

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

L.P., Appellant)	
)	
and)	Docket No. 15-116
)	Issued: June 2, 2015
U.S. POSTAL SERVICE, POST OFFICE,)	
Capitol Heights, MD, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 21, 2014 appellant filed a timely appeal from June 13 and October 2, 2014 merit decisions of the Office of Workers' Compensation Programs (OWCP). 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 met her burden of proof to establish an injury in the performance of duty on April 5, 2014, as alleged.

FACTUAL HISTORY

On April 6, 2014 appellant, then a 54-year-old mail handler, filed a traumatic injury claim alleging that on April 5, 2014 at 11:30 p.m., while she was pulling containers off a truck she felt a pain in her lower back and that, as she walked the containers to the door, the pain got worse.

¹ 5 U.S.C. § 8101 *et seq.*

In support of her claim, appellant submitted a verification of treatment form signed by Dr. Elizabeth Biru, a Board-certified internist, dated April 6, 2014 at 10:01 a.m., wherein Dr. Biru noted that appellant received medical treatment on that date and was unable to work from April 6 to 9, 2014. Dr. Eunice F. Shakir, a Board-certified family practitioner, noted in reports dated April 8 and 14, 2014 that appellant was evaluated and unable to work through April 21, 2014. Appellant also submitted a verification of treatment form indicating that she received physical therapy from Roshin Kuriadom on April 8, 2014.

By letter dated May 14, 2014, OWCP provided appellant 30 days to submit additional documentation to support her claim. Appellant did not file a timely response to OWCP's letter.

On June 13, 2014 OWCP denied appellant's claim as she had not submitted medical evidence containing a diagnosis in connection with the accepted employment incident.

On June 26, 2014 appellant requested reconsideration. In support of her request, she submitted a June 24, 2014 report by Dr. Shakir, who listed the dates of examination by appellant's physicians on April 6, 8, and 14, 2014 and noted that she had physical therapy on April 8, 22 and 29, and May 6, 2014. Dr. Shakir noted that when she saw appellant on August 8, 2014, appellant reported that she had begun to unload heavy material from a post truck and that, near the completion of the job, she experienced right-sided lower back pain and spasm. She noted that appellant had no prior history of these symptoms. Dr. Shakir indicated that appellant was in obvious discomfort during her appointment, and held her right side getting on and off the examination table. She opined that the prolonged lifting of heavy boxes caused appellant's lower back strain injury on April 6, 2014. Appellant also submitted physical therapy notes from Ms. Kuriadom and Irene Perrakis.

In an October 2, 2014 decision, OWCP denied modification of its June 13, 2014 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 injury was sustained 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

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 or exposure, which is alleged to have occurred.³ In order to meet his or her burden of proof to establish the fact that he or she sustained an injury

² *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

³ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (August 2012).

in the performance of duty, an employee must submit sufficient evidence to establish that he or she actually experienced the employment injury or exposure at the time, place, and in the manner alleged.⁴

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁵ The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.⁶

ANALYSIS

Appellant alleged that she sustained an injury on April 5, 2014 at 11:30 p.m. while pulling containers off a truck. OWCP accepted that this incident occurred as alleged. However, it denied appellant's claim as it determined that she had failed to establish a medical condition causally related to the accepted incident. The Board finds that OWCP properly denied her claim.

Appellant received treatment from Dr. Biru, on April 6, 2014, who noted that appellant was unable to work from April 6 to 9, 2014. However, Dr. Biru did not provide a medical diagnosis nor did she discuss a cause for appellant's visit.

Appellant was treated by Dr. Shakir on April 6, 8, and 14, 2014. At that time, Dr. Shakir noted that appellant appeared to hold her side moving on and off the examination table and she diagnosed a back strain injury. She noted in her April 8, 2014 report that appellant stated that two days earlier she was unloading heavy material at work and felt a pain and spasm. Dr. Shakir advised appellant to follow-up with a physical therapist. In a June 24, 2014 report, she noted that when she saw appellant she was in obvious discomfort and held her right side getting on and off the examination table. Dr. Shakir opined at that time that the prolonged lifting of heavy boxes caused appellant's lower back strain injury on April 6, 2014. She, however, failed to provide any medical rationale or results from her medical examination to support her opinion.

The Board notes that physical therapists are not considered physicians as defined under FECA.⁷ As such, the Board finds that the notes by Ms. Kuriadom and Ms. Perrakis are of limited probative value.⁸

⁴ *Linda S. Jackson*, 49 ECAB 486 (1998).

⁵ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

⁶ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

⁷ 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

⁸ *J.V.*, Docket No. 14-1025 (issued November 24, 2014).

Causal relationship must be based on rationalized medical opinion evidence.⁹ A physician must accurately describe appellant's work duties and medically explain the process by which these duties would have caused or aggravated his condition.¹⁰ As appellant failed to submit a rationalized medical opinion finding her injuries causally related to the accepted April 5, 2014 employment incident, she has not met 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 did not meet her burden of proof to establish an injury in the performance of duty on April 5, 2014.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 2 and June 13, 2014 are affirmed.

Issued: June 2, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

⁹ *M.E.*, Docket No. 14-1064 (issued September 29, 2014).

¹⁰ *Solomon Polen*, 51 ECAB 341 (2000) (rationalized medical evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician). *See also G.G.*, Docket No 15-234 (issued April 9, 2015).