contreras*, *supra* note 4.

[9] *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[10] *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[11] *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-56 (2006); *D'Wayne Avila*, 57 ECAB 642, 649 (2006).

[12] *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

[13] *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

opinion on the cause of the diagnosed neck condition. Similarly, Dr. Graziosa in his August 24 and October 15, 2013 reports diagnosed a cervical sprain, with mild degenerative change, possible radiculopathy, and traumatic headache. He noted appellant's allegation that her condition had been caused by the employment incident, but offered no medical opinion on the cause of her diagnosed conditions. A medical opinion which does not provide a complete factual and medical background and does not offer medical rationale explaining the nature of the relationship between the diagnosed condition and the employment incident is of limited probative value.[14]

Dr. Kwan submitted a report dated September 4, 2013 in which he related that he had examined appellant and diagnosed her with post-traumatic cephalgia, and traumatic injury of the cervical spine, and ruled out traumatic cervical disc herniation. He stated that the incident appellant described was the cause of her injury. Dr. Kwan's September 4, 2013 report does not contain a medically sound explanation of how the August 14, 2013 event physiologically caused or aggravated appellant's diagnosed conditions.[15] He further did not explain how appellant's diagnosed degenerative conditions of the cervical spine were related to the incident of August 14, 2013. Medical evidence submitted to support a claim for compensation should reflect a correct history, and the physician should offer a medically sound explanation of how the claimed work event caused or aggravated the claimed condition.[16] Lacking such an explanation, Dr. Kwan's September 4, 2013 report is not sufficient to establish a causal relationship between the event of August 14, 2013 and appellant's diagnosed conditions.

On January 28, 2014 Dr. Rosenfeld examined the results of an x-ray of appellant's cervical spine and diagnosed her with a subluxation at C6-C7. He also noted a decreased lordotic curve. Dr. Rosenfeld stated, "An elevator closing on your head causes vertebra to be misaligned, ligaments and muscles to be overstretched, nerves to be irritated and bulging of the discs, and various soft tissues to be inflamed." He concluded that the August 14, 2013 employment incident was the proximate cause of the described medical condition. As defined under FECA, a physician includes a chiropractor only to the extent that his or her reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.[17] As Dr. Rosenfeld provided a diagnosis of spinal subluxation, noting that this was based on x-ray diagnosis, he is considered a physician under FECA.

Dr. Rosenfeld's January 28, 2014 report, however, is similarly deficient to Dr. Kwan's. While Dr. Rosenfeld provided an opinion as to the cause of appellant's subluxation condition, he did not offer a medically sound explanation of his opinion in light of the contradictory objective evidence. Dr. Rosenfeld failed to explain how the diagnosed subluxation did not appear on the

[14] *Id*.

[15] *See M.M*., Docket No. 15-607 (May 15, 2015).

[16] *D.D.*, Docket No. 13-1517 (issued April 14, 2014).

[17] 5 U.S.C. § 8101(2); *see Merton J. Sills*, 39 ECAB 572, 575 (1988). Subluxation means an incomplete dislocation, off-centering, misalignment, fixation, or abnormal spacing of the vertebrae which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays. 20 C.F.R. § 10.5(bb).

CT scan taken on the date of injury. As such, his opinion is insufficient to establish that appellant's diagnosed subluxation was caused by the incident of August 14, 2013. To the extent that Dr. Rosenfeld diagnosed conditions beyond subluxation and opined that these conditions were caused by the employment incident, his opinion is of no probative value.[18]

As appellant has not submitted rationalized medical evidence to support her claim that she was injured as a result of an August 14, 2013 employment incident, she has not met her burden of proof to establish a claim.

Finally, the Board notes that OWCP's implementing regulations allow for authorization of medical treatment in emergency circumstances. While 20 C.F.R. § 10.300 explains that authorization of emergency medical treatment is usually provided by issuance of a Form CA-16, section 10.304 allows for authorization of emergency treatment, in the absence of a Form CA-16, in cases involving emergencies or unusual circumstances.[19] While there was no Form CA-16 issued in this case, the record reveals that appellant was transported to a hospital on August 14, 2013 from her work site. Upon return of the case record, after such development deemed necessary, OWCP shall adjudicate whether appellant's treatment on August 14, 2013 should be authorized due to an emergency or unusual circumstances.

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 a traumatic injury in the performance of duty on August 14, 2013.

[18] *See George E. Williams*, 44 ECAB 533 (1993). The Board has held chiropractic opinions to be of no probative medical value on conditions beyond the spine. As a chiropractor may only qualify as a physician in the diagnosis and treatment of spinal subluxation, his opinion is of probative medical value only with regard to the spine, even though he meets the FECA's criteria as a physician.

[19] *See also K.J.*, Docket No. 13-271 (issued May 23, 2013).

ORDER

IT IS HEREBY ORDERED THAT the December 9, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 15, 2015
Washington, DC

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

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

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