

ISSUE

The issue is whether appellant met her burden of proof to establish an injury in the performance of duty on December 5, 2013, as alleged.

On appeal, appellant contends that her attending physicians diagnosed lumbago, cervicgia, and knee injury in connection with her claim and requests payment of her medical bills and restoration of 56 hours of sick leave.

FACTUAL HISTORY

On December 20, 2013 appellant, then a 62-year-old industry operations intelligence specialist, filed a traumatic injury claim (Form CA-1) alleging an injury on December 5, 2013 due to a work-related motor vehicle accident. She reported that, as she was driving to conduct a weapons inventory in a government issued vehicle, she was rear-ended by another vehicle at a red traffic light. Appellant stated that she was wearing a seat belt, but her head jerked forward, almost to the windshield, and back again. She hit her right knee on the console, as well.

In a January 16, 2014 letter, OWCP notified appellant of the deficiencies of her claim as she had failed to submit any documentation to support her claim and afforded her 30 days to submit evidence and respond to its inquiries.

Appellant therefore submitted a narrative statement and hospital records dated December 5, 2013 from Einstein Medical Center in Philadelphia, Pennsylvania. Dr. Che Ward, a Board-certified emergency medicine physician, diagnosed musculoskeletal pain. He explained that appellant was rear-ended in a motor vehicle accident without airbag deployment and presented with back pain on the right lumbar area. Dr. Ward reported that appellant denied dizziness, chest pain, shortness of breath, nausea, vomiting, numbness, tingling, or weakness in the upper and lower extremities, but that appellant had mild lower lumbar muscle tenderness on the right side. There was no cervical spine tenderness, full range of motion of the hip, and an x-ray of the hip joint showed no acute fracture. Appellant was able to ambulate in the emergency department and her pain had decreased before discharge.

In a reports dated December 11 and 19, 2013, Dr. Judy Chertok, a Board-certified family practitioner and appellant's attending physician, indicated that appellant had a doctor's appointment and required time off due to persistent pain after her car accident. On January 29, 2014 she diagnosed "muscle spasm and pain in relation to a car accident she sustained [on] December 5, 2013 where she reported being rear-ended at a stop light." Dr. Chertok stated that appellant's initial examination was significant for "diffuse muscle spasm and tenderness, left posterior calf (not in area of tenderness) with small grape-sized swelling without ecchymosis or erythema." Appellant's follow-up examination was essentially normal and Dr. Chertok noted that her back had no tenderness to palpation along the spine, mild paraspinal tenderness in the cervical and lumbar regions, and normal gait. Dr. Chertok found "full range of motion [of] both knees without effusion or signs of trauma." She reiterated her diagnosis of "muscle spasm related to motor vehicle accident" and recommended medication and physical therapy.

By decision dated February 20, 2014, OWCP denied appellant's claim on the basis that the medical evidence submitted failed to establish a diagnosis causally related to the employment incident.

On March 10, 2014 appellant requested an oral hearing before an OWCP hearing representative, which was held on June 9, 2014.

Appellant submitted additional hospital records dated December 5, 2013 and physical therapy notes dated January 8 through March 14, 2014 from James Blakely, a physical therapist, who diagnosed lower back pain "consistent with lumbar sprain/strain."

In a December 19, 2013 report, Dr. Chertok stated that appellant was seen after motor vehicle accident and initially presented with neck and leg pain and indicated that appellant's pain was worsening in the lower back and anterior right knee. She diagnosed muscle pain and explained that appellant was having a limited schedule at work because her pain was worse after prolonged sitting.

By decision dated July 28, 2014, an OWCP hearing representative affirmed the February 20, 2014 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish 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 timely filed within the applicable time limitation period of FECA, that an injury⁵ was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁶

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. A fact of injury determination is based on two elements. 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. 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. An employee may establish that the employment incident occurred, as alleged, but fail to show that his or her condition relates to the employment incident.⁷

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

⁶ See *T.H.*, 59 ECAB 388 (2008). See also *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *Id.* See *Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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.⁸

ANALYSIS

OWCP has accepted that the employment incident of December 5, 2013 occurred at the time and in the place and manner alleged. The issue is whether appellant sustained an injury as a result. The Board finds that appellant did not meet her burden of proof to establish an injury related to the December 5, 2013 employment incident.

On December 5, 2013 Dr. Ward, the emergency room physician, noted that appellant was rear-ended in a motor vehicle accident and diagnosed musculoskeletal pain. The Board finds that Dr. Ward's diagnosis of musculoskeletal pain is a description of a symptom rather than a clear diagnosis of the medical condition.⁹ Thus, the reports from Dr. Ward are insufficient to establish a medical diagnosis in connection with the injury as required.

Similarly, in her reports, Dr. Chertok diagnosed muscle spasm and muscle pain related to appellant's December 5, 2013 motor vehicle accident. In a December 19, 2013 report, she indicated that appellant's pain was worsening in the lower back and anterior right knee. The Board finds that Dr. Chertok's diagnoses of muscle spasm and muscle pain are description symptoms rather than a clear diagnosis of a medical condition.¹⁰ The Board further finds that Dr. Chertok's indication of worsening lower back pain and anterior right knee pain is also not firm diagnoses. Therefore, the reports from Dr. Chertok are insufficient to establish a medical diagnosis in connection with the injury.

Appellant further submitted physical therapy notes dated January 8 through March 14, 2014 from a physical therapist who diagnosed lower back pain "consistent with lumbar sprain/strain." These documents are of no probative value as a physical therapist is not a physician under FECA.¹¹

On appeal, appellant contends that her attending physicians diagnosed lumbago, cervicgia, and knee injury in connection with her claim and requests payment of her medical bills and restoration of 56 hours of sick leave. The Board finds that the evidence of record fails to establish any of these medical diagnoses and their relationship to the employment incident. As appellant has not submitted any evidence to support her allegation that she sustained any

⁸ *Id.* See Gary J. Watling, 52 ECAB 278 (2001).

⁹ 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).

¹⁰ *See id.*

¹¹ *Barbara J. Williams*, 40 ECAB 649 (1989).

injury related to the December 5, 2013 employment incident, she has failed to meet 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(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 an injury in the performance of duty on December 5, 2013, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the July 28, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 4, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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